

Morocco: Negotiating Change with the *Makhzen*

Project on Freedom of Association in the Middle East
and North Africa



Kristina Kausch

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North Africa

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Preface

Associations are indispensable to the very survival of democracy and societal progress. Non-governmental organisations (NGOs) defending human rights on a local, national or international level are the guardians of fundamental liberties, and often constitute the only framework through which minorities and other vulnerable segments of the population can see to it that their voices are heard, their rights respected and their participation guaranteed. The degree of effective use of freedom of association therefore constitutes an important barometer in judging the factual situation of democracy, human rights and participation in a country.

In addition to being a fundamental right in itself, freedom of association is also a precondition and safeguard for the defense of collective rights, freedom of conscience and religion, and therefore deserves special attention and vigilance. With the rise of transnational terrorism, recent years have witnessed freedom of association in many countries being suppressed in the name of national security. Obligations that expose the founders of associations to arbitrary admission criteria, pedantic verifications and unnecessary administrative hindrances are indicators of government efforts to exert political control. This may happen formally – via the adoption of laws that allow inappropriate limitations on freedom of association – or informally – through a lack of application of the law in practice and the predominance of informal rules that replace the rule of law.

Recognising the fundamental significance of freedom of association and a vibrant, active civil society for citizen participation and the dynamics of democratisation, the Club of Madrid, an independent non-governmental organisation of 70 former heads of state and government dedicated to democratic

practice, embarked in February 2007 on a project aimed at strengthening dialogue on freedom of association across the Middle East and North Africa region. With the support of the European Commission's European Initiative for Democracy and Human Rights (EIDHR) and the United Nations Democracy Fund, the objective of the project has been to improve the capacity of both civil society and the authorities to construct a shared vision on the promotion of freedom of association. In cooperation with FRIDE and local partners, the Club of Madrid (CoM) has been engaging in efforts to strengthen dialogue between civil society and government, aiming to contribute, based on the CoM members' own leadership experience, to fostering the inclusion of civil society. With this end in mind, the project hopes to propose constructive legal and policy reforms that contribute to advancing citizen participation in national political debates on freedom of association, and more broadly, on democratic reform.

This report is one out of a series of six country reports that provide independent analysis of the state of freedom of association and civil society in Morocco, Jordan, Bahrain, Egypt, Tunisia and Saudi Arabia, respectively. The reports are intended to accompany and support the aforementioned project led by the Club of Madrid by identifying both outstanding challenges and civil society's ideas on how to resolve them. Each report is based on a substantial number of consultations and interviews among local civil society stakeholders, government representatives across all levels, parliamentarians, political party representatives, journalists, union activists, women's and human rights activists, and lawyers and political analysts, conducted throughout 2007 and 2008. The independent analysis aims at facilitating public debate and further societal dialogue on freedom of association in the respective country. The main findings and recommendations summarise the views expressed by the numerous local stakeholders who kindly granted us some of their time for an interview.

Executive Summary

Freedom of association – the right to form an association able to freely develop its activities – is an often-neglected cornerstone of any democratic transition. Morocco compares very favourably throughout the region in terms of democratic achievements, and has often been held up as a model of Arab progressive political liberalisation by Moroccan authorities and international observers. Upon closer inspection, however, the picture of Moroccan democratic reform does not appear quite as bright. While King Mohammed VI and the government have implemented a number of very important and valuable reforms, these have remained selective, ad-hoc, and in many cases flawed and superficial. Most importantly, the concentration of all meaningful political power in the palace has remained untouched.

The Moroccan civil society landscape is known to be among the most diverse and vibrant in the region. While associative life has been benefiting from a series of legal and political improvements in recent years, a number of important challenges to free association remain. This report, intended to accompany the Club of Madrid's efforts¹ to strengthen freedom of association throughout the North Africa and Middle East region, provides an independent analysis of the situation of civil society in Morocco. Findings and recommendations are based on interviews among governmental and non-governmental Moroccan stakeholders.

Civil society interviewees identified four main areas in which important obstacles to free association remained, referring to both legal provisions and their

practical implementation. Firstly, NGOs across the board described a large number of difficulties regarding the process of registration of an association, and its ability to freely develop its activities thereafter. While some of the difficulties were attributed to flaws in the law regulating public liberties, most were said to be rooted in the predominance of informal rules and the lack of practical implementation of legal provisions.

Secondly, the limited access of associations to the public sphere, both in terms of public assembly and in terms of access to a wider audience via independent broadcasting media, was harshly criticised. Unnecessary administrative hindrances and informal rules regulating free assembly, the persistent de-facto state control over broadcasting media, and the flawed legal framework for freedom of expression and the press were highlighted in this regard.

Thirdly, security and anti-terror measures, and in particular the anti-terrorism law adopted in the aftermath of the 2003 Casablanca terrorist bombings, were said to essentially undermine human rights and fundamental liberties, among them freedom of association. The frequent discrimination or exclusion of some constituencies, in particular some Islamist and Saharawi groups, received special mention.

Fourthly, the lack of independence of the judiciary as a guarantor and safeguard of all codified fundamental liberties was underlined by all interlocutors as an overarching problem, which must be solved before any legal amendments to specific laws can take meaningful effect. Efforts to establish a strong and independent judiciary must therefore be at the forefront of all reforms aimed at strengthening freedom of association. The judiciary, however, cannot be independent without an effective separation of powers in constitution and practice, paired with major efforts to combat the widespread corruption of judges.

Finally, in order for reforms to be sustainable, they must be based on a broad societal consensus which

¹ The Club of Madrid project "Strengthening dialogue and democratic discourse through freedom of association in the Mediterranean and Middle East region", of which this report forms part, is supported by the European Commission's European Initiative for Democracy and Human Rights (EIDHR) and the UN Democracy Fund. More information on the project is available at <http://www.clubmadrid.org>

involves state as well as non-state actors. The broad number of reform initiatives and proposals regarding the aforementioned problems already elaborated and advocated by Moroccan civil society requires a regular forum through which consultations and involvement of civil society in reform processes are institutionalised. Present ad-hoc consultations must take a step towards institutionalisation in order to guarantee civil society's involvement in all societal issues, and especially the

controversial and politically delicate ones. Already existing intermediary institutions can potentially play an important role, but need to become fully state-independent in order to become credible mediators. These or newly created structures of institutionalised consultation should channel reform proposals and recommendations, with the aim of generating a broad dialogue which leads to a sustainable societal consensus on democratic reform.

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Democratic Reforms under Mohammed VI

Since the accession of King Mohammed VI to the throne in 1999, the international community has been looking to Morocco as a shining example of democratic reform in an otherwise volatile region. Morocco enjoys the reputation of a relatively progressive country where modernisation and political liberalisation are being brought forward by a comparatively open-minded leadership. After a reluctant initial opening during the last years of Hassan II's reign, ambitious expectations that his young son Mohammed VI would lead the country irreversibly towards genuine democracy went unfulfilled. While the young king has been committed to democratic transition in discourse, and did accelerate the pace of reforms considerably by implementing change in a number of important areas, reforms have been selective and, most importantly, the centralisation of factual executive power in the palace has remained untouched.

The 1996 Constitution defines Morocco as a "democratic, social and constitutional monarchy". However, the King's denomination of Morocco as an "executive monarchy" describes the distribution of powers more adequately. The King is by order of the Constitution both the highest political authority and "commander of the faithful". This unique double political and religious supreme authority provides the monarch with a political impunity justified by religion. With the help of his extended power apparatus, commonly called the *Makhzen* (Arabic for storehouse), the King governs as the de-facto head of the executive. He presides over the Council of Ministers and appoints the government as well as high officials in strategically important ministries (interior, foreign affairs, defense, and religion). Royal counsellors, loyal technocrats of the King's personal entourage, (some of them appointed deputy ministers) are the true decision-makers in the ministries. At the local level, the *Walīs*, usually close to the palace, take all significant

decisions. The King also approves and adopts legislation, can rule by decree and can veto any parliamentary or governmental decision.

In short, decision-making power on significant political change does not lie in the hands of the elected, and a separation of powers, both institutionally and in terms of political practice, is not in place. In addition, the judiciary is not explicitly recognised as a power and is not independent from the executive. Against this background, public liberties (including freedom of association) become relative, as the absence of the rule of law means that no rights can ultimately be guaranteed.

Although the palace holds all executive power, the King has implemented a number of far-reaching reforms. Most notably, the establishment of an Equity and Reconciliation Commission (IER) to shed light on human rights violations committed between 1956 and 1999 constituted, in spite of its flaws, a revolutionary initiative in Moroccan politics, unprecedented in the Arab world. Other notable and widely praised reforms included a comprehensive revision of the family code (*mudawanna*), a reform of the association law, and new legislation regarding torture, the audiovisual sector, and political parties, among others. The penal code and the press code are currently under revision. Not surprisingly, such reforms are held up by the authorities as democratic achievements and indicators of the Moroccan government's genuine commitment to reform. At the same time, high government officials admit that a genuinely democratic culture in Moroccan society has yet to develop.

Accordingly, some areas have also witnessed a reinforcement or even introduction of constraints during Mohammed VI's rule. On the legal side, these have included some aspects of the new party law and the general electoral framework, the press code, and human rights restrictions deriving from the anti-terrorism law adopted following the 2003 Casablanca terror attacks. Ratification of several important international rights conventions is also still on hold, as the regime sees them as limiting the sovereignty of the

monarch. The press is relatively free in regional comparison, but is becoming increasingly limited in absolute terms. While in practice societal taboos setting limits on free speech (the monarchy, Islam, Western Sahara) are softening, journalists remain under heavy government pressure, and the last few years have seen some of the most far-reaching and widely criticised sentences imposed on independent journalists for critical reporting.

In spite of selective political liberalisation, the *Makhzen's* vision for Morocco appears to be one of economic prosperity via modernisation, rather than democratisation. According to some critics, the King does have a genuine interest in the welfare of his people, but this entails "making them happy through economic development and consumption, rather than political reform". The flattering regional comparison provides the grounds for Morocco's well-cultivated image as an Arab reform pioneer. According to some high government officials, Morocco's comparatively advanced democratic reform process, and its modern approach to human development, are the subject of both envy and alarm in some of the less democratic and modern countries in the region, which have criticised Morocco for jeopardising their own internal stability.

Local human rights activists, however, stress that this favourable image helps stall the domestic political reform process, as it reduces foreign pressure on the Moroccan government to consolidate initial steps towards genuine democratisation. Especially since 9/11, which focused international attention on the value of democratic governance, foreign actors have seen Morocco as "one of the easy cases" which required comparatively little attention. At the same time, the Moroccan experience has increasingly been held up as a regional model for democratisation, even though political reforms have in fact remained ad-hoc, partly superficial, and have notably failed to establish any accountability of decision-makers vis-à-vis the citizens.²

² Some human rights activists expressed indignation over the way Morocco is being held up as the regional model democracy by some

In domestic debate, while there is general consensus that there must be some democratic reforms, society is divided over both the pace and nature of the reforms required. Some (notably those close to the *Pouvoir*) argue that transition must be gradual in order to be sustainable. According to critics, however, selective reforms and democracy discourse have not only been insufficient, but have been utilised by the *Pouvoir* in order to preclude popular demands that might undermine the primacy of the palace, or jeopardise the image of the supposed "model Arab democracy".

