



MOROCCO WHISTLEBLOWING OVERVIEW

This overview on whistleblowing in Morocco gives a first insight into the situation of whistleblowing in the country and aims to start a discussion on improved protection of whistleblowers.

Moroccans willing to report corruption, while numerous, do not have many incentives to do so. The legal protection for whistleblowers is still weak, and there is a widespread feeling that little action will be taken once they have shared information with the authorities. This, combined with official clampdowns on the release of confidential government records, further discourages Moroccan citizens to denounce corruption.

There is also little evidence to suggest widespread understanding of whistleblowing or the distinction between the term witness and whistleblower among legislators in Morocco. While there has been some discussion within civil society and international organisations on the importance of whistleblower protection and whistleblower promotion, this discussion does not appear to have gained much political traction.

Likewise, whistleblowing seems to have been discussed as a means to fighting corruption but does not appear to be considered as a way to promote human rights and protect the public interest. This is reflected in weak whistleblower legislation, which appears to be aimed at protecting witnesses of organised crime more so than workers who report concerns of official wrongdoing, risks to health and safety or to the environment.

Nevertheless, there seem to be few alternative means of uncovering malfeasance other than through whistleblowers. There is limited access to official information that would help investigative journalists or citizens uncover abuses. Significantly, journalists and publications also face prosecution for publishing classified information.

Although a small number of cases involving whistleblowers, journalists and activists have received significant publicity in Morocco, none seem to have increased political demand or served as a catalyst for reform of laws that restrict freedom of speech and the right to expose official wrongdoing.

THE RISKS WHISTLEBLOWERS FACE

Despite government pledges¹ to protect anyone reporting corruption, whistle-blowers and journalists who publish information exposing corruption face the risk of myriad punishments. These include isolation at work, dismissal or loss of employment, discrimination at work, punitive legal action, imprisonment, and physical harm or death. Despite these challenges they face, in Morocco there is a history of whistle-blowers exposing corruption in various workplaces.

- One of the most notable cases involved former Air Force Captain, Mustapha Adib, who in 2001 exposed an oil-and-supplies scam in the military and subsequently served a two and a half year prison term. His only crime seems to have been reporting his concerns to the foreign press.¹
- In 2010 the case of Mourad Kartoumi,² a Moroccan fruit seller, attracted some publicity after Kartoumi exposed the embezzlement of contracts in Casablanca's fruit and vegetable market. Mourad's disclosures implicated the Mayor and other elected officials in the city and started an important conversation about corruption and whistleblowing in Morocco. However, little action has been taken by the authorities in response to Mourad's reports and the case has been delayed for 'reasons that remain unclear'. According to Transparency Maroc, "the accusations have not received the follow up that they merit from the authorities".³
- Another recent case saw two Ministry of Finance employees, Abdelmajid Alouiz and Mohammed Reda, prosecuted after they leaked documents that allegedly showed the former Minister of Finance, Salaheddine Mezouar, and the National Treasurer Nourredine Bensouda awarded each other salary bonuses.⁴ In March 2014, Reda was acquitted of the charge of leaking government documents; however his colleague Alouiz was found guilty and given a two-month suspended sentence and a fine of 2,000 Dirhams (approximately 200 Euros)⁵. Furthermore, an inquiry into the allegations, announced by Justice Minister Mustapha Ramid in June 2012, has not yet materialised.⁶

While whistleblowers such as Kartoumi, Alouiz and Adib face official indifference or imprisonment for revealing corruption, journalists and activists who help report whistleblowers' concerns or expose corruption themselves also face the threat of prosecution. Chakib Khayari, a human rights activist, exposed high-ranked civil servants providing assistance in drug traffickers. Khayari spent two years in prison for his disclosures, after he was accused of 'offending state institutions' in 2009.⁷ In 2013, Rachid Nini, a veteran journalist and Director of Al Massaa newspaper, was arrested and sentenced to jail and a fine for disclosing information on corruption in his newspaper.⁷

¹ Transparency International, "Mustapha Adib: Air Force Captain – Morocco", www.transparency.org/getinvolved/awardwinner/mustapha_adib (accessed 2 March 2015).

² Ali Sadki, Moroccan whistleblowers: The public's conscience, TI Blog, 19 September 2013, <http://blog.transparency.org/2013/09/19/moroccan-whistleblowers-the-publics-conscience/> (accessed 2 March 2015).

³ Rosie Slater, "Moroccan fruit seller fights corruption", 16 December 2011, TI Blog, <https://blog.transparency.org/2011/12/16/the-arab-spring-one-year-on/> (accessed 2 March 2015).

