

## **Mid-Term Report on Morocco's Universal Periodic Review**

1. ADALA "Association for the Right to a Fair Trial", ARTICLE 19 and other civil society organizations participating in the preparation of the present report (see list of associations) welcome the offered opportunity to contribute to the process of the third Universal Periodic Review. The present report assesses Morocco's progress in implementing the recommendations presented to the country and its respect of international commitments in the field of human rights, mainly the right to freedom of expression, freedom of the media, freedom of association and peaceful assembly.

This report stems from the evaluation of Morocco's implementation of its voluntary commitments through its ratification and accession to international conventions and their protocols, as well as from the extent of application and implementation of the recommendations that the country endorsed and approved before the Human Rights Council in Geneva on the occasion of the third UPR.

In order to achieve the desired goals, ADALA and ARTICLE 19 and their partners organized a national meeting in Rabat to discuss the extent to which Morocco is implementing its commitments in the field of the right to freedom of expression, freedom of the media, freedom of association and peaceful assembly.

2. This contribution focuses on the following topics:
  - **Cooperation with international human rights mechanisms**
  - **Freedom of expression, media and press**
  - **Freedom of association and peaceful assembly**

### **Part One: Cooperation with international human rights mechanisms**

## **- Unimplemented recommendations**

- Recommendation No. 144-19 “Considering a standing invitation to mandate holders as part of special procedures.”
- Recommendations No. 144-21 and No. 144-22-22 “Extend a standing invitation to mandate holders as part of the special procedures of the Human Rights Council.”
- Recommendation No. 144-23 “Take real steps to enhance cooperation with the United Nations special procedures, in particular with those of the Human Rights Council.”

## **Accomplishments**

3. [The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance](#) visited Morocco during the period from 13 to 21 December 2018.

## **Deficiencies**

4. Morocco has committed to considering extending a standing invitation to mandate holders as part of special procedures<sup>1</sup>, and to continuing constructive discussion with the special procedures mechanisms of the Human Rights Council, but has not extended a standing invitation to mandate holders within the framework of special procedures.

Furthermore, the Special Rapporteur on the independence of judges and lawyers canceled his visit because he considered that Morocco obliged him to visit particular places and thus did not provide him with the appropriate conditions to do his job in the best way<sup>2</sup>. Imposing visits to specific places on special rapporteurs is a violation of the state’s obligation to guarantee their freedom of movement and their ability to carry out their investigations and researches.

## **Recommendations**

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<sup>1</sup>Recommendation 144-19.

<sup>2</sup> See the press release of the special rapporteur on the independence of judges and lawyers.  
<https://news.un.org/fr/story/2019/03/1039041>

5. To invite the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression to conduct a visit to Morocco
6. To respond favorably to the visit request of the Special Rapporteur on the rights to freedom of peaceful assembly and association
7. To extend a standing invitation to mandate holders under the special procedures of the Human Rights Council and to allow them to move and investigate freely as part of their tasks.

## **Part Two: freedom of expression, freedom of the media and the press**

### **Partially implemented recommendations**

- Recommendation No. 144-31 “Ensuring that criminal law is fully consistent with the International Covenant on Civil and Political Rights.”
- Recommendation No. 144-112 “Ensuring that the relevant provisions of the Code of Penal Procedure or of the Criminal Code are brought into line with Morocco’s commitments arising from the International Covenant on Civil and Political Rights, particularly with regard to freedom of speech and opinion.”
- Recommendation No. 144-115 “Continuing to work for the promotion of freedom of expression by implementing the law establishing the National Press Council.”
- Recommendation No. 144-119 “Ending the prosecution of journalists and releasing them along with other individuals imprisoned solely for exercising their rights to freedom of expression, peaceful assembly and association.”

### **Unimplemented recommendations**

- Recommendation No. 144-118 "Ending the prosecution of journalists under the criminal law for exercising their rights to freedom of opinion and expression by peaceful means and for insisting on the right to obtain information."
- Recommendation No. 144-120 “Establishing and maintaining a safe and possible environment, in law and practice, for the benefit of civil society and human rights defenders including in the Western Sahara and for issues related to it **by reviewing the criminal law, removing restrictions on freedom of expression**, reviewing the

system of association registration, notice of gatherings and sticking to the same rules for all peaceful assemblies regardless of their content.