While liberalisation under Mohammed VI has partially widened the space for political debate, the mechanisms of democratic governance have hardly been further developed, and popular participation has remained largely superficial. For civil society, this means that (with a few notable exceptions), critical NGOs and opposition forces are no longer forbidden but are being kept "on a long leash". Legal provisions provide for a largely free associative life, but critics say that in practice true participation through organised civil society has so far been largely avoided thanks to the setting up of a "façade of involvement". Consultations on political reforms are taking place in a selective, ad-hoc manner only, but are not institutionalised. Morocco's flourishing civil society thus exists largely outside the sphere of traditional politics.

While Morocco's flourishing and relatively free civil society is a great achievement compared to other countries in the region, in absolute terms freedom of association can still not be guaranteed in law and practice as a means to ensure participation of the various constituencies as a precondition to a sustainable reform process. The creation and

international actors, and similarly, how Morocco's relative position vis-à-vis other southern Mediterranean neighbour states is being held up domestically as measure of Morocco's democratic advances, thus providing a good argument for not rushing further reforms. Instead of being compared with neighbouring autocracies in the southern Mediterranean, rights activists say, they want to see the northern Mediterranean states used as a measure to compare Morocco's progress: "We are not satisfied with semi-autocratic, purely formal democracy, just because we happen to be neighboured by autocracies. Just like European citizens, we want a full democracy, and we would like Morocco's international partners not to discriminate against us and raise the bar."

maintenance of associations must take place in a political, legal and social framework in which a critical civil society can freely develop its activities. Effective safeguards, not only of freedom of association in a narrower legal sense, but also freedom of assembly, expression, information and of the press, are preconditions for a civil society that actively participates in shaping the fate of the country. Finally, laws are only as good as the mechanisms to enforce them: without an independent judiciary and effective law enforcement mechanisms, no public liberties can be guaranteed. The gap between legal theory and practice, between the formal and the informal, as well as the absence of the rule of law and efficient law enforcement, make Morocco a case of (albeit subtly) flawed freedom of association.

Associations Landscape

In the whole of the Middle East and the North African region, a maturation of civil society to varying degrees is becoming manifest. Enhanced mobilisation is increasingly aimed at turning citizens into agents of development. Since the late 1980s, the Moroccan NGO sector has experienced a considerable boom. In spite of certain restrictions, estimates suggest between 30,000 and 80,000 associations are registered in Morocco, making the country the regional leader in quantitative terms. The unavailability of official statistics or a comprehensive national association database, however, makes it impossible to verify the exact number of registered associations.

This information and transparency gap also means that the typology of the Moroccan NGO sector can only be roughly estimated. Several Moroccan NGOs dedicated to promoting civil society are trying to set up databases with comprehensive statistical information.³

³ The Moroccan site www.tanmia.ma, dedicated to associative life, provides an interactive database of NGOs by theme and region, to which associations can subscribe online.

Associations cover a wide range of sectors of economic and public life, especially in the areas of health, childcare, integration of women into the labour force, promotion of women's personal status and women's rights in general, along with rural and national development, youth, education, and human rights. Moreover there are 17 labour and trade unions in Morocco. A particularly high share of associations are dedicated to fostering associative collective action, promoting literacy, education, environmental and women's issues, and fostering human, rural and local development.

In addition to non-governmental organisations, the legal form of an association is often used by the authorities to organise their activities in the areas of humanitarian and social services, via governmental NGOs (GONGOs), the most notable example being the Fondation Mohammed V pour la Solidarité.

Legal Framework

In 1979 Morocco ratified the International Pact on Civil and Political Rights, Article 22 of which proclaims freedom of association. Of the two other international conventions cited by the UN High Commissioner for Human Rights as directly relevant to freedom of association, the Right to Organise and Collective Bargaining Convention (No. 98, 1949) was ratified by Morocco in 1957, while the Freedom of Association and Protection of the Right to Organise Convention (No. 87, 1948), has not been ratified by Morocco so far.

Since 1962, freedom of association has been a constitutional right in Morocco. In contrast to most other countries in the region (except Israel), Morocco has formally guaranteed freedom of association without any constitutional restrictions since 1996. Morocco is also one of the few countries (along with Jordan, Lebanon and Israel) which has formally adopted the

principle of declaration⁴ in their legislation regarding associations, all others having introduced, to a greater or lesser extent, elements of previous formal authorisation.

The principle of freedom of association is recognised in Article 9 of the constitution, which states: "The constitution shall guarantee all citizens the following:

- a) freedom of movement through, and of settlement in, all parts of the Kingdom;
- b) freedom of opinion, of expression in all its forms, and of public gathering;
- c) freedom of association, and the freedom to belong to any union or political group of their choice.

No limitation, except by law, shall be put to the exercise of such freedoms."

Based on the Constitution, associative life is regulated by Dahir (royal decree) no. 1-58-376 of 15 November 1958 regarding the law of associations, which was modified and completed in 2002 (henceforth called "the association law").⁵ The association law, together with the law regulating public assembly⁶ and the press code⁷, form the Code of Public Liberties.⁸ The last modification of the association law in 2002 introduced considerable measures of liberalisation, including the introduction of the principle of declaration, enhanced financial capacity for registered associations, and details regarding the procedure for recognition of status as a public utility.

⁴ In contrast to the principle of declaration, which requires NGOs only to inform the authorities of their foundation in order to become legally registered, the principle of authorisation ties the official registration of the association and the acquisition of the status of a legal entity to the granting of permission from an administrative body or a judge, on the basis of criteria other than just transparency.

Dahir n° 1-58-376 du 3 jourmada I 1378 (15 novembre 1958) relatif au droit d'association (1958), tel qu'il a été modifié et complété par les lois n° 75.00 et n° 36.04 (2002).

⁵ Dahir n° 1-58-377 relatif aux rassemblements publics.

⁶ Dahir n° 1-58-378 formant code de la presse.

⁷ Dahir n° 1-58-378 formant code de la presse

⁸ Other legal provisions that regulate the particular statutes of certain associations: Dahir du 10 novembre 1917 sur les associations syndicales de propriétaires urbains ; loi n° 6-87 relative à l'éducation et aux sports, promulguée par le dahir du 19 mai 1989 ; loi n° 2-84 sur les associations des usagers des eaux d'irrigation promulguée par le dahir du 21 décembre 1990; loi bancaire du 6 juillet 1993 instituant les associations professionnelles des établissements bancaires et de crédit; loi n° 18-97 qui prévoit une réglementation propre aux associations micro-crédit promulguée par dahir n°1-99-16 du 5 février 1999.

According to Article 1 of the association law, an association is an "agreement for achieving ongoing collaboration between two or more persons in order to use their information and activity for a goal other than the distribution of profits among themselves". There are special provisions for trade and labour unions, association networks/federations, and cooperatives.⁹ In order to be legally created, every association must obtain official recognition by the authorities. This recognition is formally determined by the regime of simple declaration. Legally, the association is founded once it has submitted its statutes and a series of other documents to the local administration. As a proof for submission of this dossier, the local authority must issue to the association a provisional receipt immediately, followed by a definitive receipt within 60 days. The issuing of the provisional receipt is fundamental in order to prove the submission in accordance with the statutes.

Afterwards, the authorities must respond to the association to confirm that the dossier of declaration does not, in form or content, contradict any current legislation. In the case that there are no legally founded objections, a definitive receipt must be issued within a maximum of sixty days. Otherwise, after 60 days have expired, the association may freely carry out its activities according to the declared statutes (art. 5). So in theory, if there are no legal grounds for rejection, the association is automatically legally registered. No such automatic legality, however, is provided if the authorities fail to provide the provisional receipt in the first place. In this case, associations remain without proof of having submitted the dossier, and without legal recourse.

In the case that there are objections and the declaration is rejected, the founders of the association may take legal action as detailed in a 2002 law that obliges authorities to state the motives of any individual

⁹ The Jam'a, an assembly in the Douars, is composed of heads of families/clans. It is an organisation of customary law that is not legally recognised but is nonetheless free in the exercise of its activities. In those cases where public authorities have little presence or are geographically distant (in rural environments), the Jam'a tends to substitute them. However, lacking legal recognition, the Jam'a does not have any patrimonial capacity.

administrative decision which disfavours the interested party.¹⁰ The fact that reasons must be given for negative administrative decisions allows the founders of the association to take legal action against the rejection before an administrative court (or appeal court).¹¹

Once legally registered, the association has the status of a legal entity and may freely acquire and administer public subventions, the admission of members, annual membership fees, support from the private sector, support from foreign or international bodies (under certain restrictions), and mobile and immobile goods necessary for the execution of its activities and the realisation of its objectives (Article 6).

An association can be declared null and void by a court ruling when it is founded with any illicit or illegal objective, against moral customs and/or aims to tamper with the Islamic faith, the integrity of the national territory or the monarchy, or incites discrimination (Article 3). Once declared null, the association can be dissolved, its venues closed and any assembly of its members prohibited, the competent court being the court of first instance (Article 7). No repressive or civil measures can be taken against associations without a court ruling from the *tribunal de première instance* (Article 39). Previously associations could be dissolved by simple administrative decision, but following massive pressure from civil society the association law was modified in 2002 eliminating any possibility of dissolving an association by any means other than judicial decision.

The status of public utility (Articles 9-13) implies a series of privileges, especially in terms of funding and the fiscal regime. With the exception of political parties and “associations of a political character” (which fall

under the political parties law), any association can – its objective and means of action having been previously examined by the relevant administrative authority – demand recognition as an organisation of public utility by discretionary power of a royal decree (Article 9). Likewise, the attribute of public utility can be withdrawn by royal decree. The local authority must decide on any request for recognition of public utility, stating the reasons for its decision, within a maximum of six months from the date of submission.

Associations recognised as being of public utility possess greater patrimonial capacity and enjoy tax exemptions and other financial advantages. In addition to the aforementioned privileges for regular associations (Article 6), they can receive donations and legacies and possess the movable and immovable goods necessary for the fulfilment of their goals, once their assets fall within the amount fixed by the decree of recognition. Moreover, they can make a public appeal for donations once a year (*appel à la générosité publique*¹²).

The conditions necessary for recognition of public utility are fixed by administrative regulation. According to the decree of 10 January 2005, any association that seeks recognition of public utility must fulfil a number of conditions, among them that they “pursue a goal of general interest on a local, regional or national level” and “respect the obligations of information and commit themselves to the administrative controls foreseen by current legislation”. Other criteria include management, capacity, legal and accounting issues.¹³ The responsible governor must, within three months of receipt of the demand, provide a preliminary analysis of the goals and means of the association to the general secretariat of the government. The prime minister takes the final decision (which is eventually announced by decree, and includes the maximum value of goods the association may possess).