⁴ Smail Bellaoualli, "Case Shows Hurdles in Fighting Corruption in Morocco", Associated Press, <http://bigstory.ap.org/article/case-shows-hurdles-fighting-morocco-corruption> (accessed 2 March 2015); Faïçal Faquih, "Affaires des primes des Finances Ministre et témoins seront convoqués", L'Economiste, Édition N° 3886 du 2012/10/11, <http://www.leconomiste.com/article/899471-affaires-des-primes-des-financesministre-et-t-moins-seront-convoqu-s> (accessed 2 March 2015).

⁵ Morocco World News, AFP, "Suspended sentence for Morocco civil servant who flagged graft", www.morocroworldnews.com/2014/03/125996/suspended-sentence-for-morocco-civil-servant-who-flagged-graft/ (accessed 2 March 2015).

⁶ Smail Bellaoualli, "Case Shows Hurdles in Fighting Corruption in Morocco", Associated Press, <http://bigstory.ap.org/article/case-shows-hurdles-fighting-morocco-corruption> (accessed 2 March 2015).

⁷ Aziz AlBazi, "Reform in Morocco", Azzaman International Newspaper, Issue 4496, 6 May 2013, www.azzaman.com/?p=33267 (accessed 16 March 2015).

CURRENT LEGAL CONTEXT

Although Morocco has yet to ratify the African Union Convention on Preventing and Combating Corruption, it is one of the few member states that complies with the Convention's requirement to legal protection of 'informants and witnesses of corruption and related offences'.⁸ The Witness and Whistle-blower Protection Law (WWPL) was passed in 2011 and promised to protect trial witnesses and experts, as well as whistle-blowers who reporting corruption. Amongst other provisions, it is meant to allow judges and prosecutors to provide for new identities and safe houses for witnesses and their families. Whistle-blowers are also supposed to be protected from administrative or criminal sanctions if corruption is revealed to them in the course of their duties.

However, there appears to be very little awareness among employers and workers of the WWPL. The government and employers also invest few resources and little time in promoting the law. Some commentators believe that the WWPL may in fact deter whistle-blowers from coming forward.⁹ According to Michèle Zirari, Vice-President of the Moroccan Transparency Association "the law makes the situation worse for the complainant because, if s/he fails to prove the truth of what s/he says, s/he risks a conviction for false accusation or false testimony." Zirari explains that "if a complaint whose veracity cannot be proven is related to a crime, the punishment can range from 5 to 10 years in prison, while other unsubstantiated allegations may carry sentences ranging 2 to 5 years in prison."¹⁰ Some experts have also argued that the purpose of the legislation is not to fight corruption, rather. Instead, its aim is to tackle organized crime and terrorism.¹¹

In addition, while the legislation provides witnesses with a legal right to change their identity, for example, such protections are of little benefit to most whistle-blowers whose primary fear is of the financial, personal and professional consequences of blowing the whistle.¹² There are no known cases of the WWPL being used successfully by a whistle-blower to compensate them for any sanctions they may have suffered. The US Department of State 2011 also notes that officials attributed the low number of complaints partially due to the lack of legislation protecting plaintiffs and witnesses in corruption cases.¹³

Beyond the rights and protections afforded to would-be whistle-blowers under the WWPL, there are few assurances offered to anyone prepared to report wrongdoing and limited opportunities to publicly expose corruption. There are no

DOES THE LAW PROVIDE FOR THE PHYSICAL SECURITY OF WHISTLEBLOWERS?

The physical protection of the whistleblower can be ensured through law enforcement, so as to keep them out of danger, as well as the members of their family. In general, however, this law is not applicable to whistleblowers, but rather for those who are threatened by violent organised groups.

⁸ Article 5 of the African Union Convention on Preventing and Combating Corruption requires state parties to undertake to 'adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities'. Full text of the convention can be found here:

www.au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_PREVENTING_COMBATING_CORRUPTION.pdf (accessed 6 March 2015). The Moroccan government ratified the United Nations Convention against Corruption (UNCAC) in May 2007.

⁹ Cherif Jendoubi, Moroccan Transparency Law Fails Whistleblowers, 1 November 2012, http://english.nugudy.com/North_Africa/Moroccan_Transparen-3779 (accessed 2 May 2014).

¹⁰ Ethixbase Monitor, "Morocco: Anti-corruption law does not protect the complainant" 31 October 2012, <https://client.ethixbase.com/blogs/africa/morocco-anti-corruption-law-does-not-protect-the-complainant/> (accessed 02 March 2015).

¹¹ Interview with Mr. Azeddine Akesbi, Professor of Economics at the Institute of Educational Planning (COPE), Rabat, 9 May 2014.

¹² See, for instance, Public Concern at Work and Slater & Gordon, "Silence in the City: whistleblowing in financial services", published June 2013, p. 17, www.pcaw.org.uk/silence-in-the-city-whistleblowing-in-financial-services (accessed 2 March 2015).

