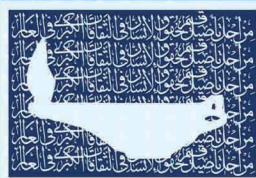


Cairo Institute for Human Rights Studies

Freedom of Association in Morocco

Legal Loopholes and Security Practices

Thematic Reports



CAIRO INSTITUTE
FOR HUMAN RIGHTS STUDIES

Institut du Caire pour les études des droits de l'homme

مركز القاهرة لدراسات حقوق الإنسان

FREEDOM OF ASSOCIATION IN MOROCCO
LEGAL LOOPHOLES AND SECURITY PRACTICE

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Freedom of Association in Morocco

Legal Loopholes and Security Practices

REPORT BY

CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES

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Founded in 1993, the Cairo Institute for Human Rights Studies (CIHRS) is an independent regional non-governmental organization which aims to promote respect for the principles of human rights and democracy in the Arab region. For this purpose, CIHRS focuses on analyzing the difficulties facing the application of international human rights law, disseminating a culture of respect for human rights in the region, and engaging in dialogue between cultures regarding the various international human rights treaties and declarations. CIHRS further seeks to attain this objective by developing, proposing, and promoting changes to policy and practice in the Arab region in order to bring them in line with international human rights standards. In addition, CIHRS conducts human rights advocacy at national, regional, and international human rights mechanisms, carries out research, and provides human rights education, both for youth and for established human rights defenders seeking ongoing professional development. CIHRS is a major publisher of information related to human rights in the Arab region, and its publications include a magazine, an academic quarterly, and scores of books dealing with various human rights-related issues.

A key component of CIHRS' mandate is to help shape the understanding of and discourse around the most pressing human rights issues in the Arab region. CIHRS then seeks to coordinate and mobilize the key players and NGOs across the Arab world to work together to raise public awareness about these issues and to reach solutions in line with international human rights law.

CIHRS enjoys consultative status with the United Nations ECOSOC and observer status with the African Commission for Human and Peoples' Rights. CIHRS is also a member of the Euro-Mediterranean Human Rights Network (EMHRN) and of the International Freedom of Expression Exchange (IFEX). CIHRS has its main offices in Cairo. CIHRS was awarded the French Republic Award for Human Rights in December 2007.

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About this report

This report grew out of the recognition of the importance of examining the degree to which the constitutional amendments of 2011 tangibly benefited Moroccan civil society. The amendments offered civil society an unprecedented opportunity to participate in formulating policies and legislation and gave substantial support to the right to form civic associations in Morocco, setting the country apart from other Arab states in this regard.

The first noteworthy observation is that no genuine legislative changes reflecting those constitutional promises have been introduced from the time work began on this report 2014 to the present. There has been no legislation protecting the right of association, guaranteeing the independence of civil society from security harassment and administrative impediments, and providing the freedom necessary to enable non-government organizations (NGOs), especially rights groups, to freely operate. Old statutes permitting the executive to impose additional restrictions on NGOs are still in force, imperiling constitutional gains. The crucial question of this report concerns the nature and impact of legal loopholes in current legislation governing civic associations and how these loopholes, coupled with security harassment, undercut the promises of the new Moroccan constitution and Morocco's continued pledges in this regard.

Answering this question required an analysis of current or proposed laws regulating civic work in Morocco in light of international human rights standards and national political dynamics, to identify and discuss the legal loopholes and lapses and the problems in practice and implementation. It further necessitated a review and study of various practical examples of the exploitation of such laws and their loopholes to restrict local and international organizations, particularly those working in human rights in Morocco. The report highlights the potential use of such long-standing statutory restrictions whenever the political will exists and the security apparatus is given the green light to do so.

Although the freedom of association in Morocco has improved somewhat in 2016–2017, the continued enforcement of old laws that have not been amended to comport with the constitution threatens a recurrence of numerous arbitrary administrative and security practices hindering civic action. These practices, some of which are detailed by this report, have plagued several local and international rights organizations in the past.

CIHRS expresses its gratitude to the Moroccan governmental and non-governmental parties that cooperated with its researchers on two field missions to Rabat during the preparation of this report. These two missions included 16 interviews and meetings with government officials, the chair and members of the National Council on Human Rights, parliamentarians, lawyers, political activists, journalists, and human rights defenders from national and international organizations in Morocco. We especially thank the Moroccan authorities for facilitating the researchers' mission, and hope they accept the recommendations in this report with interest and in a spirit of constructive engagement.

CIHRS WOULD LIKE TO THANK ALL PARTIES IN MOROCCO, GOVERNMENTAL AND NON-GOVERNMENTAL, THAT COOPERATED WITH OUR RESEARCHERS IN THE PREPARATION OF THIS REPORT DURING TWO FIELD MISSIONS TO RABAT. RESEARCHERS ON THESE MISSIONS CONDUCTED MEETINGS AND 16 INTERVIEWS WITH GOVERNMENT OFFICIALS, THE PRESIDENT AND MEMBERS OF THE NATIONAL HUMAN RIGHTS COUNCIL, PARLIAMENTARIANS, LAWYERS, POLITICAL ACTIVISTS, POLITICIANS, JOURNALISTS, AND HUMAN RIGHTS DEFENDERS FROM NATIONAL AND INTERNATIONAL ORGANIZATIONS IN MOROCCO. WE GIVE SPECIAL THANKS THE MOROCCAN AUTHORITIES FOR FACILITATING THE WORK OF THE RESEARCHERS. WE HOPE THE RECOMMENDATIONS IN THIS REPORT ARE RECEIVED WITH INTEREST AND IN A SPIRIT OF CONSTRUCTIVE ENGAGEMENT.

CIHRS DEEPLY APPRECIATES THE EFFORTS OF ALL OUR RESEARCHERS WHO CONTRIBUTED TO THIS REPORT.

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Introduction

On March 13, 2016, Moroccan National Civil Society Day, the Minister for Parliamentary and Civil Society Relations submitted the first annual report on the partnership between the state and civil society, celebrating the growth and flourishing of civil society in Morocco. According to data cited by the minister, 130,000 civic associations were registered as of 2016, and qualitative and quantitative advancements had been made in state-civil society partnerships.¹ Is this substantial figure alone evidence of the full empowerment of civil society? Does it demonstrate a recognition and appreciation of its role and the effectiveness of partnership with it?

