



CENTRE FOR LAW
AND DEMOCRACY

Morocco

Comments on Proposed Media Law Reforms

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Introduction

The right to freedom of expression is a core human right, critical to legitimate government and guaranteed by Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR),¹ a legally binding treaty ratified by 167 States as of June 2013, including Morocco.² International guarantees of freedom of expression do not, of course, prohibit all regulation of speech and of the media, but they do place fetters on the power of States to undertake such regulation. Specifically, any laws or government actions which impact on freedom of expression should be considered carefully, and be crafted in a manner that respects the legitimate right to speak, to be heard, and to access information.

Morocco's government is currently considering four draft laws whose passage will profoundly impact the media landscape: the draft Law on Press, the draft Law on Electronic Press, the draft Law on the National Press Council and the draft Law on Professional Journalists (draft Laws). Many of the proposed changes are welcome, and overall they represent an important step towards liberalising media regulation in Morocco. At the same time, several provisions in the proposed legislative package are extremely troubling and would, if adopted, undermine press freedom in Morocco.

The creation of the National Press Council is a particularly important part of the reform package. Press councils can support a strong media culture by promoting responsibility and professionalism among journalists and by defending freedom of the media. However, the reforms would make membership in the press association mandatory. This would be a clear breach of international guarantees of freedom of association and it would allow the Press Council to exert some degree of control over who could and could not work as a journalist in Morocco.

In other respects, the draft Laws, while they represent improvements on the current legal framework, do not go far enough to bring Morocco into line with international standards. For example, the draft Law on Press and Publication retains several problematic prohibitions, including for insulting Islam and insulting the Royal family, while doing away with the jail sentences that were previously associated with these offences, replacing them with significant fines. While this is an improvement, international standards require these crimes to be abolished entirely, rather than merely imposing less harsh sanctions for breach. The draft Law on Press and Publication also allows for public prosecutions for defamation and invasion of privacy, matters that should be settled by private litigation (or ideally through mediation by the Press Council).

¹ UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

² Morocco ratified the ICCPR on 3 May 1979.

These Comments outline the main problems with Morocco's proposed media law reforms and provide substantive recommendations on how to bring the draft Laws into line with international human rights standards. The Centre for Law and Democracy (CLD) urges the Moroccan government to amend the draft Laws to take into account our recommendations before they are adopted. The Comments are based on an unofficial English translation which was received by CLD on 11 April 2013.

1. The National Press Council

Press councils can serve as an effective means of empowering journalists and promoting professionalism. Article 9 of the draft Law on Professional Journalists, prohibits press agencies, defined in the draft Law on Press and Publication as including periodicals, from employing journalists who do not have a press card issued by the National Press Council. This effectively makes membership in the Council mandatory for all professional journalists. This type of requirement is a violation of the rights to both freedom of expression and freedom of association.³ Making membership mandatory effectively allows the National Press Council to serve as a gatekeeper regarding who can and cannot work as a journalist, unnecessarily restricting the ranks of the profession and potentially denying individuals the right to work as a journalist. It also forces all journalists to submit themselves to the National Press Council's disciplinary structures.

This problem is compounded significantly by Article 7 of the draft Law on Professional Journalists, which establishes several requirements for obtaining a press card. Article 7(1) states that applicants must have two years of professional experience, lowered to three months if the applicant is a graduate of a recognised journalism school. Since it is forbidden for press agencies to hire journalists for a period of more than three months without a press card, this effectively means that any new entrants to the profession will have to have a journalism degree. Once again, this is a breach of the right to freedom of expression, pursuant to which anyone can be a journalist. It is also completely incongruous with the realities of journalism, as it is relatively common for individuals who did not study journalism to become journalists.

Equally problematic is Article 7(3), which requires applicants to demonstrate that they have not been convicted of any moral charges, criminal charges of corruption related to journalism or embezzlement. There is no reason why journalists should

³ See *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, OC-5/85, November 13, 1985, available at <http://www.oas.org/en/iachr/expression/showDocument.asp?DocumentID=27>.

be expected to be morally pure. Moral crimes are not relevant to a journalist's professional credentials or output, as long as they do not impact directly on their work. Professional corruption allegations, while they are more relevant than moral crimes, still do not justify legally barring a journalist from seeking work. The requirement in Article 7(4) that applicants must possess full civil and political rights is similarly irrelevant, as is the requirement in Article 13 of the draft Law on Press and Publication that Publication Directors must never have been convicted of a moral crime. In an open marketplace, journalists depend on their reputations. If they are exposed as corrupt, word will get out and the public will not trust their work.