¹³ US State Department of State, "Country Report on Human Rights Practices for 2012: Morocco" www.state.gov/j/drl/rls/hrrpt/2012/humanrightsreport/index.htm?year=2012&dliid=204376#wrapper (accessed 6 March 2015).

explicit provisions in Moroccan labour law protecting employees against unfair dismissal or penalization for blowing the whistle. While some foreign multinational companies based in Morocco afford their employees legal rights under US and British legislation, whistle-blowers in the indigenous private sector have no rights prescribed in legislation other than those provided for under the WWPL.

In Morocco, there are also no specific constitutional or legal provisions guaranteeing freedom of speech expression. However, the government legal framework continues to be restrictive of such freedom also continues to restrict freedom of press through the legal system. For example, there are legal prohibitions under the 'Anti-Terror Law' and Press Code¹⁴ on citizens/press from criticizing the monarchy and state institutions. Monetary penalties can be imposed on journalists and publishers who violate these prohibitions. The government also has the power to revoke licenses and confiscate publications.

Nonetheless, Morocco became the first Arab country to introduce a constitutional provision securing the right to access information in 2011.¹⁵ This constitutional provision, if implemented, could help ease the burden on prospective whistle-blowers in Morocco and help expose wrongdoing by allowing journalists and citizens the right to apply for information that could indicate corruption and fraud. The Moroccan government has now published two versions of a draft freedom of information law, the first in March 2013 and the second in September 2013. However, both the first and second versions appear to contain numerous shortcomings including vague provisions around professional secrecy, an overbroad system of exceptions and symbolic penalties for non-compliance.¹⁶ Furthermore, Transparency Maroc has expressed concern about the delays around the preparation of the draft law on access to information and the exclusion of civil society and other key sectors of society such as the media and consumer rights groups in the drafting process.¹⁷

INSTITUTIONAL FRAMEWORK

Although the WWPL was enacted in late 2011, oversight bodies have yet to be given responsibility for protecting whistle-blowers or acting on their reports.¹⁸ The Office of the Ombudsman, for example, was established in 2001 to oversee the conduct of the Moroccan administration.¹⁹ While this office is considered as comparatively effective, it reportedly does not have the required authority to instigate investigations or impose penalties on wrongdoers.²⁰

¹⁴ Law to Combat Terror (Bill 03.03), May 2003, Press Code, February 2002.

¹⁵ Article 27 states that "Citizens have the right to obtain information held by public administration, elected agencies, agencies tasked with the administration of public utilities."

¹⁶ Article 19, "Morocco: Second Draft Law on the Right of Access to Information" www.article19.org/resources.php/resource/37263/en/morocco:-second-draft-law-on-the-right-of-access-to-information (accessed 2 March 2015); Réseau Marocaine Pour Le Droit D'accès à L'Information (REMDI), Analysis of Draft law 31.13 on the right to access information 23 April 2013, www.remdi.org/images/files/memorandum.pdf (accessed 16 March 2015).

¹⁷ Transparency Maroc, Communiqué de Transparency Maroc, 14 April 2014, <http://transparencymaroc.ma/TM/fr/content/communiqu%C3%A9-de-transparency-maroc#sthash.7WnvKqfO.dpuf> (accessed 6 March 2015).

¹⁸ American Bar Association, "Morocco Approves Landmark Witness and Whistleblower Protection Law", 7 November 2011, www.americanbar.org/advocacy/rule_of_law/where_we_work/middle_east/morocco/news/news_morocco_witness_whistleblower_protection_law_approved_1111.html (accessed 2 May 2014).

¹⁹ Business Anti-Corruption Portal, "Morocco Country Profile", By Decree 1-01-298, undated, www.business-anti-corruption.de/country-profiles/middle-east-north-africa/morocco/initiatives/public-anti-corruption-initiatives.aspx (accessed 2 March 2015).

²⁰ Business Anti-Corruption Portal, "Business Corruption in Morocco", undated, www.business-anti-corruption.com/country-profiles/middle-east-north-africa/morocco/show-all.aspx (accessed 2 March 2015).

DOES THE LAW PROVIDE IMMUNITY FROM PROSECUTION FOR MAKING REPORTS (INCLUDING UNINTENTIONALLY FALSE REPORTS)?

The law does not say anything on this subject. Nevertheless, it takes action against the whistleblower who acts in bad faith, while giving the judges the full discretionary authority to define the meaning of the term bad faith.

