



Corruption

# The Right of Access to Information

An Important Step in the Fight Against Corruption in Morocco?

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Morocco is no stranger to the global problem of corruption and the associated lack of public trust in the country's administration. Public pressure, especially during the Arab Spring, resulted in a constitutional amendment in 2011 and people being given the right of access to information. Citizens now have the right to request non-public information held by the administration, while at the same time public bodies are required to proactively provide citizens with more information. Morocco's Access to Information Act has been in force since March 2019, however, its adoption has been postponed until 2020.

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### **Corruption – A Far-Reaching Problem in Morocco**

In Morocco, the media and public discourse often report instances of bribery and fraud. Whether that be in the health care sector, where people often have to make additional payments in order to get vital treatments, or the traffic police, which freely hands out arbitrary fines. According to Transparency International's Corruption Barometer 2013, 61 per cent of Moroccans surveyed rated health care and the police as the country's two most corrupt sectors.<sup>1</sup> Other areas that are severely affected are the judiciary, the education system, and the military. There have been cases when revelations of corruption have led to public protests, but all too often, it is simply accepted. This is primarily due to people's lack of knowledge about their rights and the duties of the state, for example when it comes to services that, by law, should be supplied free of charge. The question of tips, quite simply called *qahwah* (coffee), concerns a large part of the population when it comes to obtaining justice or benefitting from a privilege.

On top of this, public authorities have embraced neo-patrimonial ideas that encourage nepotism and favouritism. It is no longer simply a question of authoritarian rule through tradition, but formal laws are also applied, albeit arbitrarily. Citizens find themselves in a constant state of uncertainty as to whether the rules set by an

impersonal bureaucracy or authoritarian power will be applied. State officials are entangled in a complex network of loyalties, which enables them to change or circumvent rules in order to exploit their position for personal gain.

People are often both perpetrators and victims of corrupt practices. Many deny being involved, trivialise the problem, or are unaware of any wrongdoing.

Corruption is the "misuse of entrusted power for private gain".<sup>2</sup> In reality, its practices are more complex and often difficult to define. Four frequently cited forms of corruption or abusive practices in Morocco are conflict of interest (Article 65 of Organic Law 113-4 on municipalities), abusive influence (Article 250 of the Moroccan Penal Code), favouritism (Article 254 of the Penal Code), and insider trading (Article 25 of Law 1-93-212 on Securities Trading). Articles 248 ff. of the Moroccan Penal Code distinguish between an active demand for payment, and a passive acceptance of benefits and privileges. The amount of the bribe is also decisive, along with whether state officials will only perform an activity they are required to do by law for *bakshish* (tip), or whether they are also violating the law. The risk of corruption is particularly high at the interface between the public and private sectors, and above all when awarding public contracts, licences, authorisations, tax concessions, and providing public services.



Public participation? The dwindling trust in the state is clear to see in many areas, among them low turnouts in elections. Source: © Youssef Boudlal, Reuters.

Moroccan criminal law has sufficient legal instruments for combatting corruption. According to Article 243 of the Penal Code, any judge or official who solicits, receives, or mandates a payment to which they are not entitled, is guilty of bribery. What is more, there are the offences

of fraud, forgery of documents and falsification of signatures, data or facts (Articles 351ff. Penal Code).

During a speech in July 2018, Moroccan Prime Minister Saad-Eddine El Othmani estimated



that the cost of corruption amounted to some seven per cent of the country's GDP, or approx. 6.7 billion euros per year.<sup>3</sup> This annual shortfall is roughly equivalent to the cost of building 300 hospitals,<sup>4</sup> and placed Morocco in 73<sup>rd</sup> place (of 180) on Transparency International's 2018

“Corruption Perceptions Index”. It may be an improvement on previous years, yet the country still fell well below the global average.<sup>5</sup> The main problems lie at the interface between the public and private sectors, such as the sale of public goods, licences for private educational institutions, and the award of public contracts.