¹⁰ Loi n° 03-01 relative à l'obligation de la motivation des décisions administratives émanant des administrations publiques, des collectivités locales et des établissements publics, promulguée par dahir n° 1-02-202 du 23 juillet 2002 (*Bulletin officiel* n° 5030 du 15 août 2002, p. 882).

¹¹ Legal action can be taken according to: loi n° 41-90 instituant des tribunaux administratifs, promulguée par dahir n° 1-91-225 du 10 septembre 1993, complétée par la loi 54-99 promulguée par dahir n° 1-99-199 du 25 août 1999. Décret n° 2-92-59 pris en application de la loi n° 41-90 instituant les tribunaux administratifs (*Bulletin officiel* du 17 novembre 1993, p. 644).

¹² Loi n° 004-71 du 12 octobre 1971 relative aux appels à la générosité publique.

¹³ For a full list of criteria for public utility see: décret n° 2-04-969 du 28 kaada 1425 (10 janvier 2005) pris pour l'application du dahir n° 1-58-376 du 3 jourmada I 1378 (15 novembre 1958) réglementant le droit d'association (*Bulletin officiel* du 4 août 2005, p. 583).

The decision by the authorities of whether or not to grant the status of public utility must be taken within a maximum of six months from the submission of the request to the local authority. In the case of rejection, the authorities are obliged to state the reasons, against which the association may appeal. However, the law does not foresee any legal recourse the association can take if the six months deadline is not met.

According to Article 21 of the association law, "foreign associations" are those associations that either have their base in another country, or are administered by foreign personnel, or of which at least 50 per cent of the members are foreigners.

The registration process follows the same procedure as domestic associations, as outlined in Article 5 of the association law. In contrast to Moroccan associations, however, organisations classified as foreign do not obtain full legal recognition before three months has expired (Article 24). During this period of time, the Moroccan government may object to the constitution of the foreign association (a de-facto regime of authorisation). Once full legal capacity is obtained, Moroccan legislation makes no distinction between Moroccan and foreign associations, the latter benefiting from the same legal status.

Foreign associations may also sign a convention with the relevant ministry (for example, a medical association will sign a convention with the Ministry of Public Health). Some have signed accords with the Moroccan Ministry of Foreign Affairs (Directorate of Treaties and Judicial Affairs) in order to be able to carry out their activities. Other foreign associations operate through partnerships with associations registered under Moroccan law. The latter practice has some consequences for their judicial capacity, as they lack status as a legal entity in their own right within Moroccan legal space.

The regime for political parties differs from that of ordinary associations and is regulated by the political party law.¹⁴ According to this law, any political party

¹⁴ Dahir n° 1-06-18 du 15 moharrem (14 février 2006) portant promulgation de la loi n° 36.04 relative aux partis politiques (2006).

that has the objective of interfering with the religion of Islam, the regime of the monarchy or the territorial integrity of the Kingdom, is considered null and void (Article 4). Likewise, any party that is founded on a religious, linguistic, ethnic or regional base, or on any other discriminatory base contrary to human rights, is forbidden.

Whenever the activities of a political party may interfere with "public order", the Minister of Interior and the President of the Administrative Tribunal of Rabat may order the suspension of the party and the provisional closure of its offices. If no legal procedure for dissolution has been initiated within four months (with a possible extension to six months) in order to make the closure permanent, the party can resume its activities as before (art. 50 and 51).

The 2005 political party law (adopted after extensive debate between the political parties and the Ministry of the Interior) led to intense controversy, particularly regarding the introduction of a ban on any political party founded on the base of religious, racial, regional, socio-professional or linguistic characteristics. For many observers this provision had been tailor-made to exclude, in particular, Islamist parties (notably the de-facto banned Justice and Charity) from participation in the political process. Activists also reported that the Ministry of Interior had been encouraging the creation of some façade political parties, while at the same time refusing legal recognition to some active and well-known opposition groups.

With regard to funding, Article 6 of the association law allows legally registered associations to freely acquire, possess and administer public subsidies, annual membership fees, private sector aid, foreign funding (under certain conditions), localities and materials aimed at the administration of the association and assembly of its members, and real estate strictly necessary for the accomplishment of the association's objectives. The mode of financing of an association must be specified in its statutes. Political parties cannot receive funding from international sources.

With international intervention being a matter of great concern throughout the region, foreign funding to Moroccan NGOs is strictly controlled. Associations are obliged to declare all funding from foreign sources to the General Secretariat of the Government within 30 days of its receipt, specifying the exact amount received and its origin (Article 32 bis). Foreign funding of and investment in the Moroccan press is illegal.

Since July 2002, associations may receive funds from the private sector, both Moroccan and foreign. Public grants are given on a project basis. Any public subsidy amounting to 50,000 Dirham (4,520 euros) or more for a single project must be subject to an agreement between the association and the respective ministry. The projects must, a priori, be examined by an eligibility committee which addresses the financial contributions granted. A regime of follow-up, evaluation and financial control has been put in place in order to monitor/supervise the application of internal governance and management principles.

Associations that periodically receive subventions from a public body are obliged to present their budget and accounts to the respective ministry (Article 32). Associations of public utility, in line with their enhanced ability to receive public funds, also face a number of supplementary requirements regarding internal management, transparency and accountability to the Moroccan authorities, including an annual report to the Secretary General of the Government giving evidence of the use of obtained resources. (Article 9)

In fiscal terms, associations (except for those of recognised public utility and humanitarian associations) are considered private enterprises and charged the same tax quotas as private businesses. Associations of public utility and humanitarian associations are exempted from VAT and enjoy a range of additional tax advantages.

There are no legal restrictions or regulations with regard to private assembly. Public gatherings can –

according to the law regulating public assembly¹⁵ – take place freely and without authorisation, but must be previously registered with the local authorities. The declaration to be issued to the authorities must include the day, time and venue of the assembly, as well as its objective, and bear the personal details and signatures of three people with residence in the prefecture in question. Immediately upon submission of the declaration, the local authorities must issue a receipt which serves as proof of registration. The public assembly cannot take place before a minimum period of 24 hours has passed after the issuing of the receipt. Associations with a sporting, humanitarian, cultural or artistic purpose are exempted from previous declaration.

The law establishes a distinction between a public meeting/assembly and a demonstration. Ordinary public meetings cannot take place on public roads/places. Every public assembly must be represented by one of the signatories of the declaration and two assessors, who are in charge of maintaining order, impeding any illegal activity, inhibiting any discourse that is contrary to public order, good customs, or contains any provocation to break the law. The responsible local authority may send an observer, who may also dissolve the meeting if legal provisions are not met.

Demonstrations on public roads are subject to previous declaration, and the right to stage them is limited to political parties, unions, professional organisations and other legally registered associations. The relevant declaration must be submitted to the local authorities between three and 15 days in advance. The declaration contains the same information as that of any other public assembly, along with data about the participating and invited groups, as well as the itinerary of the manifestation. Again, a receipt must be issued immediately. If the local authority later “esteems that the envisaged demonstration is of a nature that interferes with public security”, it can prohibit it by

¹⁵ Dahir n° 1-58-377 du 3 jourmada I 1378 (15 novembre 1958) relatif aux rassemblements publics, tel qu'il a été modifié et complété par la nouvelle loi n° 76.00 (2002).

written notification to the signatories of the declaration. The organisation of, or participation in, a prohibited or undeclared manifestation may be punished with six months in prison and/or a fine of 1,200 to 5,000 Dirhams. Gatherings on public roads that could “interfere with public security” are prohibited.

Freedom of association being closely linked to liberty of expression, a free media is indispensable for NGO advocacy. The Moroccan Press Code regulates relations between the state and the media. There is no law, however, that defines the media’s role in its relationship with society. The Press Code has been subject to broad criticism, inter alia due to the vagueness and potential exploitability of its provisions, and is currently under revision.¹⁶ A draft text for a new press code has been submitted to the Secretary General of the Government and circulated among members of the government. Eventually, the draft law will be presented to parliament for legislative review and adoption as law.

The current press code formally guarantees freedom of the press, freedom of information, as well as the press’ right to free access to sources of information, except if the information in question is “confidential by act of law”. These liberties must be practised according to constitutional principles, legal provisions, and the “deontology of the profession”, the latter being an extremely vague term that is easily subject to arbitrary interpretation.

Any “offence” directed towards the King or his family, or “damage” done to the religion of Islam, the regime of the monarchy or the territorial integrity of the country, is punishable with a fine of 10,000 to 100,000 Dh. In the case of a condemnation, the same court ruling may order the suspension or complete interdiction of the journal or publication (Article 41). Moreover, the Minister of the Interior may stop the publication of any media or journal that contravenes Article 41 or interferes with public order.

¹⁶ Dahir n° 1-58-378 du 3 jourmada I 1378 (15 novembre 1958) formant Code de la presse et de l’édition, tel qu’il a été modifié et complété par la nouvelle loi n° 77.00 (2003).

The main exception to freedom of the press is the act of “defamation”¹⁷, which includes every. Every defamation or injury, even if expressed doubtfully or if it is directed towards a person or body not directly named but still identifiable. Any defamation against the courts, tribunals, the armed forces, the public administration of Morocco, ministers, civil servants or other agents of the public authorities, or any person in charge of a public service or holding a public mandate, is punished by imprisonment of one month to one year and/or a fine of 1,200 to 100,000 Dh. In all these cases, defamation can be established by simple administrative decision.

Key Obstacles to Free Associative Life

Asked about the remaining challenges to freedom of association in Morocco, the Minister of the Interior replied he was “not aware of any particular problems”. Civil society representatives, however, identify five main impediments to freedom of association, deriving either from deficiencies in current legislation or, more importantly, a lack of implementation and enforcement in practice which limits the room for manoeuvre of Moroccan associations.

Flawed registration process

Legal provisions and/or a lack of implementation of the law in the registration process and the free development of activities thereafter have been major obstacles to freedom of association.

Denial of receipt: The main achievement of the 2002 association law reform was that the new system

¹⁷ Defamation is defined as follows: «Toute allégation ou imputation d’un fait qui porte atteinte à l’honneur ou à la considération des personnes ou du corps auquel le fait est imputé est une diffamation. Toute expression outrageante, terme de mépris portant atteinte à la dignité ou injurieuse qui ne renferme l’imputation d’aucun fait est une injure.»

abolished the principle of authorisation, giving way to the principle of declaration and thereby implying that the legal registration of an association no longer required any administrative act, but was automatic if the authorities did not bring forward objections within a certain period of time. In practice things are often different, however. While the law foresees a simple declaration as enough to register an association, in practice the authorities often refuse to give a provisional receipt, thereby circumventing the automatic legality of the association. As a consequence, the registration process is stalled without the need for official rejection. As the deadline passes, associations are forced to work in illegality.

While a failure to issue the second, definite receipt after a maximum of 60 days would be followed by an automatic recognition of the association after this period has expired, no such automatic safeguard is given in case the first, provisional receipt is not issued, thus leaving the declaration without any record. If the administration abstains from issuing the provisional receipt, the dossier can also be submitted to the Ministry of Justice via the intermediary of a bailiff who can later certify the submission at a certain date. However, receipts are often denied here, too.