Article 37 of the draft Law on the National Press Council, which allows for journalists to be sanctioned for any conduct which impacts the dignity of the profession, should be restricted to instances of professional misconduct (such as plagiarism or inventing quotes). As it is currently phrased, this provision is far too broad, as the dignity of the profession could be interpreted to cover almost anything, potentially allowing sanctions for non-professional lapses which are totally immaterial to a journalist's professional capabilities. It should be made clear that the Charter of Moral Conduct, mentioned in Article 4 of the draft Law on the National Press Council, may only concern itself with professional misconduct issues.

Recommendations:

- The requirement of experience in Article 7(1) and of a good character in Article 7(3) of the draft Law on Professional Journalists should be removed.
- Article 9 of the draft Law on Professional Journalists, which prohibits press agencies from employing anyone who does not have a press card, should be removed.
- In Article 13(2) of the draft Law on Press and Publications, the requirement that Publication Directors must never have been convicted of a moral crime should be removed.
- The references to “morality” in Articles 4 and 37 of the draft Law on the National Press Council should at least be limited to instances professional misconduct.

2. Content Restrictions

It is a cardinal principle of freedom of expression that restrictions on what may be published or broadcast are legitimate only where they are necessary to protect legitimate public or private interests. From this perspective, the decision to

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eliminate custodial sentences for press law violations is a welcome development. However, the draft Law on Press and Publication includes several offences which are not justified under international law.

Articles 47 and 48 provide for significant fines for insulting foreign heads of State or their representatives. This type of provision is not legitimate under international law and has no place in a democracy. The media have every right, and indeed an obligation, to engage in robust debate around issues of international politics. Often, this will involve harsh criticism of heads of State or their representatives. Instead of protecting officials against criticism, international law requires them to tolerate a greater degree of criticism than ordinary citizens. However, pursuant to the draft Law on Press and Publication, any Moroccan journalist who criticised United States President Barack Obama could face fines of up to 300,000 dirhams, even if publishing that same article in the United States would be perfectly legal.

Article 36 of the draft Law on Press prohibits the publication of statements which harm Islam, the Royal regime or Morocco's territorial integrity (the latter being presumably a reference to comments about the Western Sahara region). These are also not justifiable restrictions on freedom of expression. Social institutions, be they political or religious, should not be immune from criticism. Rather than providing protection, insulating these institutions from criticism actually weakens them by preventing the robust debate that can lead to constructive improvement. According to international standards, defamation rules should only protect individuals and private companies.

Article 37 of the draft Law on Press prohibits incitement to hatred or discrimination against a person or group based on their origin, race, nationality sex or religion. This is legitimate, but the same provision goes on to outlaw any insults based on the same criteria. While such insults are distasteful, this type of speech should not be criminalised unless it incites hatred or discrimination.

Article 39 allows for fine of up to 200,000 dirhams for reporting inaccurate news that harms the public order and up to 500,000 dirhams for reporting inaccurate news that harms the morale and discipline of the army. It is well established that international law protects inaccurate statements, as well as those deemed to be true and that general prohibitions on the publication of false news along these lines are not legitimate. Even the best journalists sometimes make mistakes, and the only penalty for this should be the harm to their professional reputation which will naturally result. False news rules have a chilling effect on debate about matters of public importance, discouraging journalists from reporting on controversial stories out of a fear that they might make a mistake.

Articles 44 and 49 of the draft Law on Press and Publication contain penalties for publishing insulting or defamatory information. Every country has some sort of defamation law but, according to international standards, these should be civil rather than criminal in nature. The criminal law is an unnecessarily harsh means of dealing with defamation, which can be dealt with satisfactorily through the civil law, as the experience of many countries demonstrates.

Experience also suggests that criminal defamation laws tend to be enforced selectively to protect officials, effectively allowing well-connected parties to forward publicly subsidised lawsuits while other aggrieved parties are forced to pay their legal costs out-of-pocket. This concern is supported by the fact that the penalties for insulting high officials are considerably more severe than for anyone else (100,000–300,000 dirhams as opposed to 10,000-100,000 dirhams). This approach runs counter to international standards according to which, as noted above, instead of enjoying stronger protection, officials should understand that their status as public figures opens them up to a greater scope of legitimate criticism.