### **The country's corruption not only has a direct impact on its citizens, but also damages the general investment climate.**

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According to political assessments, the damage caused by corruption poses the greatest obstacle to Morocco's economy. A United Nations guideline on combatting corruption describes the impact of global corruption as follows: “Corruption hinders economic development, reduces social services, and diverts investments in infrastructure. Moreover, it fosters an anti-democratic environment characterised by uncertainty, unpredictability and declining moral values and disrespect for constitutional institutions and authority.”<sup>6</sup>

Morocco's strong economic and political ties with the European Union and its geostrategic position mean that the damaging impact of corruption is felt not only at home, but also abroad. Foreign investors often cite problems with bureaucracy and corruption as reasons for their lack of interest in Morocco, despite the massive expansion of infrastructure in recent years and the government having drawn up some promising development plans. Certain problem areas, such as the fight against money laundering around Casablanca, the country's financial hub, have already been addressed, however the general framework for an investment-friendly business climate is not yet in place.

Corruption is contributing towards current weaknesses in the Moroccan economy, too. The low number of business start-ups, which could play an important role in the labour market and

encourage competition, are a reflection of the uncertainty caused by corruption. Moreover, few entrepreneurs dare to enter the formal sector, despite the creation of investment centres and a favourable legal environment.

### Is Good Governance in Trouble?

Corruption exists in almost every country around the globe, irrespective of their level of economic and social development. No government or political system has yet managed to abolish corruption altogether. In addition to economic problems and the rising cost of living, especially for the poorer sections of the population, corruption plays a major role in people's mistrust of the state and its representatives.

This dwindling trust in the state is clear to see in many areas. An Afrobarometer survey found that merely six per cent of Moroccans surveyed had experienced improvements in health, police, and education during the past few years.<sup>7</sup> Local media often report cases of corruption, most recently when the Moroccan Court of Auditors published its 2018 Annual Report. It attracted a great deal of attention when it criticised government projects in the agricultural sector.<sup>8</sup> Low turnouts in elections and high numbers of spoilt ballot papers are another sign of corruption. Only 42 per cent of the electorate voted in the last parliamentary elections in 2016. Surveys point to public dissatisfaction due to the numerous corruption scandals in particular.

When the government does take action, all too often the public believes it is simply fighting fires as opposed to initiating forward-looking policies. One example is the tax reform introduced at the beginning of 2019, whose original intention was to facilitate accounting for small businesses. The government justified the reforms by claiming they were part of the fight against general tax evasion and the containment of the informal sector. When the reforms were implemented, small businesses found themselves faced with a significant increase in checks and financial penalties, however. Strikes broke out on an unprecedented scale, especially in

larger cities like Agadir, Casablanca, and Rabat. Small business-owners criticised their unequal treatment compared to larger companies and the fact that they had not been sufficiently involved in the decision-making process.

The political power structure is difficult for the population to penetrate. First and foremost, there are the efforts to balance the royal household, the government, and the people – efforts that have not always borne fruit over recent years. On 20 April 2018, it all culminated in a social media boycott of three brands: *Danone* (dairy products), *Sidi Ali* (mineral water), and *Afriquia* (petrol stations) as a protest against the high cost of living in Morocco. In the background, the three brands were denounced for their excessively close links to politicians. Morocco has recently introduced a number of reforms to its public administration. The main focus was to strengthen trust between citizens and the administration as part of establishing good governance. Morocco ratified the UN Convention against Corruption in 2007 and aligned its reforms with the strategies of the OECD, the World Bank, and other international organisations.