The lack of correct implementation of the law by the responsible local officials leads to an often arbitrary registration process and the practical exclusion of certain groups from obtaining a licence. Officials' frequent refusal to confirm receipt of the dossiers, sometimes in order to avoid the unpopular act of official rejection, forces many organisations to operate illegally or on the basis of temporary three-month permits, which leaves them without any legal protection. Moreover, as the status as a legally registered association is linked to the status as a legal entity, the lack of this prevents the association, inter alia, from taking legal action, opening a bank account, renting office space, paying salaries or other administrative costs, organising public events or manifestations, and receiving private or public funding. Under such conditions it is difficult to function effectively.

While the government affirms such irregularities to be the exception rather than the rule, civil society representatives claim the opposite, saying that in the vast majority of cases (estimated at 90 per cent) associations that apply for registration do not get the required receipt upon submission of their dossier.¹⁸ In addition, denials of receipt are often based on grounds of public security, most notably the fight against terrorism, although the anti-terror law adopted after the 2003 Casablanca bombings does not provide any authorisation to do so.¹⁹ Many organisations (eg: Forum des Alternatives) have been working for years without official registration and depend on administrative loopholes in order to counter the arbitrary application of the law and to be able to function in a legal no man's land. For example, a bank account can be opened with a dispatch note from the post office to prove submission of the dossier of declaration. Instead of gathering in a public meeting space, people meet at someone's home. The inability to prove their declaration represents a serious burden, especially to smaller, less well-known organisations, which lack the legal expertise, means and experience to make cases of arbitrary behaviour known to the public. Most associations manage to operate somehow, but these conditions are a heavy burden, especially for small NGOs, and do little to contribute to the consolidation of a strong, professional civil society.²⁰

So while the legislative text of the association law suggests that the receipt is meant as a mere administrative formality proving the date of the dossier's submission, the practice of frequent denial of the provisional receipt turns the formal system of declaration into a de-facto system of authorisation. Despite the 2002 revision, which provided important improvements, the law still leaves too many loopholes

¹⁸ A civil society activist from Rabat-Salé reported that since the revision of the association law in 2002, only one association in the district had been issued the provisional receipt by the authorities.

¹⁹ Loi n° 03-03 relative à la lutte contre le terrorisme, promulguée par dahir n° 1-03-140 du 21 mai 2003 (*Bulletin officiel* n° 5114 du 5 juin 2003, p. 416).

²⁰ The Observatoire des Libertés Publiques therefore works on the creation of a legal council that will provide legal advice to individuals and associations "who are having problems with the non-application of the law" (legal enforcement measures and loopholes).

for arbitrary behaviour and, most importantly, fails to effectively establish the system of declaration.²¹

Complicated registration requirements: According to Moroccan associations, another administrative barrier to registration is the unnecessarily complicated provisions regarding the procedure of registration. Firstly, the state demands too many documents, some of which are difficult to attain. This requirement is an unnecessary obstacle which again disfavours small organisations with low capacities in particular.

Secondly, associations must deposit their dossier in the prefecture of their place of domicile. But if they do not have an office they must either use a tiny privately rented apartment, the office of another organisation, a company, or similar (a post office box is not sufficient). The authorities can reject a domiciliation, but the law is not very clear on that point.

Thirdly, the requirement of submitting the criminal records of the founders has been criticised as unnecessary harassment, as these records are more difficult to get than other official records, such as the *fiche anthropometrique*, that contains the same information and has the same administrative/informative value. Other than the *fiche anthropometrique*, which can be obtained at the place of residence, the criminal record file (*casier judiciaire*) must be solicited at the individual's place of birth, which often implies displacements of several hundred kilometres.

Special difficulties for foreign associations: The founding of a foreign association remains delicate. Foreign associations must request permission to operate on Moroccan territory, to which the authorities must respond within six weeks. In practice, however, they do not comply with that deadline, with the result being that the foreign organisation lacks official recognition, so the authorities can stop their activities

without notice at any time – a “factual political acquiescence in a legal vacuum”. In some cases, newly founded Moroccan chapters of international NGOs, such as Transparency and Amnesty International, were initially treated as foreign associations.²²

Criteria for public utility: In practice, very few organisations are granted the status of public utility, and even though in theory the criteria for public utility are more specific since 2002, the reasons why certain organisations have been granted or rejected this are still opaque (*and often not given*). Moreover, associations must justify in their application why they deserve the status of public utility. The criteria for the granting of public utility status, particularly with regard to what does or does not constitute a valuable contribution to the public good, are too vague, thus allowing for arbitrary behaviour on the part of the administration. The few that are granted the status of public utility in practice are said to be mostly GONGOs, ie: not totally independent from the government. However, the two biggest human rights organisations, AMDH and OMDH, do have the status of public utility. They explained the success of their applications by the fact that both organisations demanded public utility in a common petition, and the fact that each of them is unofficially linked to one of the major parties (“Yousoufi did not want to discriminate against any party”).

Burdensome tax regime: The tax regime which treats non-profit non-governmental organisations like private (profit-seeking) enterprises constitutes a heavy financial and administrative burden on NGOs, which is further aggravated through restrictions on fundraising.

Funding restrictions: In order to be eligible for most public funding, an association must be recognised as being of public utility and have a special limited authorisation from the General Government

²¹ The de-facto regime of authorisation is also reflected on the website of the General Secretariat of the Government (<http://www.sgg.gov.ma/sgg.aspx>), that offers an email service to follow up on the individual “dossier d'autorisation”.

²² Transparency Maroc was founded in 1996 as a private, independent entity. Initially, the NGO met with huge opposition from the authorities. It later collaborated with a network of NGOs, above all human rights organisations, which supported it, leading finally to its recognition. The association's demand for recognition as a public utility, however, has not been granted.

Secretariat.²³ For the latter, some NGOs must wait for years. Moreover, a few big GONGOs close to the palace (such as the Fondation Mohammed V) receive most of the public funding. Some interviewees said that the authorities used the funding mechanisms to block the capacities and autonomy of NGOs by not authorising those that are not close to the government. Instead, they argued, NGOs should be free to collect funds as they wished, especially given that the majority of small NGOs lack funds and can hardly survive. Moreover, the NGOs receive funding only on a project basis (instead of funding for administrative & HR costs). Such limited availability of public funding, NGO representatives stressed, constitutes a significant hindrance to the development of a strong and professional civil society.

With regard to funding from foreign sources, some stressed that in spite of remaining constraints, compared to past decades foreign funding to NGOs presented no substantial problem anymore. There was controversy regarding the degree to which external funding (both domestic and international) might present a risk to Moroccan NGOs' independence. Those who did see this as a risk ascribed the problem either to the need for technical adaptation of projects to the requirements of "calls for proposals" or direct attempts at political influence. Others disagreed, saying there were enough foreign funds available, from a variety of sources, to securing diversification of funding sources in order to avoid dependencies. Again, others stressed that the independence of civil society may be at risk anytime when funding sources are not being diversified, be they foreign or domestic (eg: via the INDH).

Politically motivated restrictions: Assessment of a registration dossier by the authorities must have as its sole objective the verification of the formal legality of the declaration. No evaluation on political grounds should take place. While Moroccan association legislation foresees legal assessment only, in practice

²³ Government funding for associations is mostly channelled through the Ministry of Solidarity, which has a subsidy fund of approximately 480 million Dirham (43 million Euro), and the INDH (Initiative Nationale pour le Développement Humain), which has a total budget of 2 billion Dirham (178 million Euro), part of which goes to NGO support.

the administration also revokes the legal status of associations depending on "problematic" activities. According to an official in the Ministry of the Interior, some associations have had their registrations revoked for being "too active or busy". Again, vague formulations in the law help in justifying such actions.

The groups and constituencies most affected by such discrimination are reportedly Islamist and leftist organisations, but also certain Berber and Saharawi groups. Associations are considered anti-constitutional whenever they publicly challenge the monarchy, Islam or the territorial integrity of the Kingdom. In practical terms, this means that any association that expresses dissent with the *Makhzen* regarding the Western Sahara, the institution and order of the monarchy and the King, or the primacy of Islam, can expect to be denied registration (directly via rejection, or indirectly via denial of receipt or other administrative barriers).

A representative of the Berber association *Mouvement Amazigh* reported that, after having received the provisional receipt four years after submitting the dossier, the authorities asked them to review their proposed statutes with regard to the recommendation to establish secularism in the Moroccan political system. As the prohibition of unwanted associations is not in the authorities' interest, these and other administrative barriers serve to buy time and prevent the foundation of politically unwanted associations, per se (for example, by withholding the founders' identity documents until they expire). In addition, intimidating behaviour by local authorities, who play on the citizens' lack of knowledge of the law and on the psychological legacy of the dictatorship that still provokes fear of local authorities, is being used to foment anticipatory obedience.

Outlawed associations/constituencies: In contrast to the denial of receipt of a dossier, formal rejection of a legally declared association is unusual. According to human rights activists, most of the cases where registration is actually rejected are either Islamist or extreme leftist organisations, which are considered anti-constitutional, ie: do not recognise the political

and/or spiritual authority of the King. The most notable case is the de-facto outlawed organisation *Al Adl Wal Ihsane* (Justice and Charity), a popular Islamist movement whose relationship with the authorities has become increasingly confrontational in recent years.

Unlike the moderate Islamist Justice and Development Party (PJD), *Al Adl Wal Ihsane* publicly rejects the King's supreme political and religious authority, and calls for the elimination of the monarchy in favour of an Islamic republic. Because of this stance, the group has been declared illegal by the authorities, their activities have been prohibited and some of their members arrested. According to Justice and Charity members, the group had been a legally registered association since 1983, until it was declared illegal by the Moroccan authorities in 1998. Previously, in 1981 the movement had applied for registration as a political party, but was rejected. Today, the provisions of the current legal framework make it impossible for the movement to register as a party. In this context, recent amendments made to the political party law, introducing a clause that forbids any political party founded on a religious, linguistic, ethnic or regional base (Article 4), is seen by the group as having been designed specifically to prevent *Al Adl Wal Ihsane's* participation in elections.

As the rejection of the group's status as a legally registered association has never been explicitly confirmed by a court ruling, the group continues to consider itself a legal association. In fact, the organisation was able to keep on developing its activities as usual and without major interference by the authorities until 2000, when the latter initiated measures to inhibit these activities (eg: summer youth camps, which were forbidden by court order). Official discourse by the Moroccan authorities explicitly calls the group an "illegal" and "unrecognised" organisation, and state agents persecute the movement and treat all of its activities (publications, associative activities, assemblies etc.) as illegal. While members of the group cite a number of court rulings in favour of individual members to prove their legality, the Ministry of Interior insists on the movement's unlawfulness.

Others stress that the movement's argument is flawed, as the competence to declare an association legal or illegal does not lie with the mentioned courts. In practice, the accused *Al Adl* members were still condemned and imprisoned, but for other charges.

