

Euro-Med Monitor and ImpACT International:

Draft law would violate right to freedom of expression in Morocco



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Introduction

A leak of draft law No. 22.20 on social media and broadcast networks has raised concerns in the kingdom of Morocco about the extent to which the government will restrict freedom of expression on digital platforms.

Although the Moroccan Ministry of Justice postponed consideration of the draft law due to the widespread controversy caused by the leak, the fact that it has not been withdrawn is a threat to civil freedoms and could pave the way for the silencing of dissenting voices.

As part of a legal review of the draft law, the Euro-Mediterranean Human Rights Monitor and ImpACT International for Human Rights Policies identified 17 features that violate the freedom of expression and are inconsistent with the Moroccan constitution.

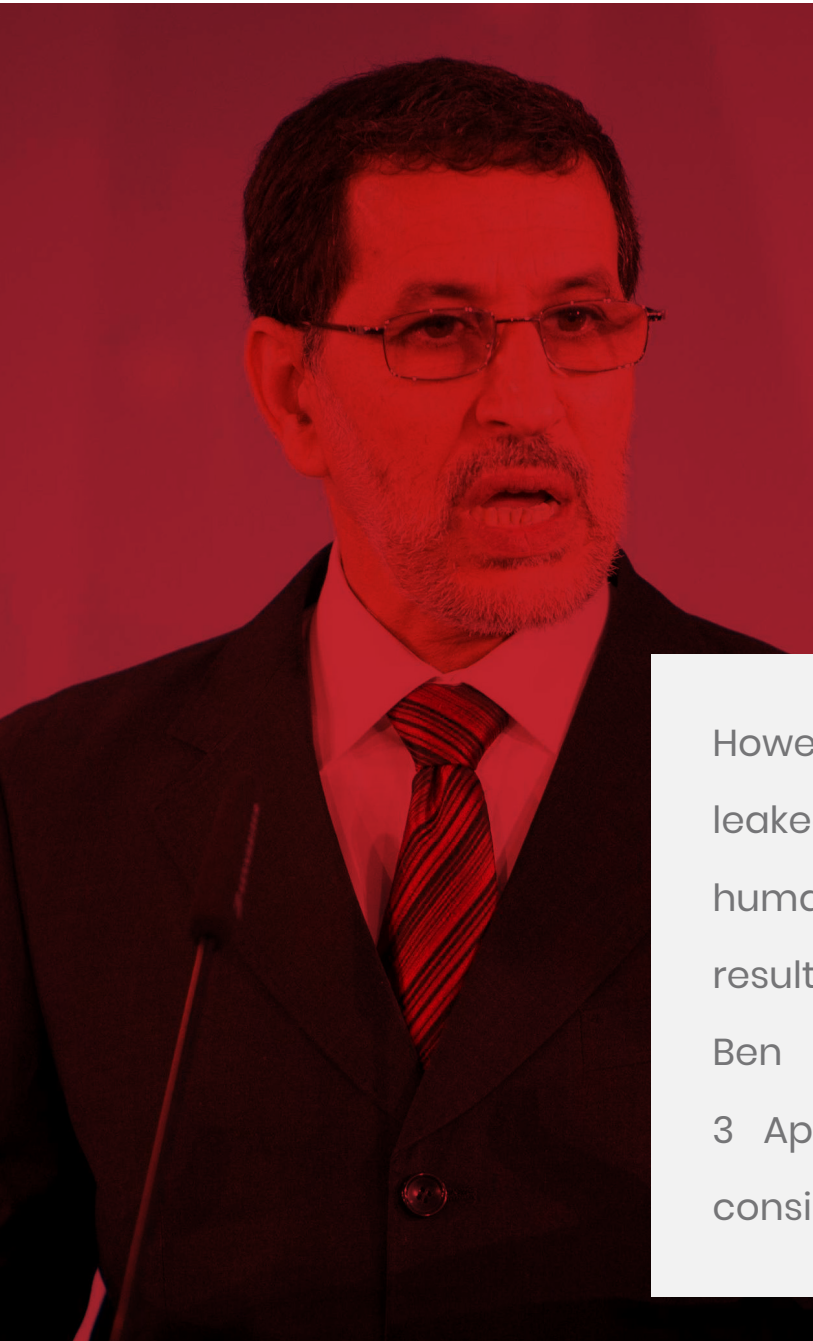
If passed, the bill would essentially legalize censorship and enlist internet service providers as informants. It is written in broad, general terms, and gives certain bodies sweeping authority to prosecute those who publish opinions on digital platforms. An indication of the



likely negative consequences of the law is the fact that more than half of its articles include penalties of heavy fines or imprisonment for three months to five years.