## Accomplishments

8. Election of the members of the National Press Council on June 22<sup>nd</sup>, 2018.
9. The journalism ethics charter was published in the Official Gazette on July 29<sup>th</sup>, 2019.<sup>3</sup>

## Deficiencies

10. The Penal Code is one of the means used to flout freedom of expression and press because it contains ambiguous crimes that would accommodate the crimes stipulated in the press and publication law; in addition, its application could lead to restrictions on freedom of press. From this standpoint, Morocco has not revised the penal code<sup>4</sup> in a way to conform more to the International Covenant on Civil and Political Rights which stipulates, in the core of its article 19, that freedom of expression should not be restricted without respect for the limitations mentioned in its third paragraph, such as the clarity and accuracy of the legal texts so that individuals could expect the outcome of their conduct and behavior in advance. However, the multiplicity of legal texts that would apply to the same expression precludes respect for this principle.<sup>5</sup>
11. In the same context, Morocco's rejection of the recommendation to refrain from relying on laws other than the press law when considering violations related to freedom of expression<sup>6</sup> is a continuing lack of respect for the provisions of the ICCPR and in particular its article 19, as it is unlawful to prosecute ordinary

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<sup>3</sup>Recommendation No. 144-115 "Continue to work to promote freedom of expression by implementing the law establishing the National Press Council."

<sup>4</sup>Morocco has not fully implemented the following recommendations:

- No. 144-31 "Ensuring that criminal law is fully consistent with the International Covenant on Civil and Political Rights."
- No. 144-112 "Ensuring that the relevant provisions of the Code of Penal Procedure or the Criminal Code are brought into line with Morocco's obligations arising from the International Covenant on Civil and Political Rights, especially with regard to freedom of speech and opinion."
- No. 144-120 "(...) review the Criminal Code and eliminate restrictions on freedom of expression (...)."

<sup>5</sup>The Human Rights Committee has affirmed in the General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights that "for the purposes of paragraph 3, the rule that will be regarded as a "law" must be drafted with sufficient precision in order for an individual to control his behavior according to it and must be made publicly available "The law may not give the persons responsible for its implementation absolute discretion in restricting freedom of expression." The law must provide sufficient directives for those charged with its implementation to enable them to properly verify the types of expression that are subject to restriction and those that are not subject to this restriction." See paragraph 25:

<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>6</sup>Morocco rejected Recommendation No. 114-113 "Refraining from invoking laws other than the Press Law when considering violations related to freedom of expression."

individuals under the criminal law for the same expressions that can be published by the media and which fall under the press law, something that violates the principle of equality before the law, since it cannot be acceptable to apply, for the same expression, different legal texts, especially at the level of penalties.

**12.** On the other hand, the right to freedom of expression is one of the tools necessary for human rights defenders<sup>7</sup> to carry out their duties as it enables them to detect document and report on anti-human rights practices. Therefore, the application of criminal law when human rights defenders exercise freedom of expression necessarily leads to restrictions on them, due to the legal provisions contained in the penal law that oppose international standards. For example, Article 263 of the Penal Code<sup>8</sup> provides one-month to one-year imprisonment and a fine of two hundred and fifty to five thousand dirhams for whoever insults any of member of the judiciary, public service or law enforcement by use of words, signs or in writing, with the intent to prejudice their honor, feeling, or due respect for their authority.

In relation with this, a ruling was issued by the Court of First Instance in Sala<sup>9</sup>, on November 25, 2019, condemning the Moroccan rapper Mohamed Mounir, famously known as Simo Gnaoui, for one year in prison and a fine of 1,000 dirhams, based on articles from the Penal Code, following his publication of a video criticizing and insulting political authorities and police<sup>10</sup>. The rapper's case is an example of the use of the penal code that does not respect the requirements of the International Covenant on Civil and Political Rights, with the aim of pursuing opinions and ideas published by individuals.

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<sup>7</sup>Recommendation No. 144-114 is not fully respected "Ensuring freedom of expression and freedom of association and all necessary measures in order to ensure that human rights defenders can carry out their duties."