In 2010, the government drew up an action plan aimed at both improving relations between the administration and the people, and at creating new internal control mechanisms. For example, there was a reform of public goods procurement in 2013, and the offences of corruption and fraud were defined in more detail. In 2015, it also set up a national anti-corruption authority: *Instance nationale de la probité, de la prévention et de la lutte contre la corruption*. At national level, Morocco has a central auditing authority (Court of Auditors), along with regional audit offices for decentralised services. What is more, it introduced a system of internal control and monitoring mechanisms; internal audits; financial reports on the part of public bodies, audited by the Court of Auditors; an obligation for certain public officials to declare their income; the introduction of the *chikaya* (complaints) telephone hotline<sup>9</sup> and other measures to prevent and combat corruption.<sup>10</sup>

## More Transparency Creates More Trust

The Arab Spring protests that shook the region reached the streets of Morocco on 20 February 2011. Tens of thousands of people demonstrated, whose demands included greater freedom of the press, a halt to corruption, and the right to co-determination. On 9 March 2011, King Mohammed VI and the government responded with a high-profile speech, in which he announced a raft of reforms. One of the most important projects was constitutional reform and the introduction of additional basic rights and rights to political participation. Following four months of consultation between political parties, trade unions, and associations, the new constitution entered into force after a referendum on 29 July 2011.

### In response to the protests of the Arab Spring in 2011, King Mohamed VI took a number of steps, including strengthening the independence of the judiciary.

In essence, the amended constitution strengthens the role of parliament vis-à-vis the king, guarantees the independence of the judiciary, and introduces new basic rights and rights to political participation for Moroccan citizens.

The right of access to information from public administration and the elected institutions has been newly introduced in Article 27 of the current constitution, adopted in 2011.<sup>11</sup> It states that citizens have the right of access to information from the public administration, selected institutions, and bodies mandated to provide public services.

Discussions had begun in Morocco on the introduction of a new information law a few years before the Arab Spring even broke out. The trend towards greater transparency in public

administration began in a number of countries during the 1990s. In 2004, the World Bank published its annual development report focusing on “Making Services Work for Poor People”. One of its concerns was the situation of poorer sections of the population, particularly in rural areas, who find it difficult to obtain documents or services from the state. Examples that also apply to Morocco include the issuance of birth certificates and property titles as well as access to health services. The World Bank report focused on how to improve public services, particularly for these groups. It identified approaches for consideration and examined the relationships between citizens, the state and public service providers.<sup>12</sup> Within this triangle, citizens should ideally have control over public services – directly or indirectly – through politics.

As a result, in July 2015 new rights of co-determination and participation were created, and particularly in the context of regionalisation and strengthening municipalities. The following rules have been introduced in the organic laws relating to regions, provinces, prefectures and municipalities:

1. Article 119: Creation of participatory mechanisms for dialogue and participation, so that citizens and associations can be involved in the development, monitoring, and evaluation of action plans;
2. Article 120: Establishment of a body for justice and equal opportunities;
3. Article 121: Exercise of the right of petition for citizens and associations with regard to municipal decisions.<sup>13</sup>

In theory, there should even be a degree of participation in decisions on the municipal budget, but in practice, such participation mechanisms are very difficult to adopt without access to information and data.

The World Bank also argues that this information and these mechanisms may make it easier to expose corruption.<sup>14</sup> The United Nations, too, has examined ways of fighting corruption. Between 2002 and 2003, a committee

met to deal with the following five issues: preventing corruption, law enforcement, and international cooperation, recovery of goods and exchange of information. On 31 October 2003, the United Nations General Assembly adopted the Convention against Corruption (Resolution 58/4).<sup>15</sup> The Convention contains provisions on preventing corruption, criminal law on corruption, provisions on international criminal law cooperation, provisions on the recovery of assets gained through corruption, and rules on mutual technical assistance between State Parties. It also lays the foundation for an interim mechanism to review the implementation and application of the Convention in the State Parties.

Article 10 on Public Reporting was inserted into the Convention as one of the prevention mechanisms. According to this Article, the signatory states should take such measures within legislation as may be necessary to enhance transparency in their public administration. Such measures may include adopting regulations and simplifying procedures in order to facilitate public access to information. It also calls for the regular publication of information on the risks of corruption in public administration.