Some provisions of the draft law appear to benefit commercial enterprises by criminalizing negative posts about the quality of certain goods, along with calls for boycotts.

Background



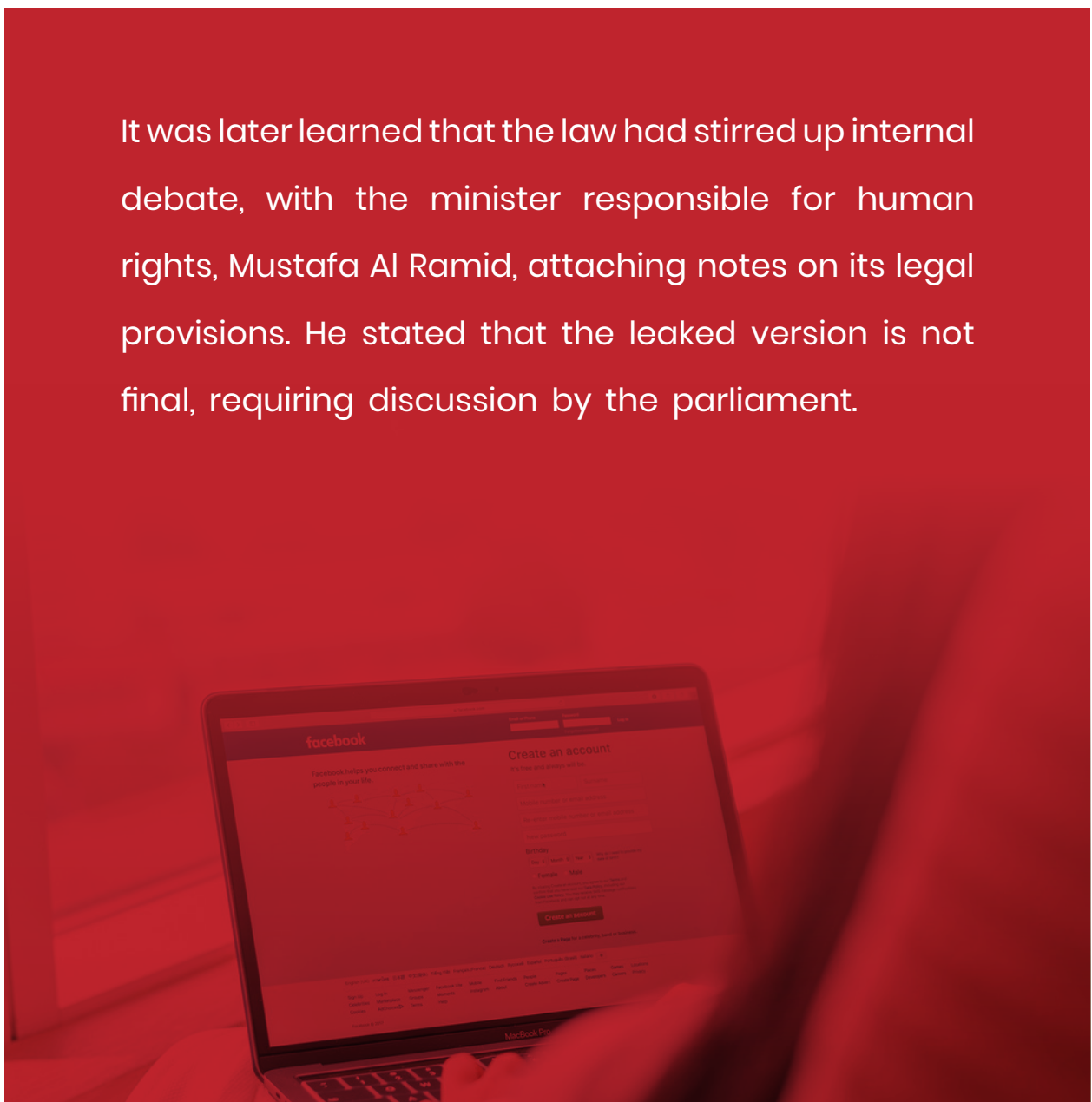
The Moroccan Government Council, headed by Prime Minister Saad Eddine El Othmani, met on 19 March to approve draft law No. 22.20, which governs the use of social media platforms, broadcast networks and types of media.