Although Moroccan official state policy supports the role of an active civil society and the Moroccan constitution contains clear guarantees of the right to freedom of association, human rights organizations in Morocco continue to face restrictions. The kingdom's policy and its engagement with these groups have gradually moved backward, despite the official praise for the positive role of civil society and rights organizations.

In the last three years, some Moroccan human rights groups have encountered considerable difficulties in exercising their constitutional right to form associations. Constitutional reforms remain ineffectual,² and no statutory amendments have been introduced to apply the constitution and provide guarantees necessary to protect the right of association in line with international standards, which ensures respect for an independent civic sphere and guarantees the free operation of rights organizations.

The debate over freedom of association in Morocco has taken an official form since March 2013, when the Ministry for Parliamentary and Civil Society Relations launched the National Dialogue

¹ For more information, see http://www.huffpostmaghreb.com/2016/03/14/financement-associations-rapport-societe-civile_n_9457642.html?

² Khadija Al-Ryadi, interview with CIHRS, Oct. 3, 2015.

on Civil Society and the New Constitutional Reforms.¹ The Moroccan authorities considered the dialogue one part of a responsible vision to strengthen the role of civil society, which would allow it to assume its rightful place as a principal partner in democracy and development, as is consistent with constitutional pledges and royal proclamations.

The dialogue sessions resulted in a bill that could constitute a new basis to amend the current association law.² The bill recognized several “lapses and impediments related largely to the legislative, political, and regulatory context, which is unsuited in many respects to the free operation of associations, as well as several practices that hinder the freedom to form associations and continued restrictions on the freedom and independence of associations.”³

In tandem with the government-moderated National Dialogue, some 2,500 associations participated in a national conference to explore ways to empower civil society in the kingdom. The conference titled “The Rabat Appeal for Democratic Associations,” held in November 2013,⁴ culminated in 31 recommendations for the reform of the current association law, with the goal of creating a statutory environment for civil society that would guarantee the freedom to form associations.⁵ A parliamentary bloc also submitted another association bill in 2013.⁶

The National Council on Human Rights (CNDH) contributed to various discussions on the freedom of association in Morocco, including the National Dialogue and the Rabat Appeal. In December 2015, it published a memorandum on freedom of association examining various ways

¹ See the website of the National Dialogue, <https://goo.gl/ZoP33v>

² The royal edict on civil liberties (Royal Edict 1-58-376 of 1958, amended by Edict 1-733-283 of 1973, Edict 1-02-206 of 2002, and Edict 09-07 of 2009), which currently regulates the operation and establishment of associations in Morocco, can be found in English at <https://goo.gl/6efPdS>

³ Introduction to the association bill submitted by the National Dialogue.

⁴ For more information, see <https://goo.gl/b8uY9n>

⁵ The conclusions of the national dialogue organized by the Rabat Appeal can be found in Arabic at <https://goo.gl/nTvDNx>

⁶ The bill submitted by the Justice and Development Party in March 2013 can be found at <https://goo.gl/Xk5fa1>

to address the challenges impeding civil society from assuming its role as an effective partner in governance in light of the new 2011 constitution.¹

All active parties have thus recognized the priority of creating a welcoming, free environment in which civil society can operate, grow, and play its role in the country, and this through core reforms that will turn constitutional guarantees into tangible laws and practices and lift all restrictions on human rights organizations.

The House of Representatives seated after the 2011 protests—its term ended in the fall of 2016—fulfilled some constitutional requirements, issuing a law on the constitutional court and a political parties' law. Nevertheless, other legislation, including the association law, was not a priority for the packed legislative agenda.

Since the core of any impending legislative reform will be based largely on addressing practices and policies that impede the freedom to form and operate associations and remedying loopholes that allow the elimination of the freedom to operate, this report relies on an analysis of the current law, proposed laws, and some relevant recently adopted laws. Within these, it identifies the potential avenues for obstruction and harassment, demonstrating this with concrete examples. The overarching objective of this analysis is to avoid all these legal flaws and shortcomings in the practice and application of any future legislation, assuming that it will be part of an integrated strategy to further liberate civic action in Morocco.

¹ The memorandum can be read in Arabic and French on the CNDH website at <https://goo.gl/Z6KWxr>

Executive summary

Civil society in Morocco is regulated by a set of laws,¹ first and foremost Royal Edict 1-58-376, issued on November 15, 1958, which regulates the right to establish civic associations.² Although the law provides for an empowered civil society, it includes provisions that should be amended to comport with the new constitution and international standards. It also contains various loopholes and avenues that allow the administrative authority to obstruct the activities of civic associations and human rights organizations and thereby impede the exercise of their assigned role, as will be discussed in detail and with supporting examples in this report.

The report found that the challenges faced by human rights groups in Morocco include legal and administrative barriers, security harassment, and political pressure, especially against national and international NGOs that cross what the authorities consider red lines. The list of political issues that may offend the Moroccan authorities include any discussion of the crisis of the Western Sahara or the monarchy, the documentation by human rights groups of restrictions on the political opposition, the defense of the rights of ethnic or national minorities, and reports exposing corruption among senior officials.

In addition to statutory barriers and overly broad, ambiguous legal provisions, some practices of the Moroccan state—in the form of its security and administrative arms—in some cases impede NGOs, both national and international, from exercising their right to form associations. This contradicts pledges by the king³ as well as provisions of the Moroccan constitution adopted in the wake of protests in February 2011.

As found by the report, these practices include increasing administrative restrictions that bar NGOs from completing the legal registration process, which in practice can lead to an unlawful

¹ Laws and regulations governing associations can be found at <https://goo.gl/YZyPAu>

² The law regulating the right to establish civic associations in Morocco can be found at <https://goo.gl/NpzdYA>

³ Speech by King Mohammed VI, Mar. 9, 2011. Available at <https://goo.gl/4ZYx3e>

prohibition on the activities of some organizations. International NGOs also face barriers to access: staff and researchers with several international rights organizations may be prohibited from carrying out field research or operating in Moroccan territory, and some have been expelled from the country.