<sup>8</sup>Article 263 of the Moroccan Penal Code: "Punishment by imprisonment from one month to one year and a fine of two hundred and fifty to five thousand dirhams shall be inflicted on whoever insults any member of the judiciary, public service or law enforcement during the performance of their duties or because of their performance of those duties, with the use of words or Signs, threats, or by sending or presenting things, or by writing, with the intention of prejudicing their honor, feeling, or due respect for their authority. If the insult occurred on one or more members of the judiciary or members of the jury in court during the session, the imprisonment will be from one year to two years. In all cases, the court of justice may, in addition to this, order that its verdict be published and announced, in the manner it determines, at the expense of the convict, provided that these expenses do not exceed the maximum fine established in the first paragraph."

<sup>9</sup>Amnesty International Report

<https://www.amnesty.org/ar/latest/news/2019/11/morocco-rapper-sentenced/>

<sup>10</sup>The Human Rights Committee has emphasized the essence of general comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights that "the scope of paragraph 2 covers the expression of an opinion that may be considered very insulting (...)." See paragraph 11:

<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

Referring to Moroccan legislation, we note that Article 263 of the Penal Code, which constituted one of the foundations for the conviction of the rapper, intersects to a large extent with what came in the text of the second paragraph of Article 84 of the Press and Publication Law which states that "Shall be punished with a fine from 5,000 dirhams to 20,000 dirhams any act of insulting<sup>11</sup> directed by the same means<sup>12</sup> to the entities and persons mentioned in the first paragraph above."<sup>13</sup>

We conclude that the aforementioned article 84 could have been used in relation to the acts attributed to Gnaoui and consequently the penalty could only have been a fine, but one of the dilemmas of the legal framework related to freedom of expression in Morocco is the similarity and plurality of legal texts that contain loose phrases and thus lead to the establishment of a hidden legal bridge between the press and publication law and the penal code that allows for tighter or lesser penalties on the basis of subjective criteria and contrary to legal principles such as equality, legitimate confidence, and legality.

- 13.** The case of journalist Hamid El Mahdaoui is an example of the seriousness of the hidden legal bridge between the press and publication law on the one hand and the Penal Code on the other hand as he was arrested on July 20<sup>th</sup>, 2017 in Al Hosseima in the countryside when he was covering a peaceful march by the Moroccan authorities before his conviction took place on July 25<sup>th</sup>, 2017 by Al-Hosseima first-instance court with three months of imprisonment for "calling for participation in a banned demonstration" and the penalty was increased by to a decision issued by the Al-Hosseima Court of Appeal on September 15<sup>th</sup>, 2017.<sup>14</sup>
- 14.** Moreover, the "Four Journalists" case<sup>15</sup> also prompts us to shed light on the phenomenon of referring journalists to the judiciary under criminal laws. The facts of the case are that the police in 2017 summoned four journalists

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<sup>11</sup>Article 83 of the Press and Publication Law defines insults as "every insulting or disgraceful expression or humiliating term that degrades dignity or defamation and does not include the proportion of any particular incident."

<sup>12</sup>The list of means of expression came in Article 72 of the Press and Publication Law, which is represented in "by any means, especially by speeches, shouting, or threats uttered in public places or meetings, or through written distributed or sold publications that are offered for sale or displayed in places or meetings, either through posters presented to the public, or through various audiovisual or electronic media and any other means used for this purpose as an electronic support.

<sup>13</sup>The list of entities and persons is described as "councils, judicial bodies, courts, land, sea, or air armies, founding or organized bodies, or public administrations in Morocco, or against a minister or several ministers for their duties or attributes, or against an employee or one of the men or officers of the authority or any person assigned to a temporary or continuous public interest or mission, judicial assistant, or witness as a result of the performance of his testimony.

<sup>14</sup>See press release by Rapporteurs sans frontières:

<https://rsf.org/ar/news/-68>

<sup>15</sup> For more details, click [here](#).