The de-facto illegality of *Al Adl Wal Ihsane* affects not only the movement's members but also other organisations, and freedom of association in general, as any link to the group. For example, the participation of a member in an event or activity, almost automatically leads to the suspension of this activity. Human rights activists report cases where a neighbourhood association could not be founded because of a single Justice and Charity member living in the locality; and public roundtables organised by other NGOs being prohibited due to the participation of individuals linked to *Al Adl Wal Ihsane*. Letters of complaint that human rights associations have sent to the ministry, demanding explanation, received no response.

Beyond freedom of association, the existence of the Justice and Charity movement outside of the legal sphere presents a number of risks for Morocco's democratic development. While the movement is neither likely nor willing to participate in the political process in the near future, the political weight of *Al Adl Wal Ihsane* is still significant. The organisation, whose outreach in universities and among the marginalised rural population is far more influential, is thus situated outside of the political-electoral sphere, meaning that the moderate and increasingly co-opted PJD only partially represents the overall Moroccan Islamist movement. Observers therefore fear that the *Pouvoir's* course of confrontation harms Moroccan interests, as it contributes to polarising society and strengthening extremism.

Limited access to the public sphere

The second set of impediments to free association revealed by Moroccan NGOs related to access to the

public sphere for non-governmental organisations, which is often hindered by a whole range of formal and informal provisions.

Permission for public assembly: The main obstacle mentioned with regard to public assembly was the informal requirement to get authorisation from local authorities for any public event. As outlined above, the law expects any denial of public assembly to be justified by the authorities. In spite of the law, which foresees a regime of declaration, denials are often based on personal arbitrary judgement, as a planned activity can be classified as representing a “risk to public order” and thereby prohibited. While by law public activities do not require permission, in practise authorisation is required and easily denied. Permission for public activities has been denied most frequently to radical movements, extreme leftist and Islamist organisations, but very rarely to human rights organisations.

Reasons for rejection are hardly ever given, and denial of official permission almost automatically leads to the cancellation of the reservation of the conference venue, as hotel managers are reluctant to oppose local authorities even when the latter’s actions have no legal backing. Authorities are said to be rigorous with regard to prohibiting meetings, and people have been arrested for simply holding a meeting at a hotel. In part, the arbitrary behaviour of the authorities is due to vague formulations regarding the limitations of freedom of assembly in the law, but there is also little awareness, and a lot of anticipatory obedience, among local administrations.

Groups in conflict with the authorities – mainly Islamist, radical Left and Amazigh groups, as well as Saharawi groups advocating independence – are usually free to gather in private venues, but cannot organise public meetings and demonstrations. Likewise, public events organised by other organisations with, for example, a Justice and Charity member on the guestlist are either cancelled, denied access to venues, or boycotted by government and the media.

Limits on free expression & access to the mass media: In spite of favourable regional comparisons, truly free expression and a genuinely free press remain elusive in Morocco, too. Deficient press laws, the lack of independence of the judiciary, and the gap between legal standards and their actual application have led to numerous detentions and incarcerations of journalists. The legal base for freedom of expression remains weak as long as the press code’s formulations remain vague, and especially as long as it names “defamation” as an exception, without defining the term more concretely. By a similar token, what does or does not constitute an “offence” to the King is very much a matter of arbitrary interpretation, and the “deontology of the profession” is too vague and exploitable a term to define the limits of freedom of the press.

There is a broad consensus in Morocco that societal taboos have considerably softened up, thus widening the space for public debate. However, a set of core taboos remain which continue to cause trouble for journalists. The *Makhzen*’s de-facto monopoly on the media, via state-owned private enterprises or other forms of direct or indirect influence, was considered very problematic, as all broadcasting media and the vast majority of the print media depend on the state. The Minister for Communication does not play a major role; instead, the Ministry of the Interior controls the media (for example via its leading role in the reform of the Press Code). A handful of print media, called the “independent press”, are the only media that neither belong to the state nor follow its editorial line. Broadcasting media – the only media with significant coverage across the country – are entirely dependent on the *Makhzen*. Most media coverage remains within certain limits set by the palace, whose margins are being pushed by the independent press only.

The relationship between the state and the independent press is frequently tense, with the last few years witnessing the highest fines for critical coverage so far. Alongside several others, the case of *Le Journal Hebdomadaire* (a critical independent weekly whose editor had to flee the country after having been convicted and handed the highest fine ever for

defamation), has attracted particularly broad international attention. As in the case of associations, the prohibition of a group or paper is unusual, but the media are being controlled and their work hindered through a range of indirect methods. Journalists and members of the press union report that there are directives given to private enterprises on where to place advertisements, thereby condemning non-conformist magazines to bankruptcy. Other methods are said to include bribery, control of advertisements, or playing journalists against each other. Anticipatory obedience also plays an important role. While the public media receive clear editorial instructions, most private media lack independence because of self-censure.

Freedom of information is not guaranteed in practice. The authorities are still very closed and their mentality is not one of transparency and accountability to the public. Journalists depend on the information the state (or individual civil servants) chooses to give them. This again favours those who enjoy good relations with the Makhzen: the closer you are to the *Pouvoir*, the more likely you are to be given information for your investigation. Journalists who do not limit their reporting to certain margins therefore face difficulties in obtaining information from the authorities. Moroccan journalists complained that often the foreign press had greater access to government sources for news on Morocco than local journalists, as the authorities on occasions preferred to speak to foreign journalists directly in order to promote a specific strategic image abroad (for example in the case of conflict in the Western Sahara). The independent press is invited to official press briefings, but is (both in terms of reporting and talk shows) practically non-existent on TV.

International funding of the press is prohibited, according to the current press code (except with special permission from the prime minister). This provision substantially hampers the situation of the independent press. The inability to attain foreign funds, paired with the reduction of advertising income, and recent unmeasured fines on editors, constitutes a massive financial burden which puts the very survival of the few independent media in danger.

Contrary to frequent assumptions, it was only under Mohammed VI's rule that the major constraints on freedom of the press were implemented. According to some independent journalists, the "modern packaging" of the new regime even makes it more difficult to attract international attention and support. Some suggested that the *Makhzen's* strategy was to choose in every civil society sector a small group or actor to promote as an alibi, while at the same time endeavouring to control the others by indirect means of obstruction. According to some independent journalists, the *Pouvoir* wants to institutionalise the press, but in a way controlled by them, in an attempt to create "a façade of a diversified press" .

Security/Anti-Terrorism Measures

Anti-terrorism and other security measures taken in the aftermath of the 2003 Casablanca bombings have generally involved tightening regulations on free association, thereby undermining many of the benefits provided by previously introduced legislative improvements regarding free association, assembly and the press. The anti-terrorism law passed in May 2003 (Law 03.03.) has given the authorities sweeping powers of control over civil society, strongly limiting fundamental freedoms such as freedom of association, expression, assembly and circulation. The law defines terrorist infractions and the respective sanctions, increases the number of offences punishable by death, modifies penal procedure with specific measures in cases of terrorism, and sanctions interference in mailings, telephone monitoring and personal observation. It puts serious constraints on foreign funding for associations, which can now, either formally or informally, be directly controlled by the government.

Under the new law, acts of terrorism are broadly defined as "any premeditated act, by an individual or group that aims to breach public order through terror and violence" . This general definition also includes the "promulgation and dissemination of propaganda or advertisement" in support of deliberate acts whose "main objective is to disrupt public order by

intimidation, force, violence, fear or terror".²⁴ The law has also been applied to convict and imprison journalists who "incite violence". Anyone who is "privy to information pertaining to terrorist offences" and does not report it to the authorities can be sentenced to prison for up to 10 years.

Since the adoption of the law in 2003, fundamental rights and freedoms have been curtailed, arrests have been made (including human rights activists and journalists) and convictions have been handed down to peaceful demonstrators and journalists. Islamist groups have been particularly affected by these measures, but so have many others such as workers' unions, human rights associations etc. The renewed 2007 bombings have led to a new wave of repression, including massive arrests and violent repression of peaceful demonstrations.

Moroccan human rights organisations, as well as international watchdogs (Human Rights Watch, the Committee to Protect Journalists, Reporters Sans Frontières and the International Press Institute) have been harshly criticising the law, warning that it undermines Moroccan citizens' human rights and fundamental freedoms. In particular, the law has been criticised for its imprecise definition of terrorism and the introduction of provisions that could potentially lead the state to criminalise peaceful and legitimate acts of protest and expression. According to some Moroccan human rights activists, the law – which had been adopted without taking into account civil society concerns – not only undermined fundamental freedoms but also counterproductively weakened Moroccan society's support for its government's legitimate and necessary effort to combat terrorism.

Weakness of the Judiciary

Fourthly and most importantly, the weakness of the judiciary and other key state institutions was

²⁴ Dahir n° 1-03-140- du 26 rabii I 1424 (28 mai 2003) portant promulgation de la loi n° 03-03 relative à la lutte contre le terrorisme.

mentioned by the majority of interlocutors as the greatest obstacle to freedom of association, human rights and public liberties in general. They argued that the effectiveness, transparency and accountability of the judiciary were key and a precondition to all of the aforementioned problems. At the same time, there was broad consensus that the weakness of the judiciary is directly linked to the overarching lack of a separation of powers, which can only be established via comprehensive constitutional reform.

No separation of powers: The judiciary is not recognised in the constitution as a separate power, and both the executive and the legislature are subject to the veto power of the King. The prime minister and parliament lack real power. In other words, formal democratic institutions are void of their democratic content, as decision-making power (in strategic issues) does not lie with elected, representative organs. Instead, the three powers are in reality being run by the same people and thus do not comply with their function of providing effective vigilance and control over each other. The King in practice not only possesses greatest executive power but also exercises significant competences in justice and legislative matters. Operational changes can be made by the elected government alone, but strategic/sensitive matters are dealt with by the palace and its entourage. With decision-making power so concentrated and no effective control mechanisms in place, political decision-making and legal procedures are neither transparent nor accountable.

The dualism of formal and informal rules that becomes apparent in legislation is also reflected in official institutions: behind the formally democratic governance scaffold, the *Makhzen* constitutes a shadow power structure that extends from the palace over the media, business etc. and down to the local councils. Royal counsellors are the true decision-makers in all ministries of strategic political importance. The role of the government, appointed according to the King's will following legislative elections, hence degenerates into little more than the state's operations manager, with independent decision-making power only in politically harmless areas.

Likewise, parliament is weak and has no legislative power without the King's approval.

The gap between legal provisions and implementation exists not only on the central level, but also in the distribution of competences to the various regional and local levels. For example, by law the elected president of the Conseil Regional has the responsibility to implement a regional development plan, but in practice it is the "Wali" who has factual control over the budget and decides where money is spent.

Lack of independence: The judiciary is not recognised as a power in the constitution and is largely controlled by the executive. According to NGO activists, it was common knowledge among Moroccans that practically all the judiciary processes are politicised, and judgements are often not decided on by the judges but dictated by the ministry. The massive corruption of judges, rights activists say, is overseen and instrumentalised by the ministry in exchange for obedience and impunity. The *Conseil National de la Magistrature* is a constitutional entity which decides on disciplinary measures against judges, and the eradication of "bad practices", presided over by the King. Moreover, royal appointments of many of its members inhibit the independence of the organ, which must not be controlled by the executive per se.