One factor for the increasing pressure and harassment faced by human rights organizations is the tendency of the state and its agencies to prioritize a response to security fears at the expense of the protection of rights and liberties, a position that has been strengthened by the growing terrorist threats in the region. This security mindset was demonstrated in a statement made by the interior minister to the House of Representatives on July 15, 2014 on counterterrorism efforts, in which he accused human rights groups that expose abuses of spreading false accusations against Moroccan security, threatening the interests and territorial integrity of Morocco, and damaging the country's image. Observers believe that the interior minister's statement led to more frequent violations of the right of association and abuses against human rights defenders.

In a response to government statements inciting against civil society, several NGOs banded together to protest the increasing restrictions on July 15, 2015. A group of 14 national and international associations¹ formed a network (the Network of Association Victims of Prohibition and Restriction) and called on the Moroccan government to respect the right of freedom of assembly and association and lift all restrictions on their operations. The network represents most of the associations that faced impediments to registration in 2015.²

In this context, CIHRS calls on the Moroccan authorities to introduce rapid legislative amendments to eliminate all legal and administrative restrictions impeding the work of civic

¹ The NGOs are: Moroccan Association for Human Rights, Moroccan League for Human Rights, Moroccan Amnesty, Moroccan Human Rights Agency, Freedom Now, the Association for Digital Rights, Attac Maroc, Jodour Association, Moroccan Association for Investigative Journalism, Transparency Morocco, Citizens Forum, Judicial Observatory in Morocco, and ACME-Maroc.

² For more information on the network, see its official website at <https://goo.gl/Zi9Kex>

associations and human rights organizations, while providing the safeguards necessary for the independence of civil society in Morocco. CIHRS proposes reviewing the association law and administrative procedures in light of the 2011 constitution and international standards on freedom of association.

Specifically, this requires implementing the following recommendations:

- Abolish all legal and administrative restrictions on human rights organizations and foster an environment amenable to the operation of such organizations.
- Review the standards that allow the authorities to ban an association's activities based on its goals.
- The authorities must state legally and constitutionally acceptable cause when suspending the registration process of any association and denying it legal recognition.
- Ensure the independence of regulatory bodies, their respect for the law, and their transparency.
- Provide a registration receipt to association officials immediately upon receipt of registration papers or notification of establishment.
- Implement rulings issued by administrative courts in Morocco in favor of associations that faced arbitrary administrative barriers to the deposit of registration documents and were subject to the unlawful prohibition of their activities.
- Consider the recommendations of the Rabat Appeal in connection with the status of civil society and enacting the findings of the National Dialogue.
- Lift all restrictions on international human rights NGOs, reauthorize their activities in the country, permit their employees to again enter Moroccan territory, and ensure their right of movement and work.

Part One

Legal loopholes threatening the freedom of association in Morocco

Civic associations in Morocco are governed by several pieces of legislation, first and foremost Royal Edict 1-58-376 issued on November 15, 1958 regulating the right to establish associations. The law is relatively good, providing for several guarantees for the right of association, most significantly the right to register by notification and an affirmation of the value and importance of civil society. However, overbroad legal provisions and their varying application in practice deny Moroccan civil society many of the benefits of the law.

In practice, legal loopholes can turn the notification process into a complicated, years-long affair. This denies the association legal personhood and hinders its operation, denies society the benefit of its services, and subjects association staff to penalties for working with an illegal entity. Other gaps can make it difficult for an association to expand geographically by opening new branches or to expand its activities to include new fields and objectives. These loopholes give the administrative body an opening to interfere in the purpose of the association and the identification of its objectives, based on what that authority considers to serve the “public interest” or deems harmful to the “national interest,” thus prohibiting an association for assuming roles guaranteed under the constitution and international conventions and treaties.

These issues will be detailed with various examples in this section.

1. Legal loopholes hindering the registration of a new association

Article 2 of the law on the right to establish associations in Morocco governs the registration of NGOs under a notification system. Article 5 sets forth a set of conditions and registration documents that must be submitted with the registration application to the local administrative authority or court in the jurisdiction of the association's headquarters. In exchange, the local authority provides a dated and stamped temporary receipt indicating submission of the documentation, which must include a set of documents on the association's planning and internal structure, objectives, and address, as well as the identification documents of members of the executive bureau.

Article 5 requires the local administrative authority to replace the temporary receipt with a permanent one within 60 days of the date on the receipt. Nonetheless, the association can legally operate even if it does not receive the permanent receipt, as long as state authorities do not officially object to its formation, and its work is consistent with the objectives outlined in its registration documents.

The temporary receipt is thus a crucial document that recognizes the association's registration and qualifies it to operate officially and lawfully. Absent this stamped and dated receipt, an association cannot prove it has submitted documents to the competent bodies and therefore cannot begin operations, even if the authorities have not issued an official decree against its establishment. In addition, the administrative body can refuse to accept the documentation without stating cause or providing a reason for the rejection.

The administrative authority can use this loophole to impede registration, offering no grounds or objections that could be discussed, addressed, or even appealed. This happened with increasing frequency in 2014 and 2015, when local administrative authorities refused to accept registration documents or give a temporary receipt after some rights associations deposited their documents. The activities of these associations were thus hindered and association members exposed to legal risk, either for belonging to an illegal entity or participating in activities organized by an unlawful entity.

To take just one example: in May 2014, the local authorities refused to accept the registration documentation for the Freedom Now association or grant it a temporary receipt to prove its legal

status as a lawfully established association. In June 2014, police forces, citing the entity's lack of legal status, barred association representatives' access to a site where the association announced it intended to organize a public activity. The same month, the association filed a petition with the Administrative Court to review the authorities' refusal to register it, but the petition was denied on the grounds that the association, being an unregistered entity, did not have standing to sue the government.