(Muhammad Haddad, KawtharZaki, Abdel Haqq Lashkar and AbdelilahSakheer) in addition to the MP Abdel HaqHaysan. They were investigated about the source of the news they published in the media institutions they work for. The news pertained to a fact-finding committee in the Moroccan parliament and was actual news. On March 27<sup>th</sup>, 2019, the Court of First Instance in Rabat issued a six-month prison sentence and a fine of 10,000 dirhams.<sup>16</sup>

As a result of these court cases, it is important for Morocco to commit to refraining from invoking laws other than the press law when considering violations related to freedom of expression, whether it concerns journalists, media workers, human rights defenders, political opponents, artists, or any other individuals. Morocco should equally end the prosecution of journalists under the criminal law for exercising their rights to freedom of opinion and expression by peaceful means.<sup>17</sup>

**15.**The case of the journalist Omar Radhi also reflects the ambiguity and inconsistency of the legal texts related to freedom of expression, as the judicial police placed him in custody and referred him to the prosecution on the basis of his post on Twitter denouncing a judicial decision issued against a group of activists of the rural (Riff) movement. The content of the post has been qualified on the basis of Article 263 of the Penal Code which states that “Shall be punished one month to one year in prison and a fine of two hundred and fifty to five thousand dirhams any person who insults any member of the judiciary, public service or law enforcement during or because of the performance of their duties, by use of words, references, threats, or by sending or presenting messages and objects, or by use of writings or drawings that are not public, with the intent to prejudice their honor, feeling, or due respect for their authority. If the insult occurred on one or more of the judiciary or sworn members of a court, during session, imprisonment is from one to two years. In all cases, the court may, in addition to this, order the publication and announcement of its ruling in the

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<sup>16</sup> See the [press release](#) of the National Union of the Moroccan Press.

<sup>17</sup> These two recommendations were not executed:

- Recommendation No. 144-118 "Ending the prosecution of journalists under the criminal law for exercising their rights to freedom of opinion and expression by peaceful means and for insisting on the right to obtain information."
- Recommendation No. 144-119 "Ending the prosecution of journalists and releasing them along with other individuals imprisoned solely for exercising their rights to freedom of expression, peaceful assembly and association."

manner that it reckons suitable on the convict's expense, provided that such expenses shall not exceed the maximum fine prescribed in the first paragraph.”

On December 31<sup>st</sup>, 2019, the first instance court in Ain Sabaa, Casablanca, decided to pursue Omar Al-Radhi on provisional release. In the January 2<sup>nd</sup>, 2019 session, the court postponed consideration of the case to the March 5<sup>th</sup>, 2019 session.

Regardless of the content of the post, referring individuals to the injunctive judiciary for criticism of state institutions and officials is puzzling, given its blatant inconsistency with the provisions of Article 19 of the International Covenant on Civil and Political Rights.

**16.** Finally, Morocco partially implemented Recommendation 144-115 since the members of the National Press Council signed and published the Journalism Ethics Charter in the Official Gazette on July 29<sup>th</sup>, 2019. However, the Charter contained some provisions that would raise a number of observations because of the use of expressions of moral significance that would constitute an unlawful restriction on freedom of the press, such as requiring the journalist to “avoid resorting to dishonorable ways and means to access information and news.”<sup>18</sup> It would have been safer to adopt statements that are more related to the essence of journalistic work, such as dishonest means, so that journalists should not be held accountable for their pursuit of information in ways that could be considered dishonest in accordance with a particular religious or political system.

It should also be noted that the definition related to freedom of opinion is contrary to international standards, since the Charter states that “opinion is in principle free and cannot be restricted in any way, but it is not arbitrary and should be based on correct facts.” On the other hand, the Human Rights Committee insisted in the General Comment No. 34 regarding Article 19 of the International Covenant on Civil and Political Rights that the first paragraph of the article guarantees the right to embrace all opinions for individuals and that it is not required that the opinion be based on true facts.<sup>19</sup>

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<sup>18</sup> Paragraph 8 of the first section on professional liability.

<sup>19</sup> See paragraph 9 from the general comment no 34:

"Paragraph 1 of article 19 requires protection of the right to hold opinions without interference. This is a right to which the Covenant permits no exception or restriction. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. All forms of

## **Recommendations**

17. Amending the legal texts related to freedom of expression and the press
18. Repealing articles related to defamation crimes included in the penal code and being limited to the press and publication law
19. Explicitly abolishing prison penalties in all cases related to expression, the press and the media without referring to other laws.
20. Reconsidering public subsidy for the press in order to promote a democratic and diverse press.