Corruption of the judiciary is a major problem. Morocco's rank in TI's Corruption Perceptions Index has worsened from 70 to 79 (with a score of around 3.2 out of 10, the worst possible score being 0), indicating a heavy systemic corruption, tendency worsening. According to TI's global corruption barometer 2006 survey, at least 60 percent of Moroccans said they had to pay bribes during the past year. When asked how they assessed their government's action to fight corruption, 77 percent considered them not effective or inexistent, and 15 percent even said the government encouraged corruption rather than fighting it. The judiciary, the police, public registry and permit and medical services were considered by Moroccans to be the most corrupt sectors (all receiving a value four

or over, with five being the maximum possible level of corruption).²⁵

No rule of law: The lack of independence and corruption of the judiciary impedes the impartial application and effective enforcement of existing democratic laws. Associations are greatly affected by this as the legal resources they have at their disposal to defend their rights are not effective.²⁶ As several interviewees pointed out, under these conditions appealing to the judiciary meant, first and foremost, dealing with the administration. This in turn means depending on the arbitrary behaviour of local civil servants. In short, the dualism of the formal and the informal, of elected and powerful, of laws and legal practice, plus the ineffectiveness of legal appeal to claim one's codified rights, are greatly hampering freedom of association.

The breaking of certain taboos is often followed by legal persecution. For example, people denouncing cases of corruption in the government or judiciary are persecuted and convicted even if they have valid proof for their claims. Witnesses of corruption are not protected by law and often persecuted for defamation. Lawyers who file the respective cases have been sanctioned with loss of their professional licenses as a direct consequence of their prosecution of corruption cases. NGOs' efforts to advocate the adoption of a law to protect witnesses of corruption are meeting with strong resistance from a lobby that wants to preserve its income. There is broad societal consensus that corruption is an important problem, but this consensus appears not to be shared by the executive.

Constitutional reform: As the constitutional framework fails to establish a separation of powers, creates a weak judiciary and a largely powerless government and

²⁵ Transparency International: Corruption Perceptions Index 2006 and Global Corruption Barometer 2006, available at <http://www.transparency.org>

²⁶ For example, the Administrative Court and the First Instance Court of Casablanca-Anfa both refused to follow-up on a case brought before them by Transparency Maroc (submitted by huissier), which reported the refusal of a local authority to receive a declaratory dossier and to issue the relevant receipt. Transparency Maroc had first attempted to submit its dossier in 1996 but did not get the receipt until 2004. The association had to operate illegally for eight years.

parliament, and instead gives all meaningful executive power to the King, accountability and rule of law have no constitutional safeguards. Most civil society representatives therefore consider constitutional reform as the first priority to effectively strengthen freedom of association, based on real participation. The recognition of the judiciary as a “power” and the modification of Article 19 dealing with the competences of the King²⁷, are considered among the most crucial and delicate of the changes required.

The debate about constitutional reform is a debate on the distribution of powers in the country, and as such it touches the very heart of the Makhzen. The true distribution and centres of power have ceased to be a real taboo, except if anyone demands a real change. The Pouvoir, however, is able to mobilise forces against unwanted debates and has the means and methods to exclude those in favour from public space and debate. But while broad segments of civil society keep demanding constitutional reform, for the palace-dependent government the issue is not on the agenda. When taking over power, the King signalled that he was not opposed to such reforms, including ceding some of his powers. Some years later, however, it became clear that he has no intention of ceding any significant power (beyond increasing participation to some degree). While both governmental and non-governmental bodies, in one way or another, refer to the need for some sort of constitutional reform in their discourse, there is no consensus regarding the urgency, timing, modalities, scope and content of such reform. Notably, there is a marked breach between the discourse and demands of those close to the Pouvoir, on the one hand, and human rights organisations on the other.

The Minister of the Interior underlined that the 1996 Constitution was by no means unchangeable and

“might be amended in the future”. This illustrates the general government discourse about constitutional (and other delicate matters of) reform, which signals openness on a general level, but does not admit details or timeframes. According to critics, the King sends positive signals by endorsing far-reaching reforms (for example, those included in the recommendations of the IER), on a general level, while at the same time maintaining control over the process and paralysing it, with follow-up in terms of practical implementation or concrete deadlines lacking.

Among Moroccan human rights associations, the need for constitutional amendments is a consensual issue. Many demand a constitutional assembly to draft such amendments, and the consultation and involvement of civil society in the process. Article 19 of the constitution gives the King powers that should belong to parliament alone, but parliamentarians are considered, by some, “not brave enough” to demand a constitutional amendment. Crucially, human rights activists that try to advocate for a societal debate on constitutional reform point out that while raising the topic in public is not a strict taboo anymore, it has proven impossible to display this message on public broadcasting media. A general discourse on human rights and a “democratic culture” is allowed, but no concrete reform proposals are being aired. It was therefore seen as crucial to develop the debate on constitutional reform at a more meaningful level. The debate on constitutional reform comes and goes periodically, usually tied to some specific event. Even though some issues are largely uncontested (eg: the abolition of the second parliamentary chamber), so far the debate on constitutional reform has not been picked up by the “internal apparatus” to convince the King to become active on this matter.

Judicial reform: The problematic lack of independence of the judiciary is generally recognised, and many organisations have already made declarations about what needs to be done in order to reform the judiciary, for example regarding the reform of the Conseil Supérieur de la Magistrature (CSM). The CSM is supposed to supervise and discipline the judiciary.

²⁷ Article 19: “The King, “Amir Al-Muminin” (Commander of the Faithful), shall be the Supreme Representative of the Nation and the Symbol of the unity thereof. He shall be the guarantor of the perpetuation and the continuity of the State. As Defender of the Faith, He shall ensure the respect for the Constitution. He shall be the Protector of the rights and liberties of the citizens, social groups and organisations. The King shall be the guarantor of the independence of the Nation and the territorial integrity of the Kingdom within all its rightful boundaries.”

Constitutionally, the body is presided over by the King. In practice, the Minister for Justice has fulfilled the role for the last three decades, though, meaning that a member of the executive presides over the judiciary. A draft law on judicial reform (*projet de loi sur une réforme judiciaire*), which aims at reforming the organisation of the magistrature, which is still based on a law dating from 1914 and urgently needs revision, has been elaborated in parliament.

Dialogue: State – Civil Society

NGO consultation & involvement: There was agreement among NGO interviewees that in order for civil society to be able to stimulate reflection and propose scenarios to the political actors, there must be regular exchange between the two on all matters of societal concern (including the obstacles to free association mentioned above), via institutionalised mechanisms of dialogue and consultation.

A 2003 *circulaire* by Prime Minister Driss Jettou established the basis of an official government policy towards associations. The *circulaire* “aims to prepare the ground for a new partnership policy, understood as the entirety of relations of association, participation and merging of human, material or financial resources, with regard to the execution of social contributions/benefits, implementation of development projects, or assumption of services of public interest.”²⁸ It characterises civil society as agents of socio-economic development and basic service providers (focusing explicitly on poverty reduction, women and children, adult literacy, youth and education, and other socio-economic issues), and stresses the need for transparency and good governance in the execution of those projects. Accountability, however, is only mentioned as NGOs’ accountability towards the government, not vice versa,

hence delineating transparency and good governance as a one-way street. Moreover, the cooperation discussed is limited to the area of socio-economic development, and does not mention any role or contribution of civil society in the political sphere. Consultation and dialogue on political and legal reforms and democratisation are not foreseen.

There are a number of government initiatives in which NGOs have been systematically involved, most notably the National Initiative for Human Development (*Initiative Nationale pour le Développement Humain*, INDH). A decentralised development initiative launched by the King himself, the INDH has been hailed by the international donor community as a new participatory way of promoting development. The INDH’s approach suggests enhanced participation of the often marginalised rural population. In particular, the enhanced engagement of associations in local development allows young people and women, who lack representation in the local *Jam’a*, to participate in shaping the community by designing and implementing local and regional development projects.²⁹

According to critics, however, the INDH framework simultaneously helps the state to maintain control over NGO activities through its funding and project planning schemes. Institutionally located at the Ministry of Social Development, the INDH provides funding to NGOs, which helps small associations, but also implies greater proximity to the state. Project planning and implementation is closely monitored by state agents, and the denomination of project leaders is led by the authorities. A frequent criticism from NGOs therefore was that the INDH risked co-opting civil society in an attempt by the regime to manipulate and control the Moroccan association landscape.

Some critics see the INDH as a tool used explicitly to present a façade of decentralisation and civil society involvement, while in reality the framework provided by the initiative allows only superficial participation and moreover provides the *Pouvoir* with a convenient

²⁸ *Partenariat entre l’Etat et les Associations*, Circulaire N° 7/2003 (27 Juin 2003).

²⁹ Michel Doucin (ed.): *Guide de la liberté associative dans le monde*. La Documentation française, Paris, 2007.

means of control. Some interviewees even viewed the state's encouragement of NGO activity in local development as an attempt to partly redistribute the burden of providing basic services from the responsible state institutions to NGOs. At the same time, critics mentioned that the image of enhanced participation created by the INDH reinforced Morocco's international reputation as a pioneer in human development. Some activists said the authorities in charge of the INDH had on some occasions asked people close to them to found new façade associations to which they could formally channel INDH funds. Moreover, it was argued that the success of the initiative in fostering development had been limited, but as it was an initiative of the King's, nobody could be held accountable for its failure.

According to the highest government officials, the INDH is an essential instrument for implementing Morocco's new model of human development, based on a decentralised bottom-up approach to rural development through capacity-building and the involvement of local stakeholders. Minister of the Interior Ben Moussa stressed that the INDH was an instrument designed to strengthen civil society at large through systematic involvement and capacity building. He also mentioned that, as part of the INDH, a watchdog institution had been set up that aimed at assessing the impact of the INDH's implementation on the ground and helped to coordinate efforts. The King "gave the general direction", which was then applied by the government, it was affirmed. Through the INDH, the minister said, NGOs were becoming true partners to the government and service-providers to society (eg: in tackling illiteracy), agents of development, "accompagneurs du pouvoir publique", as well as a "social barometre".

Government representatives underline the arguably low level of management capacity in most local associations, and stress the need for professionalisation. While NGOs demand accountability from state agencies, the latter talk of accountability only with regard to the NGOs that receive public funds. The low level of professional

management, critics say, provides a good pretext for the government to demand accountability and/or control mechanisms. Control measures are being justified through NGOs' general management deficiencies and the need for financial accountability.

Apart from the INDH, NGOs confirm that there have been some dialogue activities between the government and civil society with regard to political decisions of public interest. The Minister of the Interior emphasised that regular dialogue was being held with civil society, and that "the door remains open". At the same time, he also made it clear that associations must abide by current legislation, notably the constitutional order, otherwise they could "not be dealt with". NGOs stress that the opinions of associations working on specific issues and unions have often been sought (for example regarding the 2003 revision of the penal code). The government regularly invites some NGOs to conferences on issues of national interest, which have on occasion led to the adoption of common recommendations. Eventually, the NGOs lobby for the implementation of these recommendations.

