



"Demonstration of the 20-February Movement in Casablanca, 2013."  
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# MOROCCO

# PRESENTATION

This country review is part of a larger study on **Freedom of assembly in the Euro-Mediterranean region** in the present time, presented in two parts: **I- Legislative review**, and **II- Practice of freedom of assembly**. Part I of the regional study was published in November 2013, and Part II will be published in 2014.

**The full Regional study on Freedom of Assembly in the Euro-Mediterranean Region is available [here](#).** It presents international standards protecting this fundamental right, and proceeds to analyzing the legal frameworks and their compliance to international human rights standards in 13 countries of the Mediterranean and the European Union: [the EU as region](#), [Spain](#), [the United Kingdom](#), [Algeria](#), [Egypt](#), [Israel](#), [Jordan](#), [Lebanon](#), [Libya](#), [Morocco](#), [Palestine](#), [Syria](#), [Tunisia](#) and [Turkey](#).

In order to develop the assessment of national legislations in comparison to international standards and the practical implications of legal provisions concerning freedom of assembly, objective indicators were used as a reference throughout this study, together with a gender-sensitive approach to detect whether women enjoy freedom of assembly to the same extent as men, or if they are more specifically affected by restrictions.

This study is based on a process of consultation and participation involving members of the Euro-Mediterranean Human Rights Network (EMHRN), which includes 80 organizations and institutions of human rights defense based in 30 countries as well as individual members. It thus reflects the efforts of a researcher recruited in the country, assisted by members of the EMHRN Working Group on Freedom of Association, Assembly and Movement, and the active involvement of other civil society organizations and experts.

Accordingly, the objective of this study is to provide Human Rights defenders and civil society organizations, international organizations and state institutions, with an analysis that allows them to assess national policies in their country and compare them to those of other countries and to international conventions, in order to advocate for relevant reforms and help improve the situation of freedom of assembly in the countries of the Euro-Mediterranean area.

## Introduction

Demonstrations and rallies in Morocco grew since the 1980s in response to difficult living conditions, but also thanks to a relative democratic opening, especially since the accession to the throne of King Mohamed VI. These dynamics were supported by the development of a strong civil society<sup>1</sup> and the increasing demands of the trade union movement.

Morocco has ratified the main international conventions on human rights. However, many laws remain restrictive to civil rights; a reform of the body of laws governing public freedoms is desirable, following on from the constitutional reform of July 2011 that developed a whole chapter on rights and freedoms in the new constitution. It is also important to note that freedom of expression, hence indirectly freedom of association and assembly, are bound by intangible and non-written “red lines” that punish speeches or writings which openly criticize the King, his family or authority, the Islamic nature of the State or Islam as such, and Morocco’s “territorial integrity” – i.e. Morocco’s claimed sovereignty over Western Sahara.

Many public assemblies have recently been met with excessive use of force by the authorities which claimed a number of lives. It is important to stress that in the context of demonstrations, women are often targeted by physical aggressions, sexist comments and acts of intimidation by the police. All this resulted in the call formulated by human rights associations to organise a public debate on the legal framework governing public assemblies.

Besides, the supremacy of international human rights treaties mentioned in the Constitution is at the same time limited by constitutional provisions within the limits of specific local legislation and “national identity”, a contradiction that renders the concept of legal supremacy meaningless.

Consequently, the analysis of the body of laws governing public assemblies as well as their implementation is an important step towards the long-awaited implementation of constitutional principles relating to human rights.

### 1. General Legal Framework

Morocco's ratification of international human rights treaties makes the State responsible of taking all effective measures essential to the protection of public assemblies.

<sup>1</sup> Favoured by the Associations Law No. 76.00 of 23 July 2002, OB No. 5046, 10 October 2002, p. 2890.

### *International Instruments*

#### Ratification:

- ▶ International covenant on civil and political rights;
- ▶ International covenant on economic, social and cultural rights;
- ▶ International convention on the elimination of all forms of racial discrimination;
- ▶ International convention on the elimination of all forms of discrimination against women;  
*(with statements and reservations which affect the core meaning of this convention, see Annex 2)*
- ▶ Convention against torture and other cruel, inhuman or degrading treatments or punishments;
- ▶ International convention on the protection of rights of all migrant workers and members of their family

#### Not ratified:

- ▶ Optional protocols relating to the above-mentioned international covenants.
- ▶ The convention No. 87 of the International Labour Organization on workers rights.