Freedom Now, a Moroccan association located in Rabat that aims to support media freedoms, is thus compelled to operate "illegally," severely curtailing its activities,¹ with no avenue for redress. The ruling against it was a worrying development, according to Abderrahman Ben Amrou, a lawyer and the president of the Moroccan Judicial Observatory,² who saw it as evidence of a tendency to curb the independence of the Administrative Court and shift the role played by the court in this debate.³ The lawyer for Freedom Now, Abdelaziz Nouaydi, said that the ruling came as a surprise, since the association had acquired legal status after declaring its formation.⁴ Members of the Freedom Now board believe the authorities' refusal to recognize the association is due to members' individual political affiliations. Maati Monjib and Khadija Al-Ryadi, both members of the association's executive bureau, said that the real motive for the restrictions faced by Freedom Now is that the group includes members of the Islamist Al Adl Wa Al Ihssane and others who have expressed their opposition to the monarchy.

The Moroccan Association for Digital Rights faced a similar situation in May 2014, when the local administrative body refused to issue it a temporary receipt, although it had submitted all the required documentation.

The association, which works in issues of digital rights, privacy, and freedom of expression, deposited its establishment documentation for the first time on May 14, 2014, but the authorities refused to provide a temporary receipt. In February 2015, the association again sent in its documentation by registered mail, documenting the deposit process, but it had received no

¹ Interview with Maati Monjib, the president of Freedom Now, Sep. 28, 2015, Rabat, Morocco.

² A rights lawyer and the former president of the Lawyers Syndicate in Rabat.

³ Interview with lawyer Abderrahman Ben Amrou, Rabat, Morocco.

⁴ Telephone interview with Nouaydi.

response as of this writing.¹ Meanwhile, the authorities are pressuring human rights associations that cooperate with the Moroccan Association for Digital Rights or provide space for its limited activities, claiming that the group is an illegal entity. On May 5, 2015, the governor of Rabat sent a letter to the president of the association objecting to the designation of a headquarters for the association and its activities, arguing it was an entity without legal status.²

Numerous groups for Sahrawi human rights encounter these same practices, facing difficulties in obtaining legal status. The Moroccan authorities often use these administrative stratagems to refuse to complete the legal registration of Sahrawi NGOs, and local administrative officials unlawfully refuse to accept their notification documentation. This happened to the Sahrawi Observatory for Children and Women and the Collective of Sahrawi Human Rights Defenders (CODESA).³

In what is perhaps the worst case, which Sahrawi organizations fear will be their fate, the Sahrawi Association of Victims of Grave Violations of Human Rights Committed by the Moroccan State (ASVDH) was given a temporary receipt ten years after it had submitted its registration documents. ASVDH, which was established by former political prisoners and victims of enforced disappearance in May 2005,⁴ received its temporary receipt in 2015, becoming the first Sahrawi NGO to receive legal recognition from the Moroccan government.⁵ This would not have been possible without the energetic efforts of national and international human rights champions, the UN High Commission on Human Rights, and the intervention of the CNDH.⁶

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¹ Karima Nader, vice-president of the association, in a telephone interview, Aug. 28, 2015.

² According to communication between the governor of Rabat and the president of the Moroccan Association for Digital Rights, May 5, 2015.

³ For more information, see CODESA's 2015 annual human rights report.

⁴ A local official with the Interior Ministry refused to accept ASVDH's documentation at the time of registration. The association filed suit with the Administrative Court, which ruled in its favor in 2006, reasoning that the legal official did not have the discretionary authority to deny receipt of the documents. The ruling became final in 2008, but ASVDH continued to face unjustified rejection from the administration, until it finally obtained the receipt in 2015.

⁵ For more details, see <https://goo.gl/irdAXv>

⁶ For more details, see <https://goo.gl/x7cggQ>

2. Legal loopholes jeopardizing registration renewal or the registration of new branches

These arbitrary administrative practices are associated not only with the registration of new associations. They can similarly hinder active, registered organizations in a way that threatens their stability and lawful expansion. This can take one of two forms: associations may be denied the final receipt that enacts their registration or they may be denied a temporary receipt when renewing registration, opening new branches, or documenting any relevant development in the association's status.

a. Denial of final receipt

The scope of associations' operations that receive only a temporary receipt remains limited, and they do not enjoy some rights acquired by associations that have completed the registration process and obtained the final receipt. For example, most government agencies will not consider applications for partnership or support from an association without a permanent receipt. The Ministerial Commission on Human Rights considers a final receipt evidence of an association's legitimacy and refuses to work with or grant material support to any association without one.

Denying an association a permanent receipt is thus an effective way to impede its operation and receipt of material support and hinder cooperation with the official bodies with which it is ostensibly a partner. In addition, this is possible without a statement of any official objection that could be contested. The Rabat Appeal recommended amending the association law to set forth new registration measures that would grant an association a single registration receipt as soon as it has deposited the necessary documents for notification.

b. Obstruction of registration renewal, expansions, or administrative changes

Article 5 of the law requires associations to notify the authorities and submit the same documents in the event of any change in the administrative board, the renewal of its mandate on the date set forth in the association's charter, an amendment in the association's charter, or the establishment

of a new branch. In all these cases, the association must follow the same registration procedures, in exchange for a stamped and dated receipt from the competent bodies proving that the change has been registered.

As one example, this refusal of the administration to complete these procedures hindered the registration renewal of 60 branches of the Moroccan Association for Human Rights from July 2014 to September 2016 in various Moroccan cities and villages. In some cases, the administrative authorities arbitrarily refused to accept the documents declaring the association's representatives, without stating cause. A temporary receipt was denied to 48 of the association's branches, and only 12 branches received the temporary receipt, among them the central office of the association in Rabat.

The Moroccan Association for Human Rights went to the Administrative Court with the details of 24 cases in which the local authorities had refused to accept notification documents or issue a temporary receipt. In ten cases referred to the first-instance court, the court ruled in favor of the association and against the authorities' practices.¹ In other cases, litigation continues while the authorities refuse to accept their registration renewal files. In no case has recourse of the Moroccan Association for Human Rights—and other NGOs facing similar restrictions—to the Administrative Court alleviated these arbitrary practices, which continue.