In 2000, the umbrella organisation Espace Associatif organised a campaign for the modification of the association law, including a political and jurisprudential study of the law that compared Moroccan legislation with that of other Arab countries. The campaign mobilised around 1,200 associations, and also some parliamentary groups. The campaign initiated a dialogue with the government on this issue via the then Ministry of Human Rights, which in 2002 led to the adoption of the new, revised association law. Even though the new law still needs some improvements, it was considered both legal progress and a success in terms of civil society mobilisation. This success was also linked to the political climate at that time (*alternance*), which was particularly favourable for bringing forward such dossiers.

Given the palace's sensitivity with regard to certain topics, NGOs seeking dialogue must adopt a cautious and well-measured discourse when lobbying for

reforms. For example, one of the main human rights associations lobbied for Moroccan ratification of the Rome Statute, subjecting itself to the jurisdiction of the International Court of Justice, including the abolition of the death penalty. As the Minister of Foreign Affairs says this ratification would limit the King's sovereignty, instead of directly questioning the palace's democratic credentials the group has argued that this is a technical mistake as the ICJ only acts where national justice systems fail.

According to a member of the parliamentary committee on human rights, given the lack of systematic civil society consultation, the confidentiality of parliamentary committee meetings sometimes posed a "big problem in terms of transparency". With substantial change to the role of civil society in recent years, and NGO involvement becoming more and more common, some MPs "often close their eyes and pass on information informally". However, he stressed that institutionalised consultations with civil society were not foreseen, as this was "more the work of the parties".

Indeed, various interviewees of both government and civil society suggested that the relationship between civil society and the state remained unclear, and in particular there was controversy regarding the nature and scope of the role of civil society in the political process. Whereas associations are not allowed to engage in party politics, in practice many NGOs maintain close relations with a particular party. The weaker the parties and parliament are as the traditional public representation bodies, the greater is the need to open up other channels that allow people to have a significant influence on public decision-making. Consultation of civil society and strengthening parliament must therefore go hand-in-hand in order to guarantee broad participation.

Human rights activists point out that institutionalisation of dialogue is necessary in order to guarantee civil society's involvement before laws are adopted, in particular with regard to legislation on politically sensitive matters. If consultations only take place after everything is settled, or the most sensitive

issues on which consultation is most crucial are left out, laudable dialogue initiatives turn into fig-leaf consultation that instrumentalises civil society in order to legitimise new laws. By contrast, a genuine involvement in the legislation process, via mandatory consultation on all relevant societal issues, which allows civil society's concerns and proposals to be taken into account, is yet to be established.

Some interviewees moreover emphasised that debate on specific political reform projects must not be limited to the elites but, in order to create sustainable societal consensus, be based on a broad public debate. For this, a free media is required to act as interlocutor. Independent journalists stressed that they would like to establish a relationship with the Monarchy in order to hold meetings to discuss issues regarding the remaining challenges to freedom of the press in Morocco, but had so far not been able to establish this type of dialogue. In sum, interviewees stressed that those dialogues that had been taking place were a good start, but had only been open to certain groups, on certain topics, and most importantly, no significant institutionalisation of dialogue/consultation on all relevant societal issues had taken place. There was consensus among NGOs and government representatives that the role of civil society in the political process needed greater clarification.

Intermediary institutions: The main national institution intended to provide a link between (human rights) NGOs and the government is the Advisory Council on Human Rights (*Conseil Consultatif des Droits de l'Homme*, CCDH). Placed under the direct authority of King Mohammed VI, the CCDH is assigned a consultative mission, proposing and triggering issues regarding the "promotion of a human rights culture in Morocco". Part of its mission is to "facilitate cooperation between authorities, on the one hand, and representatives of both national and international associations, as well as human rights activists, on the other". It may also present direct proposals for legal reforms to parliament and to the King, and has been directly involved in the drafting of some legal texts, for example the ongoing revision of the Press Code.

Created in 1990 and having its prerogatives redefined and extended in 2001, the CCDH played a key role in the Instance Équité et Réconciliation (IER), a truth commission so far unique in the Arab world which was set up by the government in order to shed light on human rights abuses during the decades prior to Mohammed VI's rule. When the IER concluded its work, the CCDH was put in charge of fulfilling the needs and expectations of the reconciliation process. The CCDH has worked in partnership with various ministries to promote human rights and gender equality within the government structures. Every four years the Executive Board of the CCDH is partially renewed. Members are appointed by the King, who chooses among three nominees agreed upon by civil society representatives. Government representatives form part of the Council in an observer function.

According to both Council Members and NGO representatives, the Justice and Reconciliation Project and the creation of the CCDH to support and ensure that reconciliation and justice are achieved, represent the most successful collaboration to date between the government and civil society. They ascribed this achievement largely to the support and dedication of both the King (and government) and the main human rights organisations. The dialogue between state and civil society was of particular importance in the processes of reconciliation and the production of dossiers of grave human rights violations under Hassan II, on which Moroccan NGOs have been working hard. The Equity and Reconciliation Commission (IER) eventually issued a comprehensive set of recommendations. The King has endorsed these recommendations, but not actually ordered their implementation. The CCDH is now in charge of the follow-up. Regarding material compensation, implementation has begun, with the CCDH issuing the first cheques to victims. While the IER has been an admirable achievement and far more than just a fig leaf for the government, its main significance, initially, was to give the general signal that the Moroccan state is ready to deal with the past. Human rights activists agree that the IER in itself was a revolution, but

implementation remains lacking, and this has led to controversial debate.

Since 2004, the CCDH has organised annual meetings on the promotion of human rights throughout the Arab world, encouraging participatory citizenship in Morocco, gender equality and the promotion of community reparation, along with dealing with past human rights abuses related to the equity and reconciliation process. In addition, the CCDH is preparing to establish a Commission for the Independence of the Judiciary. In terms of institutionalised cooperation, in 2007 the CCDH signed an agreement with the Ministry of the Interior for the training of "authority agents" (policemen, civil servants, prison staff etc) in respect for the law and its correct application. Main criticisms of the CCDH include that it lacks independence from the palace, failing to comply with the Paris Principles³⁰ which are meant to guarantee its independence from the state, and therefore has limited impact. In some cases, critics say, the body even contributed to covering up some cases of human rights violations. Moreover, it is generally lamented that the CCDH has only consultative functions and lacks the political influence needed to implement real change.

Representatives of the CCDH admitted that there was controversy over the degree of independence of the body, but insisted that its very composition (most members are prominent human rights activists and/or members of the opposition to Hassan II's regime) was proof enough of its independence. Moreover they argued that the presence of civil society in the CCDH had helped to lend credibility to the institution, to the IER recommendations, and to advance its general agenda.

In addition to the CCDH, there are a number of other structures which could potentially link state and civil

³⁰ The Paris Principles adopted by the UN General Assembly in 1993 specify that National Human Rights Institutions, in order to be able to effectively promote and protect human rights, must be characterised by: Independence guaranteed by statute or constitution; autonomy from government; pluralism, including in membership; a broad mandate based on universal human rights standards; adequate powers of investigation; and adequate resources.

society, such as the Superior Council on Education, the Administrative Council and the Municipal Councils. These institutions, however, have so far not developed an interaction with civil society dynamic enough to ensure broad participation on public policy issues. Moreover, the constitution (Articles 93-95) envisages the creation of an Economic and Social Council, which could provide another forum for dialogue and participation but has not so far been established. Likewise, the creation of a Superior Council of the Press could provide a valuable forum regarding issues of free expression, information and the media. Generally speaking, there is a need for more effective intermediary institutions as fora and links between civil society and government that facilitate dialogue on all essential societal issues.

Some civil society activists pointed out that the lack of institutionalisation of dialogue was not only due to the lack of political will but also to the lack of a central institution representing the interests of civil society, which could serve as an interlocutor for the government. Some NGOs therefore stressed the need for an umbrella organisation for Moroccan civil society, a National Civil Society Council that would be fully independent of the state and elected by and composed of civil society members that could play a consultative role for negotiations with the state (propose laws, amendments etc). It was suggested that following the positive example of Mali, such a council should be an “organ of awakening and pacification”. It was stressed that the vast number of regional and local organisations particularly need an entity that defended their interests at the national level and before the state. While the bigger, well-known and well-funded associations in Rabat and Casablanca were less affected, these regional and local NGOs lacked outreach, knowledge and capacities.

Other activists feared that such a council might monopolise the “opinion of civil society”, rather than channelling it, and therefore its creation was not in the interest of Moroccan civil society, “whose diversity is its strength”. Instead, they suggested, such a Council could be assembled on an ad-hoc basis

to tackle issues and defend interests of specific importance and pertinence. In sum, there was broad agreement that some sort of institutional framework for the collective defense of civil society interests was needed.

With the objective of creating a single civil society interlocutor for partnerships under the INDH, the Ministry of Social Development is currently engaged in an effort to partially structure relations with civil society by founding a National Council of Development Associations. NGO representatives expressed concern that such a Council could be instrumentalised by the government, and thus, from a civil society point of view, presented more risks than opportunities for freedom of association. Moreover, the additionally stated purpose of such a Council, of eliminating “bad practices of associations”, appeared to confirm such fears, as no reciprocity was applied in order to tackle such bad practices in public administration. Taken as a whole, the proposal was therefore unconvincing to many NGOs.

Approaches & potential for dialogue: According to NGO activists, the *Pouvoir* has embarked on a strategy of trying to co-opt the main players and potential opponents in order to minimise the risk of civil disobedience, while simultaneously avoiding the harmful image of an oppressor of dissent and public liberties. By doing so, interviewees said, the executive maintains control over the political landscape, contributes to emptying the partisan space of its meaning, and reduces parliamentary efficiency. In a process that started with the appointment of opposition leader Youssoufi as prime minister in 1998, many of the former critics and dissidents of the Hassan II regime have been integrated into government institutions and processes. Those who prove intractable, by contrast, are ignored and/or boycotted.

Advocates of reform adopt different approaches to deal with this reality. To some, closeness to the regime necessarily entails being absorbed by it, thus turning former dissidents into lazy, regime-faithful followers that back away from making real criticisms. To others, cooperation with the regime, or at least refraining from

confronting it, is a crucial precondition for any dialogue on reform. Among civil society associations that try to lobby for reform, different approaches are being pursued. Some rely on a more partnership-based approach with the government, trying to avoid direct confrontation. Others see themselves as a watchdog taking more confrontational positions vis-à-vis the government, in order to advocate special positions and raise public awareness.

According to the former, an approach based on dialogue and cautious negotiation is more promising and pragmatic. Human rights organisations pursuing this approach (eg: OMDH) praise positive government measures, but always combine them with criticism of remaining shortcomings and challenges. Advocates of the more confrontational approach (eg: AMDH) say the soft partnership-based approach leads to co-opting, absorption and at times even instrumentalisation by the *Makhzen* (similar to the creeping co-opting that absorbed the former opposition parties, which first entered government in *alternance* with the objective of achieving change through cautious negotiations under the *Makhzen's* umbrella). Observers say OMDH and AMDH approaches are more efficient when seen as complementary forces: one applies the necessary pressure, the other talks to the government.