The Moroccan constitution of 2011 includes in its preamble<sup>2</sup> the principle of the **supremacy of ratified treaties on internal laws** as of their publication in the Official Bulletin.

### *National Instruments*

**Article 29 of the constitution guarantees freedoms of assembly, peaceful demonstration and association** without any discrimination.

Pending a practical implementation of the constitutional provisions, which would need the reform of laws on public freedoms, the **Dahir (royal decree) No. 1-58-377 governs public assemblies**<sup>3</sup> since it was promulgated on 15 November 1958, and then modified and supplemented by the law no. 76.00 of 23 July 2002. In addition to these two texts, the **Electoral code of 2 April 1997**, modified and supplemented by law No. 64-02 of 24 March 2003, contains many provisions on gatherings related to elections.<sup>4</sup>

**This Dahir distinguishes 3 types of assemblies: Public meetings; demonstrations on public roads; and mobs.**

<sup>2</sup> Under the new constitution, the preamble has the same legal force as other provisions.

<sup>3</sup> O.B. No. 2404a of 27 November, 1958, p. 2883.

<sup>4</sup> O.B. No. 5096 of 3 April 2003, p. 245.

**Public meetings** are governed by law 76-00 and the Dahir 2002, art 2: “Any temporary but concerted assembly where the agenda is fixed in advance is said to be a public meeting”. Art 21 of law 76-00 provides that any person has the right to participate in a public meeting. The only restrictions to the exercise of this right are those imposed in accordance with the law and which are necessary in a democratic society.

**Demonstrations on public roads** are a static or moving gathering, defined mainly by its organisers. Only political parties, trade-unions and professional associations can hold such demonstrations, all other demonstrations on public roads are prohibited.

**Lastly, mobs are not defined precisely.** Some describe the mob as an unorganised group of people on the street. Others consider the mob as illegal when the goal is to resist authorities.

Art 17 of Dahir 1958 distinguishes between 2 types of mobs, armed and unarmed mobs.

- ▶ Unarmed mobs: When they do not respect the declaration procedure for the demonstrations or when the demonstration has been prohibited.
- ▶ Armed mobs: When several individuals carry hidden or apparent weapons, or other dangerous objects.

**Interesting case law of the Moroccan administrative justice protects freedom of peaceful assembly, such** as a decision issued by the administrative court of Oujda:<sup>5</sup>

*“Freedom of assembly is a basic component of individual freedoms like freedom of opinion and movement. Without freedom of assembly, no exchange or debate on public affairs can be imagined. This freedom of assembly means the right of individuals to gather in a place to express their ideas in the form of speeches, seminars, conferences or discussions. All legislations, constitutions and international treaties acknowledge that freedom of assembly is a precondition to the consolidation of human rights and to the propagation of the principles of democratic practice”*<sup>6</sup>

The Marrakech administrative Court of Appeal (Decision 159 of 10/7/2007) also states that the judiciary only has the power to decide on the closure of assembly venues and the banning of gatherings.<sup>7</sup>

<sup>5</sup> Decision No. 202/01 dated 26 September 2001.

<sup>6</sup> Judgment published in *Guide pratique de la jurisprudence en matière administrative* (Handbook of administrative case law), A. Bouachiq, t. 5 R. A. M. D. publication, No. 16, 2004, p. 112-117.

<sup>7</sup> *La jurisprudence en conflits administratifs (Case law on administrative disputes)*, RDM No.2 (2010) p: 280-284.

## 2. Procedures

The Dahir of 1958 imposes a certain number of conditions to be complied prior to holding of public assemblies and demonstrations.

### *Public meetings*

Under article 3", *any public meeting will be preceded by a **declaration** indicating the day, the time and the place of the meeting. This declaration will specify the purpose of the meeting. **It will be signed by three people** domiciled in the prefecture or province where the meeting will take place and will provide the names, professions and addresses of the signatories as well as a certified copy of their national identity card".*

All these requirements can be considered as “unnecessarily bureaucratic” according to the criteria of the Special Rapporteur of the United Nations on the Rights to Freedom of peaceful assembly and association.<sup>8</sup>

**Resident foreigners** have a Moroccan residence identity card, and can thus organise assemblies if they wish to do so. In addition, the law does not expressly prohibit non-resident foreigners from taking part or organising assemblies. They also have the right to form associations in accordance with the law of 1958 such as it was modified by law 75-00 in 2000.