The Moroccan Association for Investigative Journalism's attempt to change the association's executive structure offers another case of intransigence. Although the association was registered in 2011, the authorities refused to give it a temporary receipt after a new executive bureau was elected in May 2015.²

These arbitrary practices affect associations in various ways. They undermine their ability to operate, curb the scope of their activities, and expose their members to legal action. Associations operating without state recognition of their establishment encounter difficulties in organizing

¹ In the cases of branches in Tahla, Imintanoute, Temara, Khenifra, Tifelt, Marrakech Menara, Chefchaouen, Casablanca, Aït Ourir, and Marrakech.

² Rachid Tarek, president of the association, in an interview with CIHRS, Oct. 1, 2015.

activities and general assemblies, and they may also find it hard to rent office space, conference halls, or public spaces that require proof of legal registration. In addition, they are typically barred from participation in official events and consultations.

3. Legal loopholes allowing interference in an association's purpose, objectives, and nature of its activities

a. Interference in the purpose of an association's establishment

The issue of the temporary or final receipt is not the only problem that impedes registration. Under Article 3 of the Moroccan association law (amended by Royal Edict 1/02/206 issued on July 23, 2002), registration can be denied or revoked for associations whose “purpose or illegitimate objective contravenes laws or public morals, or may seek to infringe the Islamic religion, national territorial integrity, or the monarchy, or advocates any form of discrimination.”¹ These overbroad, vague terms legally and practically allow for interference in the operation of an association and may permit the hindrance of its registration or its dissolution in contravention of international standards. According to the International Labor Organization Convention on freedom of association and protection of the right of organize, any restriction set forth in law must have a legitimate aim and the law in question must be precise, specific, and comprehensible, particularly in the case of provisions that give state authorities freedom of action. This is not true of this article, which permits the interpretation of the ambiguous standards therein; a reliance on this provision could lead to the annulment of the registration of numerous lawful associations.

To take one example, the Moroccan authorities have used this article to refuse to register organizations that cross red lines, such as associations working in defense of Amazigh or Sahrawi rights, which can easily be categorized as threatening national territorial integrity. It has also been

¹ See the law on the right to establish associations.

used with associations that include members of some opposition political groups or political dissidents, such as members of Al Adl Wa Al Ihssane.¹

b. Obstructing the role of associations as partners in legislative and institutional reform

Article 12 of the Moroccan constitution of 2011 upholds civil society's role as a partner in legislative reform and gives NGOs the right to participate in the preparation, implementation, and assessment of state policies.² Article 13 requires the state to provide for legal instruments in the form of consultative bodies to foster the participation of NGOs in decision and policymaking, noting, "The public authorities shall work to create instances of dialogue, with the goal of linking various social elements to the enactment, implementation and application, and assessment of public policies." Articles 14 and 15 expand the scope of participation to include all citizens, by giving them the right to propose bills and submit petitions. These constitutional promises have come under clear threat by quasi-legal practices and new legislation that allows associations to be denied this real achievement in the constitution.

On June 1, 2016, as early steps were being taken to issue new laws and amend statutes to comport with the constitution, Law 64/14 on the submission of legislative bills³ and Law 44/14 on the submission of petitions to the public authorities⁴ were issued; they both entered into force on August 18, 2016.

The laws did not incorporate the contributions and proposals submitted to parliament by NGOs, reducing the constitutional prerogatives of civil society. Article 4 of both laws sets forth the

¹ Al Adl Wa Al Ihssane is an illegal Islamist political group that advocates the application of Islamic law and does not recognize the monarchy. For more information, see "al-Adl wal-Ihsan: Inside Morocco's Islamist Challenge," at <https://goo.gl/kcQjHJ>

² Article 12 of the constitution states, "Associations interested in public affairs and non-governmental organizations shall contribute in a participatory democratic framework in the enactment, implementation, and assessment of decisions and initiatives undertaken by elected institutions and public authorities. These institutions and authorities must organize this contribution pursuant to the conditions and methods set forth in law."

³ Available in Arabic at <http://goo.gl/0kayZQ>

⁴ Available in Arabic at <http://bit.ly/2eJvThl>

grounds for the rejection of proposals and petitions submitted to parliament on legislative amendments. According to this article, a petition will not be accepted if its beginning or content “influences the fundamental precepts of the nation, particularly in regard to Islam, territorial unity, or the monarchy.” This overbroad, ambiguous language will permit the rejection of a large set of proposals related to human rights.

For example, proposals advocating the reform of legislation related to individual freedom may be disregarded as contravening the fundamental precepts of the nation. The same is true of proposals on human rights in the Western Sahara, on the grounds that they infringe Moroccan territorial integrity. The same article allows the rejection of petitions that address “issues related to national defense and internal security.” The authorities can thus easily cite this article to deny any petitions for security sector reform.

Article 3 of the Petition Law and Article 5 of the Bill Law set forth several conditions proposed bills and petitions must meet for consideration, most significantly that they “serve the public interest.” The committee tasked with considering proposals thus has the right to determine what does or does not serve the public interest and, in turn, whether any proposal will receive consideration. This provision hollows out the significance of the idea itself: that NGOs have the right to participate based on their own vision, not what committees deem as serving the public interest.

This is in addition to the procedural and technical rules elaborated in the law, to which civil society organizations must adhere. These extremely complicated rules constitute a barrier to any effective participation. For example, each organization must collect 5,000 signatures in support of a petition for submission, under Article 6 of Law 44/2014 on the submission of petitions; 2,500 signatures are required for the submission of proposed bills under Article 7 of Law 64/14.¹

These new legal restrictions deprive Moroccan civil society of one of its most important constitutional gains: to be a partner in legislating. There is therefore no alternative but to amend

¹ Memorandum from the Prometheus Institute for Democracy and Human Rights on Law 44/14 and Law 64/14, Apr. 2015, p. 14.

these laws to make the conditions and restrictions more specific, curtail the discretionary authority of the competent committees, and limit the potential for arbitrary interpretation with clear, narrow terms.

Establishing official channels by which civil society may contribute to policymaking and reform through direct cooperation with elected institutions or the prime minister would allow organizations defending human rights to play a real role. If the political will exists to properly implement the new constitution, it will permit civil society to expand its role in the public sphere, particularly in legislative reform.

c. Hindering associations' ability to receive foreign funding

Article 206 of the Moroccan Criminal Code specifies “imprisonment of five years in addition to a fine of up to 10,000 dirhams for any person who receives from a foreign person or organization, in any form, support intended or used to finance an activity or advocacy capable of infringing the integrity, sovereignty, or independence of the kingdom, or undermining the fealty owed by citizens to the state and the institutions of the Moroccan people.”