However, after parts of the bill were leaked, controversy erupted in the human rights community. As a result, Minister of Justice Mohamed Ben Abdelkader announced on 3 April a postponement in the consideration of the draft law.

A government spokesman explained that the goal of the proposed law is to fill a gap in legislation and prevent harmful behavior such as the spreading of fake news and malicious targeting of minors,

especially during the spread of COVID19-. In addition, he said, the bill is designed to harmonize the Moroccan legal system with international standards related to cybercrime, particularly in light of the government's ratification of the Budapest Treaty on Cybercrime on 29 June, 2018.

It was later learned that the law had stirred up internal debate, with the minister responsible for human rights, Mustafa Al Ramid, attaching notes on its legal provisions. He stated that the leaked version is not final, requiring discussion by the parliament.



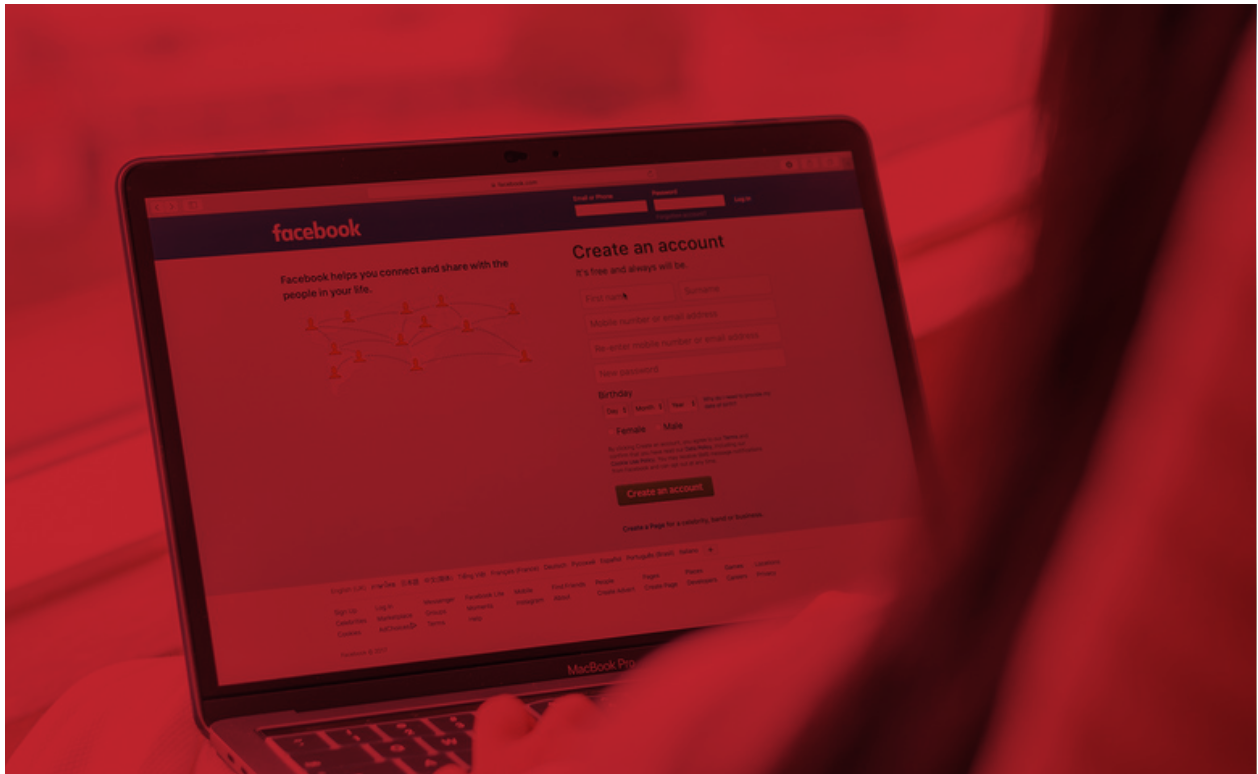


Provisions of **the draft law**

The draft law obtained by Euro-Med Monitor, consists of three chapters, including nine sections and 25 articles. The first chapter, «general provisions,» consists of two sections: definitions and scope. The second chapter is titled «The System of Providing Social Media and Open Broadcast Networks **and Similar Services**» and has three sections: supervisory and oversight bodies, obligations of service providers and sanctions on those that violate the requirements. The third chapter, on sanctions, consists of four sections: crimes affecting security and economic order, crimes involving the dissemination of fake news or threaten the honor of others, and crimes against minors.

According to the spokesperson for the Moroccan government, the draft law now has been revised to include several new requirements to ensure freedom of communication that does not impinge on legally protected interests.

Justification for the draft law



The draft law states that the current legal system in Morocco is not sufficient to deter harmful practices on social media. The goal, it says, is to harmonize the national legal system with laws and standards adopted internationally to combat cybercrime, especially in light of Morocco's ratification of the Budapest Treaty on Cybercrime on 29 June 2018. However, that agreement does not contain provisions related to freedom of expression on social networks. The draft Morocco law appears aimed at limiting the influence of protests, since social media platforms became a powerful tool for that use after they contributing to the success of economic boycott campaigns in 2018.

Feedback on the bill

The leaked bill has triggered controversy in the kingdom of Morocco, since activists and human rights defenders perceive it as threatening freedom of expression. Opposition parties consider the bill a «serious violation» of individual freedoms and a «clear retreat» in Moroccan human rights and personal freedoms.

The most prominent positions are:



Independence Party