Morocco's Commission for the Prevention of Corruption (ICPC) was established in 2008.²¹ The ICPC is responsible for, among other things, assuming the implementation of government policy in preventing corruption.²² However, much like the Ombudsman's office, the ICPC has no formal role in protecting or advising whistle-blowers. According to Transparency Maroc's 2008 Annual Report, the ICPC also has a critically small budget, is believed to be subject to political influence, has weak investigative powers and mandate and suffers from a lack of human resources which preventing it from fulfilling its mission.²³ It is also believed that there is little substantive political pressure in elite circles will to equip the ICPC with the powers it needs.²⁴

A lack of political will from within government and among the Moroccan political elite, is also likely to hinder any potential institutional reform and leave whistle-blowers with few avenues through which they can report. In 2010 the Moroccan government revealed a two year anti-corruption plan which included government protection for whistle-blowers and channels for the public to report graft and extortion by government officials.²⁵ Furthermore, Article 36 of the 2011 constitution, guaranteed the establishment of a new anti-corruption body that would coordinate and supervise anti-corruption efforts nationally (National Instance of Probity, of Prevention for the struggle against Corruption [*Instance nationale de la probité, de la prévention de la lutte contre la corruption*]).²⁶ At the time of publishing, neither of these reforms have been implemented.

The likelihood that whistle-blowers' reports will not be acted upon is compounded by the absence of fair and effective systems for whistle-blowers to seek remedy for reprisal. The courts have not heard any cases taken by whistle-blowers for wrongful dismissal, intimidation or any other harm they may have suffered.²⁷ Even were they to do so, it is not clear that they would be given a fair hearing: questions over the independence of the Moroccan courts system and judiciary remain unanswered.

WHAT IS THE LEVEL OF UNDERSTANDING AMONG POLICY MAKERS OF THE TERM 'WHISTLEBLOWER' IN YOUR COUNTRY?

The distinction between a general witness in a trial and a whistleblower is not marked. This leaves whistleblower vulnerable to abuses of the law. A corruption witness cannot refuse to give testimony if summoned by the court, and is at any rate compelled to provide evidence of any allegations, or face sanctions (both jail time and pecuniary fines)

HOW SYMPATHETICALLY ARE WHISTLEBLOWERS TREATED BY THE MEDIA?

Generally, the media do not speak about it.

²¹ The L'Instance Centrale de Prevention de la Corruption (ICPC) was legally established by Decree 2-05-1228.

²² Article 2 of Decree 2-05-1228.

²³ Transparency Maroc, Annual Report 2008, page 5, <http://transparencymaroc.ma/TM/sites/default/files/Rapport%20moral%202008%20fr.pdf>

²⁴ Interview with Mr. Azeddine Akesbi, Professor of Economics at the Institute of Educational Planning (COPE), Rabat.- 9 May 2014; see also Transparency Maroc, "Communiqué de presse relatif à l'Instance Centrale de Prévention de la corruption", 23 September 2008, www.transparencymaroc.ma/uploads/communiqués/Fr/55.pdf (accessed 2 March 2015).

²⁵ Lamine Ghanmi; Editing by Peter Graff, "Morocco Launches 2-year Anti-Corruption Drive", Reuters, 22 October 2010, www.reuters.com/article/2010/10/22/morocco-corruption-idAFLDE69L19V20101022 (accessed 2 March 2015). The plan has also been criticized for not seeking the input of civil society in formulating these measures.

²⁶ Moroccan Constitution, see Articles 36 and 167, www.maroc.ma/en/system/files/documents_page/bo_5964bis_fr_3.pdf (accessed 2 March 2015).

²⁷ Annual Reports from the Office of the Ombudsman's have not recorded any cases related to the protection of whistleblowers, reports available online in French: www.mediateur.ma/index.php/fr/ (accessed 2 March 2015).

CONCLUSIONS AND RECOMMENDATIONS

While Morocco has introduced new legislation aimed at protecting witnesses and whistle-blowers it is believed that they will do little to provide meaningful safeguards for people who speak up. What is more, genuine reform will require increased action among elites or overwhelming civil society support political will to empower state institutions with the resources and independence to act on whistle-blower and witness reports. Currently, vested interests, lack of political will by politicians, limited institutional support and deficiency of safe channels to report and limited education and support in the workplace for whistle-blowers are considered the main barriers in protecting whistle-blowers. When whistle-blowers in Morocco are punished for reporting corruption, it sends a discouraging message to others who are hesitating to do the same. Institutional reform must have the support not only of the government but also of the Moroccan political elites.

It is therefore vital to strengthen political will from within the government and the Moroccan political elite. In particular, TI's principal recommendation is that the government should reinforce or implement adopt legal safeguards for whistle-blowers, freedom of the press and access to official information to allow individuals report concerns without undue fear of legal action or imprisonment. More specifically:

- The WWPL should be amended to remove punishments for false reporting and to allow whistle-blowers report more than suspected crimes.
- Reforms are also needed to provide for financial compensation for whistle-blowers who suffer reprisal as well as protection against unfair dismissal.
- Morocco should also consider ways in which intermediaries, such as state helplines, could be used to allow whistle-blowers report more safely.
- Civil society organizations fighting corruption should work more closely with human rights organizations, trade unions, employers and journalists to promote the rights of whistle-blowers, citizen access to information and free speech.

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