With its broad, vague language, this article allows a wide array of human rights activities to be punished and severely curtails the right of Moroccan civil society to freely obtain funding within the limits of the law and as permitted by international human rights conventions to which Morocco is a party.

This article threatens numerous rights activists in Morocco with prison and fines, with its imprecise, broad terms that could be deployed as a form of reprisal if the political will exists. This, in fact, is exactly the situation facing seven Moroccan journalists and activists who launched a project, Storyteller, with support from Free Press Unlimited, an international organizations headquartered in the Netherlands. The trial of the journalists began in November 2015,¹ with five defendants, among them historian Maati Monjib, facing charges carrying a maximum

¹ The trial of the seven human rights defenders is still underway. See the statement on the incident from Free Press Unlimited at <http://bit.ly/1luSAUu>

sentence of five years in prison and a fine of 10,000 dirhams. Two journalists, Maria Moukrim and Rachid Tarek, are charged with the receipt of foreign funding without notifying the secretariat of the government.¹

4. Role of the CNDH and prospects for change

In a report in December 2015,² the CNDH said that it had used its mandate as an intermediary body to regularly intervene with the competent institutions to assist associations facing difficulties in obtaining a temporary or permanent registration receipt. The council intervened in 22 cases from March to December 2013, 9 cases in 2014, and 12 cases in the first ten months of 2015.³ The president of the CNDH, Driss El Yazami, attributed the obstacles in the registration process largely to protracted, ineffectual bureaucratic measures, particularly on the local level, due to the centralization of authority and the inefficiency of bureaucratic channels and instruments.⁴ El Yazami believes this is a procedural more than a political issue, noting that the legal provisions are ordinary. The error that must be addressed is in the way far-flung local authorities and officials without appropriate training implement them.⁵

Although there is bureaucratic red tape, according to CIHRS interviews with several organizations facing obstacles, the Interior Ministry is a serious hindrance to the registration process as well. The sole oversight body for the registration process, the ministry is, by its nature, not independent of the executive. Moreover, past judicial proceedings highlight the repressive policies and unlawful practices of the Interior Ministry.

¹ See the CIHRS statement on this incident, “Freedom of Expression Does not Undermine the Security of the State,” <http://www.cihrs.org/?p=17614&lang=en>

² The report can be found at <https://goo.gl/u6hMgJ>

³ Ibid, p. 15. [Is this the same report referenced in note number 38]

⁴ Interview with El Yazami, Sep. 30, 2015, Rabat, Morocco.

⁵ Ibid.

In addition, under the law, the local authorities, which are subordinate to the Interior Ministry, do not have the discretion to refuse to accept documents or submit a receipt. The increasing frequency of this practice is thus an expression of a clear authoritarian outlook that seeks to hinder or prevent certain groups from working in civil society. Although delays in the issuance of a registration receipt may result at times from bureaucratic red tape, bureaucratic shortcomings cannot be used to control human rights NGOs.

Here CIHRS reiterates the recommendation of the Rabat Appeal on the need to create an alternative regulatory authority to oversee registration processes. The law must also clarify that if the authorities reject the formation of any association, they must immediately provide tangible, legal cause and permit an expedited appeal before the courts. All this must be addressed as part of clear amendments that remedy the unlawful practices of local authorities and establish legal guarantees to ensure the end of arbitrary practices against civil society organizations.

The CNDH also submitted a memorandum on Law 64/14 and Law 44/14, released in April 2016, to the second chamber of the parliament. In it, the council recommends simplifying the procedures and conditions for the submission of proposed bills and petitions and narrowing and clarifying the grounds to deny proposals. It also requested amendments to Article 4 of Law 44/14 to guarantee the creation of a participatory instrument. Its recommendations were consistent with most of the proposals and criticisms of the laws by civil society organizations.

In this regard, CIHRS recommends considering the proposals submitted by the Moroccan Organization for Human Rights in a memorandum published on January 6, 2016, in particular reducing the required number of signatures for a bill proposal to 6,000, for example.¹ This is part of a comprehensive plan to reduce the law's technical and procedural demands for civil society to participate in submitting petitions and proposing legislation.

¹ See the story at <https://goo.gl/1snzfS>

Part Two

Unlawful security practices threatening freedom of association in Morocco

Not only legal loopholes jeopardize the constitutional gains made in the freedom to form associations. If we affirm the need for political will to liberate civil society, as a guarantee for the adoption and amendment of legislation consistent with the constitution, another core guarantee is equally needed. This guarantee is the end of unlawful security harassment of national and international associations operating in Morocco, especially in human rights and most particularly on sensitive issues classified by the security apparatus as “red lines” that cannot be crossed.

This security harassment can take various forms, from preventing activities or forcibly shutting them down if they proceed to deporting international participants in them. As a whole, these practices threaten the climate of free association that Morocco has long prided itself on providing to national and international rights organizations alike.

Although in this section we will review only a few examples of this harassment on the national and international levels, we caution that the persistence of this harassment will only weaken the capacities of civil society, even if the constitution and law grants it full freedom.

1. National associations

The years 2014 and 2015 saw a clear uptick in the frequency with which the authorities prohibited public activities of human rights groups, typically absent legal grounds for these restrictions. In most cases, the ban was unofficial: the authorities contacted locations rented by associations for their activities, such as hotels and private conference halls, and informed them that the activity or event was banned, but did not officially notify the association or offer any reason for the prohibition. In other cases, security forces showed up at the location of the event without prior notification and prevented participants from entering.

The Moroccan Association for Human Rights documented no less than 93 incidents in which activities and events organized by associations were banned by the Moroccan security authorities from July 2014 to September 2016. Although the Administrative Court in Rabat ruled on November 21, 2014¹ and January 16, 2015² that the ban on meetings of the Moroccan Association for Human Rights violated national legislation and Morocco's commitments under international human rights law, the effective ban of these activities by the executive authorities was not lifted.