In 2007, the Moroccan government ratified the UN Convention, thereby committing itself to establishing a procedure for providing free access to information. When Morocco adopted its constitutional reforms in 2011, Algeria had already had an information law in place since 1990, but it contained so many hurdles that it was virtually never applied. Other countries in the region, such as Tunisia and Mauritania, possessed no such laws. At present, 129 countries around the world have laws or mechanisms to provide access to information. Sweden's legislation in this respect is over 250 years old, while the US passed its Freedom of Information Act in 1966. EU citizens have had access to the documents of the European Parliament, Commission, and Council since 2001. In Germany, the Freedom of Information Act has been in force since 2006.

## The Right to Information in Morocco

Deliberations about how to draw up a law on access to information began following Morocco's ratification of the UN Convention in 2007. The first task was to examine the existing statutory regulations. Provisions relating to access to or restrictions on information were laid down in press law, regulations on state archives, public procurement law, and consumer law. Especially problematic were Morocco's general



civil service regulations dating back to 1958. Article 18 stipulates that all public officials are bound by the obligation of professional discretion and only allowed to disclose information if instructed to do so by the relevant minister. The (translated) wording of the text is as follows: “Irrespective of the rules laid down in the Penal Code on professional secrecy, all public officials are bound by the obligation of professional discretion with regard to all facts and information of which they become aware

in the course of or in connection with the performance of their duties. Any misappropriation or communication of information or administrative document to third parties is strictly prohibited. Only the authority of the overseeing Minister can release the public official from this non-disclosure obligation.”<sup>16</sup>

However, certain public institutions already had a mandate to actively provide citizens with information and data. These included



More transparency: Information may be obtained from parliaments upon request. Source: © Reuters.



the National Archive, the Statistical Office, the National Council for Human Rights (*Conseil National des Droits de l'homme*) and the Media Council (*Conseil supérieur de la communication audiovisuelle*).

Three key questions were considered prior to drafting the new law:

1. What is the current situation regarding the right to information for the applicant and the competent authority?
2. What exceptions should there be?
3. Who mediates in the event of disputes?

The Access to Information Act was adopted in February 2018 and entered into force on 12 March 2019 pursuant to Article 27 of the 2011 Moroccan Constitution.<sup>17</sup> The Ministry of Administrative Reform and the Civil Service are responsible for its implementation.

The following points are reflected in this new law: Information, including in the form of laws, regulations, reports, letters, emails, evaluations, films, drawings, etc., may be obtained from the following institutions upon request: parliaments, public administration, courts of law, local administrative authorities, and public or semi-public entities. Applications are submitted directly to the relevant authority and are to be answered within 20 days. In urgent cases, a shorter processing period may be requested according to the law. However, the competent authority can also extend the period to 40 days. Ideally, the authority that receives the request should provide information. If it rejects the request based on exceptions mentioned in the law, it must submit a statement of reasons. In this case, the Commission acts as mediator on the Access to Information Act. The information should normally be free of charge, though the law allows the authorities to charge a handling fee for processing the relevant documents. It has yet to be clarified how illiterate people should contact the authorities. It is expected that the authority in question provides support in this respect; however, it is still not clear to what extent.

## The exceptions in the Access to Information Act fueled a great deal of debate in civil society.

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It was already clear during the constitutional reforms of 2011 that it is especially difficult to implement fundamental rights and freedoms when they touch on particularly sensitive areas of government or society. Article 7 of the Access to Information Act contains a list of exceptions, including information on internal and external state security, information on relations with other states or international organisations, monetary and economic policy, financial rights of the state, copyright and related rights.<sup>18</sup> These exceptions in the law were the subject of extensive debate by civil society prior to its adoption.

The exceptions were based primarily on Article 19 of the UN Covenant on Civil and Political Rights.<sup>19</sup> It restricts certain information rights as provided by laws created to protect individuals, national security, public health and morals. The fact that the relevant authority interprets exceptions and that public officials may be liable to prosecution for infringement of the aforementioned civil service regulations, are problematic however. In a statement, the National Human Rights Council called for the exceptions to be formulated more clearly.<sup>20</sup> Nevertheless, their demands were largely ignored, and the legislators left these issues to an arbitration committee.

Article 10 of the Access to Information Act provides a detailed list of the information, which should be published independently. This means that, as set out in the UN Convention, the bodies concerned are obliged to publish as many documents as possible, such as legislative texts, reports, and statistics.