Among Moroccan civil society, there is broad agreement that the dynamics of reform in Morocco work according to certain informal rules. The King picks up a topic of great interest in society and turns it into a policy initiative (as happened in case of the reform of the personal status law, *mudawanna*). Instead of consulting civil society or waiting for them to come forward with concrete proposals, the state avoids far-reaching reform demands by pre-empting them with its own tailor-made reform initiatives. In other words, state initiatives define the space of civil society. NGOs, however, can use this mechanism by exerting constant pressure without openly confronting the *Pouvoir*, eventually making the King pick up their initiative as his own. Sticking to the basic principle of not questioning the monarchy or the King's primacy is

essential. The main question for civil society pro-reformists must be: how do we get the King to appropriate the topic as his own?

Representing the *Makhzen's* point of view, a royal counsellor stated that Morocco had reached a state of general consensus on the essence of necessary reforms, where disagreement remained only on certain details. He emphasised that it was the role of the state to "impose the framework of negotiations" on these issues, and blamed civil society for "invading" this space in order to "avoid positive confrontation", and called this behaviour a "perversion" of the role of civil society. He also lamented that, from the government's point of view, any time the state took an initiative that rested upon civil society, the move was interpreted as an act of manipulation or control. Therefore, dialogue between state and civil society must first and foremost be held over the role of NGOs in society, or about the respective roles of each of these institutions/actors in general. At the same time, he suggested that a more frequent consultation of civil society on behalf of the elected could be useful, as civil society could play a "warning role" indicating society's satisfaction with the state's record.

A human rights activist mentioned that the lack of institutionalised dialogue on reform was linked to the lack of an overall systematic framework for democratic reform, and to the absence of systematic and independent political evaluation of the process of democratic reform. At the same time, he warned that a significant level of corruption in the system and the resulting conflicts of interests meant that certain members of the *Makhzen*, political leaders and the business community had no interest in allowing institutionalisation of dialogue or any kind of monitoring or accountability mechanisms.

In sum, while dialogue and consultation have taken place on a relatively broad scale, civil society agreed that it must be institutionalised in order to guarantee broad participation on all important societal issues. Government representatives signalled interest in cooperation with civil society and agreed that more

regular dialogue could be useful for the government, too, with NGOs providing a social barometer reflecting the people's mood regarding governmental action. Remaining challenges lay in creating consensus on the modalities of institutionalisation of such a dialogue, as well as the creation of suitable intermediary institutions, whose credibility would stem from their role as independent, neutral mediators facilitating dialogue and public debate on free association and the larger process of democratic reform.

Local Calls for Reform

Numerous initiatives and proposals have been made by Moroccan civil society proposing reforms and recommending means of implementation in order to tackle the problems described above.³¹ Calls for reform to ensure free association and broad participation can be summarised in four categories: firstly, a constitutional reform that guarantees an effective balance of powers; secondly, a judicial reform that ensures the independence and accountability of the judiciary; thirdly, legal reforms that put an end to legal loopholes in the code of public liberties (and other laws relevant to free association) and include safeguards for effective law enforcement; and fourthly, the establishment of institutionalised dialogue between government and civil society on these and all other relevant societal issues and/or matters of democratic reform.

With regard to the four areas identified above, which represent the main obstacles to free association,

Moroccan civil society representatives suggested a number of (not exhaustive) measures.

1. **Legal reforms:** eliminate, in dialogue with civil society, all legal loopholes permitting arbitrary behaviour and provisions curbing public liberties and fundamental freedoms in the Association Law, the Law on Public Assembly, the Press Code, the Penal Code, and the Anti-terrorism Law, inter alia by:
 - Establishing effective legal safeguards, such as the introduction of penalties and appropriate legal resources for those refused an on-the-spot receipt by local authorities, and for any other act that impedes the correct application of the law, to ensure a de-facto establishment of the regime of declaration;
 - Affording validity to the postal dispatch note, given upon dispatch of the dossier to the authorities, as proof of receipt;
 - Simplifying the requirements for declaration to the greatest possible extent;
 - Modifying the requirement to submit criminal records;
 - Redefining the provisions of eligibility for public utility in dialogue with civil society;
 - Establishing effective safeguards for full transparency on the reasons for unfavourable administrative decisions (declaration, public utility, etc)
 - Reducing funding restrictions for associations, especially those from foreign sources;
 - Introducing a special tax regime for all non-profit associations, including enhanced tax exemptions;
 - Abolishing legal taboos on free expression in constitutional and legal provisions;
 - Establishing effective safeguards (including legal resources and penalties) to guarantee a de-facto regime of declaration for public assembly;
 - Restricting the authorities' competences to control and dissolve public meetings;
 - Reducing restrictions of public assembly with reference to "public order" ;
 - Lifting all charges on associations for the use of public venue facilities;
 - Adopting a press code which regulates the relationship between the press and society

³¹ For example, the Moroccan Observatory for Public Liberties, by initiative of the Forum des Alternatives, in April 2007 implemented a national campaign for the revision of laws regulating association and public assembly, and the application of all legislation in force. The campaign involved representatives of the ministries of justice, the interior, and the former ministry for human rights, along with 617 civil society organisations in 17 regions. The Observatory noted the unanimity among civil society regarding the need to reinforce efforts to bring associations together with the relevant political actors to discuss public liberties in Morocco. Another national campaign has been initiated targetting political parties concerned with the rule of law. The campaign is advocating for genuine information on and application of the law, and has been supported by over 500 associative landscape.

- (instead of the relationship between the press and the state);
- Guaranteeing journalists’ free access to sources of information, and obliging authorities to provide information to the press;
 - Prohibiting any governmental or administrative decision implying a penalty to journalists, restricting such decisions to an impartial and independent judiciary;
 - Abolishing all prison sanctions, and abolishing or substantially reducing fines and other sanctions, against journalists for crimes of opinion;
 - Establishing that crimes of defamation will be dealt with through civil procedures only;
 - Abolishing all provisions which punish declarations considered an offence to Moroccan or foreign officials;
 - Abolishing or substantially reducing the scope of provisions that punish declarations considered as “harming” the monarchy, Islam or the territorial integrity of the country;
 - Clearly defining, in dialogue with the press and civil society, the crime of “defamation”;
 - Guaranteeing freedom of the press and broadening the scope of exercise of this profession in the framework of a code of professional deontology among journalists, human rights defenders and civil society activists, freely and undisturbed by paternalism or interdiction;
 - Securing safeguards for the protection of freedom of opinion and expression, and the transformation of the press into an organ of control, defense of the values of democracy, and of the preservation of pluralism and a culture of tolerance and diversity;
 - Preserving the moral role of journalists and the protection of their rights;
 - Allowing international investment in Moroccan media;
 - Amend anti-terrorism legislation so as to establish effective safeguards against arbitrary application of the law and disproportionate restrictions of human rights and fundamental freedoms.
 - Guaranteeing accordance of Moroccan legislation with international pacts and conventions, in particular those ratified by Morocco.
2. **Rule of law:** ensure rigorous application of the law by establishing effective safeguards in laws and legal procedures, including penalties and adequate legal resources in cases of disrespect of the law.
 3. **Accountability:** establish full transparency, accountability and objectivity regarding criteria and procedures in all interactions between government and NGOs or the media (including issuing of receipts, denial of public assemblies, granting of public funding, issuing broadcasting licenses, etc).
 4. **Awareness:** raise awareness and promote a culture of accountability, transparency and rule of law among civil servants, judges, and government authorities.
 5. **Judicial and constitutional reform:** Strengthen the Judiciary via a full separation of powers in law and practice, including checks and balances, a comprehensive judicial reform, a national plan to combat corruption, and a traceable, systematic implementation of all the recommendations made by the IER.
 6. **Institutionalised consultation:** establish institutionalised mechanisms of regular consultation between government, parliament and civil society regarding all matters of public interest, via newly created intermediary bodies in full accordance with the Paris Principles, inter alia by:
 - Creating a body of civil society representation (either permanent or ad-hoc) as an independent interlocutor for the government;
 - Creating a social and economic council, as envisaged in the constitution;
 - Creating other independent consultative intermediary bodies that can serve as fora for specific areas of concern (such as a consultative council of the press);
 - Enhancing transparency through the creation of a publicly available official database including all legally registered associations;

- Redefining, in a joint effort between government and civil society, the nature of partnership between both;
- Fostering a national debate on the role of civil society and public participation in the process of democratic reform, including all constituencies without exception.

Conclusion

In regional comparison, Morocco is clearly a leader in terms of progressive political liberalisation. Civil society is vibrant and able to develop its activities without large-scale repressive measures. However, the predominance of informal rules, as well as a range of unnecessary administrative hindrances, demonstrate a still considerably flawed reality under the shining surface of the Moroccan success story. Key obstacles

are often rooted not only in deficient laws regulating free association, but in broader structural democratic deficits such as the lack of the rule of law, corruption, the weakness of parliament and the concentration of state powers in the palace, all of which require a more courageous, overarching reform process than the valuable but selective measures Moroccan authorities have so far dared to undertake. As expressed by one Moroccan human rights activist, Morocco finds itself today at a crossroads where it must decide who it wants to be compared to: its autocratic neighbours in the southern Mediterranean, or the consolidated democracies to the north. It is to be hoped that Morocco's potential as a regional leader of democratic reform will give it the courage to raise the bar, move from relative to absolute criteria of assessment, and strive to become a fully-fledged democracy. International donors, for their part, should adapt their policies to accompany Morocco in this process.

WORKING PAPERS

- 54 Morocco: Negotiating Change with the Makhzen. Project on Freedom of Association in the Middle East and North Africa, *Kristina Kausch*, February 2008
- 53 The Stabilisation and Association Process: are EU inducements failing in the Western Balkans?, *Sofia Sebastian*, February 2008
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Freedom of association – the right to form an association able to freely develop its activities – is an often-neglected cornerstone of any democratic transition. Morocco compares very favourably throughout the region in terms of democratic achievements, and has often been held up as a model of Arab progressive political liberalisation by Moroccan authorities and international observers. Upon closer inspection, however, the picture of Moroccan democratic reform does not appear quite as bright. While King Mohammed VI and the government have implemented a number of very important and valuable reforms, these have remained selective, ad-hoc, and in many cases flawed and superficial. Most importantly, the concentration of all meaningful political power in the palace has remained untouched.

The Moroccan civil society landscape is known to be among the most diverse and vibrant in the region. While associative life has been benefiting from a series of legal and political improvements in recent years, a number of important challenges to free association remain. This report, intended to accompany the Club of Madrid's efforts to strengthen freedom of association throughout the North Africa and Middle East region, provides an independent analysis of the situation of civil society in Morocco. Findings and recommendations are based on interviews among governmental and non-governmental Moroccan stakeholders.

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