The declaration is presented to local administrative authorities, in exchange of a **stamped receipt of acknowledgment**. If the organisers did not succeed in obtaining this document, they can send the declaration by registered letter with acknowledgment of reception. The meeting should take place only after a **minimum period of twenty-four hours** following the date of acknowledgment of the declaration or forty-eight hours after the sending of the registered letter.

The public meeting is thus not entirely free insofar as two conditions are required. First, advance declaration, and second, the presentation of the receipt of acknowledgment. However, if authorities are not pleased with a specific meeting because of its political or cultural character, they can deny either the declaration or the delivery of the receipt, as they may not sign the acknowledgment of reception to the letter, which is the only supporting document of the legality of the assembly.

Yet the delivery of this receipt of acknowledgment of the declaration by the competent jurisdiction is not mandatory as per law 75-00. Moreover it does not set forth any punishment to civil servant if they refuse to deliver the aforementioned receipt. Thus, law 75-00 leaves room for this arbitrary administrative practice that has prevailed for a long time, which turns the acknowledgment of the declaration into a de facto authorisation, conducive to interferences with freedom of assembly.<sup>9</sup>

<sup>8</sup> 2<sup>nd</sup> Annual Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/23/39, 2013 in para.54).

<sup>9</sup> Report of the Special Rapporteur, A/HRC/20/27, para. 28.

**The meetings of associations and legally constituted groups are exempted from prior declaration** (Article 3). However, in practice authorities sometimes ask for prior declaration for inter-associative meetings. In these cases, the declaration procedure allows the administration to assign a representative to attend the meeting, in accordance with the law, interfering in the work of associations.

### ***Demonstrations and mobs***

Demonstrations on public roads are also subject to a **prior declaration**, to be filed only by political parties, trade-union organisations and professional associations. The declaration must be signed by three people whose residence is in the prefecture or the province where the demonstration will take place.

The declaration is presented to the local administrative authority three clear days at least and fifteen clear days at most before the date of the demonstration (Article 12), and a **receipt** is given in return. If the organisers do not obtain this receipt, they can send the declaration by registered letter with acknowledgment of reception to the same authority.

If the administrative authorities deem that the planned demonstration is likely to disturb public security, they can ban it by a written decision sent to the signatories of the declaration (Article 13).

Lastly, article 17 of the dahir of 1958 specifies that armed assemblies are prohibited, as well as **any unarmed mob which could disturb public security**.

Because of these restrictions on the organisation of demonstrations on public roads, citizens who do not belong to an organisation cannot hold demonstrations legally, since there is no exemption to this procedure (the concept of “spontaneous demonstration” hence does not exist in Moroccan law). They thus fall under the scope of the definition of a “mob”.

## **3. Restrictions**

### ***Public meetings***

In all cases, meetings **cannot be held on public roads** or extend beyond midnight or the time fixed by the administration (Article 4).

The administrative authority who received the declaration can assign a civil servant to attend the meeting. This person will have the right to announce its dissolution if required by the organisers committee or if the meeting results in clashes or assaults (Article 7).

## ***Demonstrations***

**Only political parties, trade-unions, professional groups and registered associations can stage demonstrations in public spaces after submitting a declaration for this purpose** (Article 11). Foreigners have the right to form associations and consequently are able to organize demonstrations in their name.

However, as seen as in point 2, **citizens who do not belong to organisations cannot legally hold demonstrations**, and their gatherings are thus regarded as mobs, generally being subject to police repression.<sup>10</sup>

The local administrative authority can, at any time, take written decisions to maintain public order by prohibiting the display of emblems, flags or any other rallying symbol, either on public roads or on buildings, sites and premises freely open to the public (Article 22). They can also modify the route or the time of the demonstration, in particular for reasons of traffic and security.

The administration holds a **discretionary power to ban a demonstration** if it deems that it is likely to disturb public security (Article 13). In fact, the competent authority is not required to justify the ban with convincing reasons, leaving the door open for arbitrary bans.