Article 22 of the Access to Information Act calls for the establishment of a Commission on the Right to Information to act as a mediating and monitoring body. The Commission is expected

to advise public authorities and applicants alike, and arbitrate on disputes. On 16 March 2019, its inaugural meeting was held in Rabat under its new president, Omar Seghrouchni. The Commission consists of two representatives of the public administration and one representative of civil society, appointed by the head of government. In addition, the two chambers of parliament, the anti-corruption authority, the National Archive, the National Human Rights Council, and the ombudsman's office each supply one representative. The representatives are appointed for five years and may be re-elected once. Excluded from this Commission is the competent Ministry of Public Administration. As regards the composition of the Commission, civil society has levelled criticism against its close ties to the government, and hence its lack of independence. The lack of sanctions available to the Commission has also faced criticism.

The agreed measures will not be adopted before 2020 since the authorities concerned need time to train their personnel, both in Rabat and in the decentralised municipalities. These personnel should have already been appointed in December 2018, but the Ministry of Public Administration is still unable to say who is currently being trained in which subject area. However, the ministry points out that this newly created position involves a range of important responsibilities, so it is vital that these public officials receive extensive training. Law 31-13 also stipulates that a guideline needs to be developed for these officials. According to Article 30 of the law, the authorities have one year to do this.

### **Outlook and Criticism**

Morocco still lacks practical experience with the right of access to information. The process to date has revealed the complexity of the issue in Morocco, and this is why so many unanswered questions remain. In particular, the role of the Commission on the Right of Access to Information continues to be vague. Experts on the ground fear that this body will have little power to assert itself against the strong administration

in Morocco, and will merely serve as a pretence that the government is serious about combatting corruption in Morocco. The Act and the Commissions are not enough in themselves to deal with the corruption that is so rife in the country's administration.

### **Actions taken to date do not penetrate far enough into the public administration to be able to call it a true culture of transparency.**

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Most importantly, large sections of the population are ignorant of the rights and obligations that are enshrined in the constitution. This is particularly problematic in areas where representatives of the state exceed their authority and act in very authoritarian ways. We can assume that it will take some years before Morocco develops a true culture of transparency.

According to the Centre for Law and Democracy's Global Right to Information Rating, the basic conditions in Morocco are fulfilled with regard to the normative design of the Access to Information Act.<sup>21</sup>

The best way to measure the implementation of the respective freedom of information laws is by the number of queries processed. Other relevant criteria for the implementation of freedom of information are the processing period and the hurdles encountered by applicants. In Germany, for example, approximately 10,000 inquiries are made every year.<sup>22</sup>

Therefore, the Ministry of Public Administration, which is responsible for providing training in this respect, plays a key role. In addition to providing the required guidelines for implementation and technical aids, it is particularly important that public officials at all political levels receive adequate training to ensure greater legal clarification about their rights and duties.

Eight years after the Arab Spring, Morocco continues to witness protests on social issues on the part of professional organisations, student associations, trade unions, and other groups. According to World Bank estimates, 20 per cent of Moroccans live below the poverty line of two US dollars per day. Despite a strong middle class, the country faces some enormous demographic and social challenges, with high youth unemployment posing a particular problem. A recurring demand is for the authorities to fight corruption in the country. This suggests that corruption is becoming increasingly unacceptable in Moroccan society, and that old patterns no longer apply. Over the last few years, Morocco has demonstrated its ability to implement political reforms. For example, the country has made progress in the areas of family law and decentralisation. Now is the time to seriously tackle the problems of corruption, competitiveness, and the climate for direct investment. The right of access to information could play a key role in increasing transparency in the country. However, it is important to ensure the law is implemented with a strong focus on citizens, rather than simply involving the creation of a new institution.