For example, on January 16, 2015, in the case of the Moroccan Association for Human Rights vs. the Ministry of Youth and Sport,³ the Rabat Administrative Court ruled, "The missions of Moroccan Association are to increase awareness of human rights issues and contribute to their promotion and defense. It has the right to organize its activities as it wishes, provided they do not infringe, threaten, or hinder the public order." The incident involved a training seminar at the Bouhelal Center, and the court awarded the association 50,000 dirhams for material damage and \$10,500 for moral damage.

¹ Ruling of the Rabat Administrative Court, Nov. 2014.

² Ruling of the Rabat Administrative Court, Jan. 2015.

³ The event was organized at the Bouhelal Center, a public utility under the supervision of the Ministry of Youth and Sport.

In another case, on November 21, 2014 when ruling for the Moroccan association, the court referred to the government's obligation to protect the freedom of assembly under the Moroccan Constitution, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights.¹ The Moroccan state appealed both court orders with the Appellate Administrative Court.²

On September 27 and 28, 2014, the Moroccan League in Defense of Human Rights was not permitted to convene a national seminar on human rights culture, and the authorities also barred it from holding an internal organizational meeting in Rabat. On December 13, 2014, the league and the Moroccan Association for Human Rights were prohibited from organizing a joint thought seminar in Tangier, though they had met all legal requirements and obtained written permission from the local authorities.

The restrictions imposed on the activities of human rights groups that the authorities deem politically sensitive continued in 2015 and 2016. For example, in May 2016, the mayor of Marrakech banned a public event on combatting corruption and bribery, organized by the Moroccan League for Human Rights in concert with Transparency International at El Kalaa des Sraghna; the mayor said the event might disturb the public order.³ The Moroccan League believes that the topic of the event—corruption—was the real reason for the ban, seeing concerns about the public order as simply a pretext to prevent the organization from raising awareness of how to combat corruption.⁴

The authorities also prohibited a seminar on environmental rights on July 1, 2016 that was to be held at the Marrakech local council, organized by Attac Maroc, the Moroccan Association for Human Rights, and the Amazigh Citizenship Network.⁵

¹ Ruling of the Rabat Administrative Court, Nov. 2014.

² Communication from Khadija Ainani, vice-president of the association.

³ For more details about the incident, see <https://goo.gl/e23zdV>

⁴ Ibid.

⁵ See the statement from Front Line Defenders at <https://goo.gl/s000Eo>

2. International rights organizations operating in Morocco

The increased restrictions on human rights work from 2014 to 2015 extended to international organizations working in the Kingdom of Morocco. The conflict between the Moroccan authorities and a number of these groups came to a head when representatives of the international organizations were forced to leave Morocco.

For example, the Moroccan authorities prohibited the 16th annual youth camp run by Amnesty International (AI), to be held in Bouznika, near Rabat, in the first week of September 2014. The theme of the camp was combating torture and mistreatment. The authorities did not directly inform AI or the organizers; they learned of the prohibition from a press release published by the official Morocco News Agency.¹

The authorities say the ban resulted from AI's non-compliance with legal procedures, while the organization says it complied with all procedures set forth in Moroccan law, in particular Article 3 of the royal edict on public assemblies.² That article requires that the local authorities be notified of all public assemblies, but it does not require prior permission.

The tension between the Moroccan state and Amnesty International reached a peak after AI published a report in May 2015 titled, "Shadow of Impunity: Torture in Morocco and Western Sahara."³ The report concluded that although torture in Morocco is not systematic, and in fact had declined somewhat, police and security forces continued to use beatings, strangling, pressure, waterboarding, and psychological and sexual violence against prisoners and detainees and that impunity for these practices prevailed. The Moroccan state considered these allegations to be

¹ See the Amnesty International statement on the incident at <https://goo.gl/McvZaC>

² Available in Arabic at <https://goo.gl/yVR5rb>

³ See the report at <https://goo.gl/b6vHaH>

evidence of clear bias against Morocco, which began with Morocco's inclusion as a priority state in AI's international anti-torture campaign, launched in 2014.¹

Tension between the organization and the state continued after Moroccan police in June 2015 detained and expelled AI's director for Europe and Central Asia and a researcher on refugee and immigrant rights. AI saw this as an attempt to prevent legitimate human rights research and silence critics of the Moroccan authorities.² After several attempts by Amnesty International to defuse tensions and improve relations with the Moroccan government, on March 17, 2016, the Moroccan prime minister announced that his country was prepared to cooperate with all international NGOs in a framework of neutrality, professionalism, and respect for national laws and regulations, including Amnesty International. The announcement followed a high-level meeting with the AI secretary-general.³

Another prominent international NGO, Human Rights Watch (HRW), was also questioned about its activities in Morocco, on the grounds that its assessment of the status of human rights was biased. In October 2015, the government spokesman and Minister of Communications Mustapha El Khalfi sent a letter to the executive director of HRW accusing the organization, among other things, of using and abusing Morocco's open-door policy "to tarnish its image." The letter demanded that HRW suspend all activities pending a meeting of clarification.⁴

According to HRW, the Moroccan state said in meeting in March 2016 between HRW Executive Director Kenneth Roth and Minister Mustapha El Khalfi that the request to suspend activities was still in force, since HRW did not recognize the positive strides Morocco had taken in human rights and had adopted a biased position on the Western Sahara issue.

In addition to these prominent examples of the Moroccan authorities' intolerance for criticism of government policies from international human rights organizations, the past two

¹ See the news story at <https://goo.gl/Z5GgM5>

² See the Amnesty International statement on the expulsion at <http://bit.ly/2uvf2m6>

³ Details of the announcement are at <http://bit.ly/2pI57Kr>

⁴ A copy of the letter can be found at <https://goo.gl/zdoUpp>

years also saw the expulsion of a number of international rights lawyers, observers, and researchers.