Limiting the right to organise demonstrations to registered associations constitutes a **disproportionate restriction of this fundamental freedom** which is absolutely contrary to international law. In fact, according to the Special Rapporteur on the right to Freedom of peaceful assembly and association, individuals involved in unregistered associations should be free to carry out all kinds of activities, including organise and participate in peaceful gatherings, and should not be subject to penal sanctions.<sup>11</sup>

In addition, **other laws restrict directly or indirectly freedom of assembly** of men and women in Morocco.

**The anti-terrorism law** No. 03-03 (adopted on 28/05/2003) threatens the exercise of public freedoms. Under its provisions, any demonstration or public meeting that degenerates could constitute its organisers as terrorists. Two rather vague conditions can result in an assembly being regarded as a terrorist act, under art 218-1:

<sup>10</sup> For example, the movement of unemployed graduates could not get permission for their association. Their sit-in outside the parliament in Rabat are illegal and although peaceful and not disturbing traffic, they are often dispersed by violence without the police giving mandatory warnings for dispersing the crowds, according to local human rights organizations.

<sup>11</sup> Report of the Special Rapporteur, A/HRC/20/27, para. 56 ; also *Lignes directrices de l'OSCE sur la liberté de réunion (OSCE Guidelines on freedom of assembly)*, 2nd edition, para. 53, 105 and 106.

- a. Destruction, degradations or deteriorations of properties belonging to others;
- b. The existence of an intentional relation between these degradations and “*a collective endeavour to seriously breach public order by intimidation, terror or violence*”. In such a case, a demonstration can become this “collective endeavour” even if the majority of the participants did not participate in the destruction and remained peaceful.

Finally, the electoral code 9-97 promulgated in 1977 and modified by the law 64-02 of 24 March 2003 sets out the rules for electoral campaigns. It refers to the Dahir of 1958 concerning public assemblies and thus does not lay down other conditions.

#### 4. Protection

The law does not expressly establish the positive obligation of the State to protect peaceful assemblies, which is nonetheless an obligation under international law. Given the importance of the freedom at stakes, authorities have the obligation to take measures to facilitate assemblies and to protect participants against individuals or groups, including *agents provocateurs* and counter-demonstrators, who aim at disturbing or dispersing the assembly.<sup>12</sup>

##### *Use of force*

The police must follow a specific procedure while dispersing unauthorised gatherings. Under article 19, a police officer must give the order to disperse, read out loud the possible sanctions incurred, and disperse the assembly by force only after the third warning.

It appears from discussions with civil society activists, that authorities are not keen on respecting the legal procedure defined for the dispersal of gatherings. The concept of proportionality is disregarded, and law enforcement forces systematically resort to excessive use of force when policing and dispersing undeclared but peaceful gatherings.

##### *Effective remedy*

A judicial remedy against administrative decisions such as the restriction or ban of a demonstration, or against the police for excessive use of force is theoretically possible before an administrative court.

However, the delays practiced in the judicial system question the effectiveness of this right. The recourse available does not meet the “fast appeal procedure” requirements under

<sup>12</sup> Report of the Special Rapporteur, A/HRC/20/27, para. 33.

international law,<sup>13</sup> which would make it possible to hold the demonstration on the planned date if the court ruled in favour of the organisers. Furthermore, it is extremely difficult for the victims of acts of violence to fill complaints against the police because of procedural obstacles in determining responsibilities and establishing the proof of violent acts.

Finally, the weak geographical extension of administrative courts - seven courts in the whole territory and two administrative appeal courts (in Rabat and Marrakech), and the deep-grounded suspicion of lack of independence of the administrative judiciary are also responsible for the scarce number of appeals before these courts.

## 5. Sanctions

The Dahir of 1958 provides for punishments in the event of not respecting its provisions. According to article 9, *“Any infringement of this law is punished with a fine of 2,000 to 5,000 Dirhams. In the event of repetition the contravener is punished with imprisonment from one to two months and a fine of 2,000 to 10,000 Dirhams or only one of these two punishments, without prejudice of sanctions incurred for crimes or offences made during these assemblies”*.