*—translated from German—*

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- 1 Transparency Maroc 2013: Baromètre mondial de la corruption 2013. Nouvelle confirmation de la situation alarmante au Maroc, 9 Jul 2013, in: <https://bit.ly/35PnnDH> [5 Aug 2019].
- 2 Cf. The World Bank 2002: Qualité de la croissance, Washington, p.152, in: <https://bit.ly/2oFBD14> [1 Nov 2019].
- 3 Maghreb-Post 2018: Marokko – Regierungschef beziffert Schaden durch Korruption, 7 Aug 2018, in: <https://bit.ly/32FijG8> [20 Aug 2019].
- 4 Ibid.
- 5 Cf. Transparency International 2018: Corruption Perceptions Index 2018, in: <https://bit.ly/2B7SAEu> [8 Sep 2019].
- 6 Cf. United Nations Development Programme 2004: Lutte contre la corruption – Note de pratique, Feb 2004, p.1, in: <https://bit.ly/342f99r> [25 Oct 2019].
- 7 Bratton, Michael et al. 2019: Better but not good enough? How Africans see the delivery of public services, Afrobarometer Dispatch No.290, 2 Apr 2019, p. 6, in: <https://bit.ly/2BJQmuB> [25 Oct 2019].
- 8 2M Media 2019: La Cour des comptes publie son rapport au titre de l'année 2018, 12 Sep 2019, in: <https://bit.ly/32DSRui> [2 Oct 2019].
- 9 The telephone hotline was introduced by Decree 265-17-02 on 26 June 2017. Citizens can report possible cases of corruption or submit suggestions for improvement. Further reading: Maghreb-Post 2019: Marokko – Anti-Korruption – Hotline erfüllt Erwartungen nicht, 12 Jul 2019, in: <https://bit.ly/35Zih82> [9 Aug 2019].
- 10 The introduction of helmet cameras for certain police officers in Morocco was of particular interest to the media. Further reading: Laaraibi, Abdelhalim 2016: Fighting corruption in Morocco, Deutsche Welle, 18 Sep 2016, in: <https://p.dw.com/p/1K4UW> [18 Nov 2019].
- 11 Zeino-Mahmalat, Ellinor 2014: Constitutional Reform and Constitutional Reality in Morocco. Between Monarchical Stability and Democratic Renewal, International Reports 2/2014, p.129 in: <https://bit.ly/2N45hX8> [25 Oct 2019].
- 12 The World Bank 2003: World Bank Development Report 2004. Making Services Work for Poor People, p. 49 ff. in: <https://bit.ly/2p571WL> [2 Aug 2019].
- 13 Bulletin Officiel 2016: Loi No.113-14 relative aux communes (Law No. 113-14 on municipalities), 18 Feb 2016, in: <https://bit.ly/35XmFEs> [29 Aug 2019].
- 14 Ibid., p.55.
- 15 United Nations Office on Drugs and Crime 2004: United Nations Convention Against Corruption, in: <https://bit.ly/1xquxcG> [13 Aug 2019].
- 16 For original French text, see: Dahir No.1-58-008 du 4 chaabane 1377 (24 février 1958) portant statut général de la fonction publique, in: <https://bit.ly/32CZtt4> [2 Aug 2019].
- 17 Bulletin Officiel 2018: Loi no. 31-13 relative au droit d'accès à l'information, 3 May 2018, in: <https://bit.ly/35VGSKC> [1 Aug 2019].
- 18 Zeino-Mahmalat 2014, n.11, pp.130 f.

- 19 United Nations 1994: The UN International Covenant on Civil and Political Rights, in: <https://bit.ly/35Xp560> [1 Aug 2019].
- 20 Conseil National de Droit de l'Homme 2016: Droit d'accès à l'information - Avis du CNDH sur le projet de loi No. 31-13, Rabat, p.12f., in: <https://bit.ly/2NyY8NB> [1 Sep 2019].
- 21 Cf. Global Right to Information Rating, in: <https://bit.ly/2NNOXM7> [2 Aug 2019].
- 22 Cf. Frag den Staat: Informationsfreiheit, Open Knowledge Foundation Deutschland, in: <https://bit.ly/2N1jMtA> [3 Aug 2019].