In April 2016, the Moroccan authorities deported eight European lawyers, an extremely draconian measure that presages a policy of restricting the entry of international rights figures to Morocco. The lawyers had established an international legal collective in support of the prisoners of Gdeim Izik, Sahrawi prisoners who had been arrested during the 2010 riots,¹ and were arrested after reaching their hotel in Rabat, on the grounds of “disturbing the public peace.”²

In a press statement, government spokesman Mustapha El Khalfi justified the decision as part of “sovereign practices,” stressing that “the kingdom cannot accept a group of foreigners of various nationalities sowing problems and undermining the public order.”³ These claims and practices brought a strong response from two prominent lawyers, Abderrahman Ben Amrou and Abderrahim Jamaï, both of whom had previously served as the head of the Rabat Bar. The two men issued a statement on April 30, 2016,⁴ criticizing the government policy of expelling journalists, lawyers, and human rights defenders without regard for the law or constitution. Lawyers in particular, they said, have a global professional obligation and mission, which they have a right to pursue regardless of the cases they defend.

In June 2015, the delegate of the International Institute for Non-Violent Action (NOVACT) was expelled due to the organization’s activity in promoting human rights in Morocco. The institute considered the action a sign of the deteriorating state of human rights in Morocco.⁵

The same month, security officials interrupted a workshop in Marrakech and confiscated the mobile phones provided to participants in the Storyteller workshop,⁶ a project to support

¹ The rioting in 2010 resulted in the imprisonment of 24 Sahrawi activists by order of a military court on charges of killing members of the security forces who raided the protest camp, known as Gdeim Izik, in the Western Sahara in November 2010. Several of the prisoners are in critical health due a long hunger strike. Rights organizations demanded they be retried before a civilian court in a fair trial.

² For more details about the expulsion of the lawyers, see <https://goo.gl/2ZY4T9>

³ See, “Khalfi: The Expulsion of 8 Europeans in Full Accordance with the Law,” <https://goo.gl/J9Sw66>

⁴ The statement is available in Arabic at <https://goo.gl/jkpJ7K>

⁵ For more details, see <https://goo.gl/RvbtNL>

⁶ See the statement from Free Press Unlimited at <http://bit.ly/2vUOHxA>

citizens' journalistic skills, improve journalistic professionalism in various mediums, and cover stories using mobile phones. The workshop was organized by Free Press Unlimited, an international NGO based in the Netherlands that promotes citizen journalism, freedom of expression, and access to information with its Moroccan national partners. Moroccan human rights defenders and NGO workers who participated in the project were later subject to harassment.

Worryingly, restrictions on the work of international NGOs in Morocco are at times arbitrary. On August 19, 2016, the Pasha of Tetouan banned a roundtable organized by Search for Common Ground on youth participation in local governance, without offering any legal justification.¹ This threatens these organizations' ability to pursue their work in Morocco and detracts from Morocco's long-touted image as a country that respects and secures the role of civil society as a partner democratic development.

¹ For details, see <https://goo.gl/DWn2V2>

Conclusion

In the wave of popular democratic uprisings that swept the region in 2011, Morocco chose to engage with protest movements by opening up opportunities for reform from within the system. It moved toward tangible, democratic reforms, improvement in the status of human rights, and a genuine democratic dynamic that could open the public sphere to all stakeholders and ensure a participatory system to meet the aspirations of one of the most active political and civil societies in the Arab world.

Although the challenges of the democratic transition facing Morocco in 2011 were less daunting than those it encountered in 1999 as the Years of Lead drew to a close, it nevertheless did not succeed as expected in overcoming these challenges to become an Arab democratic model worthy of emulation. In fact, it found recourse in the same justifications used by other Arab governments—which chose a decidedly un-democratic path—including resorting frequently to a security approach on the pretext of political stability and repeatedly accusing rights organizations of prevarication, misinformation, and collusion in foreign conspiracies against public security.

The statement made by His Highness the King before the Gulf Cooperation Council in April 2016 is perhaps the best illustration of this: “We are facing conspiracies which seek to undermine our collective security. Things are quite clear and require no further analysis. They want to destabilize the few countries which have managed to safeguard their security, stability, and political systems. I am referring to the Gulf countries, Morocco, and Jordan, which are oases of peace and security for their citizens and a factor of stability in their respective regions.”¹ With this speech, the King put Morocco in the same column as some of the most repressive regimes in the region.

Serious threats are facing the security and stability of Morocco in light of national, regional, and international challenges, including new waves of violent extremism, economic recession, and

¹ The text of the speech can be found at <https://goo.gl/n8G7Jp>

instability in neighboring countries. Nevertheless, the last two decades have demonstrated that Morocco's stability, like that of any other modern state, depends on the state's respect for the rule of law and diligent action to promote core rights and liberties.

Just five years ago, Arab intellectuals, with the encouragement of strong democratic voices believing in the promises of reform within Morocco, aspired to see Morocco become the first country in the region in which its citizens enjoy the advantages of their peers in Western democracies. These voices began to gradually subside before the growing influence of the strong national and regional security lobby that believes, in defiance of the lessons of history, that governance based on fear and repression will guarantee the region's inhabitants a secure, stable life.

In contrast, the in-depth interviews with civil and political actors in Morocco conducted while preparing this report agree with the conclusions of others based on the daily observance of Morocco politics: there are many parties within the Moroccan political system that continue to prefer long-term stability grounded in opening up the public sphere to citizens through an internal democratic process. They are convinced that civil society and rights organizations have a role to play in reaching this goal. There are those who believe that the human rights movement in Morocco is crucial to gain ground in the ongoing struggle for respect for rights and liberties, the codification of human rights in the constitution, and the institutionalization of instruments to protect them.¹

Morocco ratified the International Covenant on Civil and Political Rights without reservations. Article 22 of that convention states, "Everyone shall have the right to freedom of association with others." Article 12 of the 2011 Moroccan Constitution states explicitly, "Civil society associations and non-governmental organizations shall be formed and practice their activities freely, within the framework of respect for the constitution and law."

All that remains is for the laws to reflect these commitments and for official practice to elevate the values of freedom over the power of the security establishment, for the sake of the stability and prosperity of Morocco.

¹ Rachid Touhtou, "Civil Society in Morocco under the New 2011 Constitution: Issues, Stakes and Challenges," Sep. 2014, Arab Center for Research and Policy Studies, p. 24.