## **Part Three: Freedom of association and peaceful protest**

### **Partially implemented recommendations**

- Recommendation No. 144-117 “Ensuring respect of the constitutional provisions related to freedom of the press, opinion, expression, freedom of assembly and association, including for people who want to express their views on the situation in the Western Sahara and its political situation.”
- Recommendation No. 144-119 “Ending the prosecution of journalists and releasing them along with other individuals imprisoned solely for exercising their rights to freedom of expression, peaceful assembly and association.”
- Recommendation No. 144-121 “Eliminating obstacles that prevent NGOs from seeking registration by the authorities.”
- Recommendation No. 144-122 “Approval of authorization requests for all NGOs that seek registration in accordance with the law, including those that defend minorities”

### **Deficiencies**

21. At the legislative level, there is a delay in enacting a new legal framework related to freedom of association, freedom of assembly and peaceful demonstration to be consistent with the provisions of the Constitution and international obligations.
22. As for the administrative level, the administrative authorities have sometimes behaved arbitrarily through requiring associations wishing to be founded to

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opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion."

provide documents not stipulated in the law or delaying the delivery of temporary or final deposit receipts, and sometimes depriving some associations of temporary or permanent foundation receipts, or requesting a number of legal documents that is greater than the legally required number.

In this context, we mention the restrictions that the Moroccan Association for Human Rights suffers from, as the authorities refused to receive files for the renewal of 52 its branches, and refused to deliver deposit receipts to 10 branches despite receiving its files. Meanwhile, it issued 24 permanent and temporary deposit receipts.

**23.** The administrative authorities also refused to explain the prohibition decisions in several cases, in addition to resorting to violence and force in a disproportionate way during interventions to break up peaceful gatherings.

**24.** For example,<sup>20</sup> on October 19<sup>th</sup>, 2019, the Moroccan Association for Human Rights at the Souk Sabt Ouled Tayma Region, Taroudant province, was barred from holding its public gathering after the doors of the youth hostel were closed with iron chains during their working hours, although the association had submitted a notice for the organization of the gathering to the local authorities and to the director of the youth hostel in order to use the public hall of the institution. Members of the association denounced closing the doors of the youth hostel by conducting a protest in front of the headquarters of the same institution. On March 23<sup>rd</sup>, 2019, the gendarmerie forces prevented a protest march organized by a group of “Harak activists” in the town of Tasmassin, in Al-Hosseima province, to demand the release of the detainees of the rural (Riff) movement, and to call for job opportunities and to end the marginalization of the region, when the protesters tried to take the main road towards the neighboring group called ‘Amzorn’.

Local authorities in the city of Tiznit also prevented citizens and members of the Moroccan Association for Human Rights from accessing the cultural cafe "AkrauAnamur", where they would have organized a meeting on the issue of “The reality of human rights in Morocco and the current tasks of the human rights movement”, which came on the occasion of celebrating the fortieth anniversary of the Moroccan Association for Human Rights, led by Khadija Al Reyadi, the

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<sup>20</sup> For more details on cases of violations on to the right to peaceful assembly, [click here](#) to see the report prepared by the National Human Rights Commission and the Youth Center for Rights and Freedoms.

former president of the Moroccan Association for Human Rights, and other members of the association, Tiznit Branch, in addition to citizens wishing to attend the activity. They were all surprised by the security forces and other auxiliary forces who sieged the place.

## **Recommendations**

- 25.**Ending all kinds of restrictions on freedom of association, assembly and peaceful protest
- 26.**Enacting a new legislative framework related to freedom of assembly, peaceful demonstration, and freedom of association.

## **List of civil society organizations involved in preparing this report**

The Moroccan Prison Observatory

“Muwatana” Initiatives Association

“Al Wassit” for Democracy and Human Rights

Moroccan Forum for Truth and Equity

Moroccan Initiatives Forum

The Zacora Society for development and democracy

The Society for anti-racism and the support of foreigners and immigrants

Amnesty International

The Moroccan Organization for Human Rights

Citizenship Alternatives Movement

Association Coalition working in the field of autism in Morocco

Youth for Youth Association

Young Journalists Forum

The Alliance for the Advancement of the Rights of Persons with a Disability in Morocco

The National Union of Journalism

Tinghir Associations for Development and Democracy Network

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