The draft Law on Press and Publication fails to recognise a defence of due diligence in the context of a defamation suit. Journalists should be able to defend themselves against charges of defamation by demonstrating that they took reasonable steps to verify the information in line with professional standards. The law allows for a defence of truth, but this does not apply to incidents that are over ten years old or for which a pardon has been issued. Both of these exceptions are illegitimate. There is no reason why discussion of past acts, or of pardoned crimes, should be off-limits.

The prohibition on exposing the private lives of individuals, in Article 55 of the draft Law on Press and Publication, is also problematic. Like defamation, breaches of privacy should generally be treated as a civil matter, resolved between the parties rather than through a public prosecution. Laws on breach of privacy should include a public interest override, so that private information can legitimately be revealed if there is a significant public interest at stake, such as exposing corruption, which outweighs the potential harm to privacy.

Article 33 of the draft Law on Press and Publication prohibits the sale of material which is harmful to minors. This is a legitimate concern, but the law is currently overly broad. The law should be clarified to express more clearly the categories of content to which it applies (pornography, violent material, etc.) and the circumstances under which such material may or may not be distributed.

More generally, there are problems with including prohibitions of a general nature, such as those relating to defamation or hate speech, within media specific legislation. Instead of creating special offences for the press, the Moroccan government should consider the idea of having cases involving the media dealt with

through the National Press Council. One of the benefits of having a press council is the creation an efficient and effective mediation process to resolve disputes over media output and conduct. The legal framework already envisions complaints to the National Press Council, but currently these procedures can be cancelled at the discretion of the complainant in favour of a judicial remedy. Instead of acting as an optional supplement to the judicial process, the National Press Council should replace the court as a forum of first instance for complaints about journalists' conduct. One of the rationales for this is that the Council will better understand the special issues that the media faces and what professional standards should be expected of it. Aggrieved parties who are not satisfied with the National Press Council's process could then retain the option of appealing to court.

Recommendations:

- Articles 47 and 48 of the draft Law on Press and Publication, which prohibits insults to foreign leaders or their representatives, should be removed.
- Article 36 of the draft Law on Press and Publication, which prohibits statements that harm Islam, the royal regime or Morocco's territorial integrity, should be deleted.
- Article 37 of the draft Law on Press and Publication should be limited to statements that incite hatred or discrimination.
- Article 39 of the draft Law on Press and Publication, which prohibits publishing false news, should be removed.
- The defamation provisions in Article 44 and 49 of the draft Law on Press and Publication should be removed. If these provisions are retained, the law should eliminate the higher penalties for insulting public officials and should provide for the defences of reasonable publication and proof of truth regardless of how old the information is or whether it relates to a crime that has been pardoned.
- Article 55 of the draft Law on Press and Publication, which allows journalists to be prosecuted for breaching privacy, should be removed and any rules limiting free speech to protect privacy should include a public interest override.
- Article 33 of the draft Law on Press and Publication, which prohibits the publication of material which is harmful to children, should be further clarified.
- The National Press Council should be given a stronger role in settling disputes over journalists' conduct and investigating complaints.

3. Internet Regulation

According to Article 9 of the Draft Law on Electronic Press, websites are legally responsible for the content of advertisements they host. That is potentially a problem since advertising content is often generated automatically, for example through a service such as Google AdSense. Instead of holding websites responsible, the liability should fall exclusively on the parties that created or purchased the advertisements.

Article 14 of the draft Law on Electronic Press is also problematic insofar as it allows for emergency judicial orders to shut down websites deemed to contain slanderous (defamatory) material. Blocking websites that incite violence or crimes against humanity can be justified on an emergency basis in certain circumstances, but it is difficult to conceive of circumstances where the potential for damage from defamatory material is so large as to justify an emergency injunction blocking a website.

Recommendations:

- Article 9 of the draft Law on Electronic Press should be amended so that liability for advertisements lies exclusively with the party that purchased those advertisements.
- Article 14 of the draft Law on Electronic Press should be amended to remove the reference to slander.

4. Liability

Article 60 of the draft Law on Press and Publication states that, in cases where the Publication Director or author cannot be sued, the importers or distributors can be held liable. The law should respect the defence of innocent dissemination, whereby those who distribute and/or print material are granted immunity as long as they are unaware of any problematic content. This principle is crucial to the publishing industry, and is particularly important in the context of the Internet. Internet companies like Google and Facebook publish millions of statements every day, with no practical means of vetting every one for defamatory or otherwise problematic content. Remedies for problematic content should be limited to those parties with actual knowledge of the content and a measure of editorial control.

Recommendations:

- Article 60 of the draft Law on Press and Publication should recognise a defence of innocent publication where printers or distributors act without actual knowledge of the problematic content.