Other provisions reinforce the incurred sanctions. For example, according to article 14 the offence *“Will be punished with imprisonment from one to six months and a fine of 1,200 to 5,000 Dirhams or only one of these two punishments: 1-those who have made an inaccurate declaration likely to mislead authorities on the information required in article 12 of this law (Article concerning the procedure, referred to above) or who have issued by any means, a call to participate in a demonstration after its prohibition; and 2 - those who have participated in the organisation of an undeclared or prohibited demonstration”*.

Moreover, article 21 lays out that whoever takes part in an unarmed mob (i.e., very often undeclared demonstrations are considered as “mobs”) and has not left it after warnings, will be punished with imprisonment from one to three months and/or a fine of 1,200 to 5,000 Dirhams.

These punishments for minor infringements such as an “inaccurate declaration” or the participation in an undeclared but peaceful demonstration, are disproportionate. According to international norms, the principle of proportionality also applies to the responsibility driven by the participation in a gathering or assembly, and in all cases the individuals who did not commit any objectionable act should not be held accountable, considering the dissuasive effect that could have on the organisation of future events.<sup>14</sup>

13 Report of the Special Rapporteur, A/HRC/20/27, para. 42: *“The Special Rapporteur stresses the importance that regulators give the organizers of rallies “in due time justified reasons for the imposition of restrictions, and the possibility of a fast appeal”*.

14 Second Report of the Special Rapporteur, A/HRC/23/39, paras. 77-78.

**The anti-terrorism law** is characterised by more severe punishments (within the scope of the modifications made to the penal code) such as article 218-2 which provides for punishments going from two to six years of imprisonment and a fine going from 10,000 to 200,000 Dirhams for any person who who praises any action of a terrorist nature through speeches, slogans or threats pronounced in public spaces or meetings.

## 6. Gender and Freedom of Assembly

It is important to stress that under article 19 of the constitution, *“Men and women enjoy equal rights and freedoms in civil, political, economic, social, cultural and environmental matters, stated in this Title [i.e. that relating to freedoms and fundamental rights] and in the other provisions of the Constitution, as well as in the conventions and international covenants duly ratified by Morocco”*.

**However, women suffer from specific difficulties** to exercise their right to freedom of assembly. The Family Code, the law that specifically governs the status of women, does not include any restriction on women's freedom of assembly, even if it bears provisions which put women in an inferior status compared to men on certain questions.<sup>15</sup> On the other hand, cultural and religious considerations significantly interfere with the freedom of women to assemble (especially in public spaces). For example, **the common law in force** in certain areas and for certain “tribes” can be a barrier for the participation of women in decisional assemblies and for their right of assembly. In particular, the common law relating to collective grounds governed by the Dahir 1919 prevents women from taking part in the management of collective grounds and from sitting in the tribal assembly (Jmaa) as the custom does not recognise them as bearing rights. The strength of this common law and the ignorance of positive laws protecting their rights are a barrier to the organisation and defence of their interests for these women, who are afraid to demonstrate and to organise to plead their cause.

<sup>15</sup> In particular, but not exclusively, the Family Code does not give women the right to oppose the remarriage of her husband and if she refuses her husband from having a second wife, the judge shall proceed to divorce by dissension. The legal inheritance shares accruing to heirs are always lesser for women than for men (a woman receives half less than her brother).

## Recommendations

1. Implement the new constitutional provisions relating to freedom of assembly by drafting a law guaranteeing its effective exercise;

In the absence of a new law, amend Dahir no. 1-58-377 and law No. 76.00 of July 23, 2002, specifically to:

2. Remove restrictions on people wanting to stage a demonstration (for foreigners);
3. Simplify the procedure of notification in order to make it really accessible to all;
4. Make it mandatory for the administration to submit a receipt of notification and punish the non-observance of this procedure by public servants;
5. Restrict and specify cases in which a demonstration can be banned and make compulsory for the administrative authority to provide substantiated reasons to the ban;
6. Allow an effective and fast judicial remedy in the event of restrictions or prohibition of a public assembly or a demonstration, within deadlines permitting the holding of the event if the court favours the organisers;
7. Modify articles 9, 10, 14, 20 and 21, and any article that provides for heavy sanctions against organisers and participants for minor infringements, in particular freedom-depriving punishments, or that burden participants with a collective responsibility for illegal acts of others
8. Set up a mechanism for receiving and examining allegations of violations of fundamental rights, excessive use of force and ill-treatment in the context of policing assemblies.