This group points to the fact that the government worked on the bill in a state of «blackout,» a violation of the right to information guaranteed by Article 27 of the kingdom's constitution. Party officials also expressed their «dissatisfaction with the government's obvious confusion in dealing with this bill.»

Authenticity and Modernity Party



Officials of this party also consider the bill a violation of rights and freedoms, disrupting national unity. They also object to the timing of its introduction, when the country was busy tackling the coronavirus pandemic.

Progress and Socialism Party



The party objected to the timing of the bill's introduction, as well as the leak of some of its contents while the country is preoccupied with containment of the novel coronavirus. «If the government has problems with the cohesion of its components, it must address this at another time, not in these circumstances that require national mobilization to confront the coronavirus pandemic,» said Mohamed Nabil Benabdallah, the party's secretary-general, in a video on the official website of the party.



Concerns about the leaked draft of the bill include:

Failure to respect the constitution, and the rights and freedoms it guarantees. Article 2 of the draft law imposes restrictions on digital communication, overriding the constitution.

Confusion concerning the entities to which the law applies. Article 3 states that the law applies to social networking services and open-broadcast-network service providers that leverage internet platforms to make a profit. It also states that its provisions apply to users who publish, share or engage with content. On the other hand, Article 4 also says that its requirements do not apply to the press and editorial content, which is instead are regulated by separate legislative provisions. Thus, it is not clear how social media platforms will be dealt with vs. “traditional” media, or how journalists’ personal social media accounts, on which they publish their articles, will be regarded.

Legalization of content censorship. Article 5 states that a specified body or authority will be responsible for censorship and supervision of the services provided by social networks. Censorship violates the right to freedom of expression.

Recruitment of platforms as tools of censorship. Article 8 requires internet service providers (ISPs) to implement a system for monitoring published content and obliges them to respond promptly to every request to delete, block or disrupt access to any electronic content deemed in violation. This article also gives the government's administrative body direct authority, without any judicial oversight, to classify content as illegal, and thus gives it the power to delete, block and prohibit any content.

The reasons defined as suitable for taking such actions include threats to public safety and order, or to the beliefs considered "sacred" in Morocco. When these "violations" occur, the ISP must remove the content within 24 hours of the complaint. Article 9 stipulates that service providers submit an annual report on illicit electronic content identified and how they were handled.

Thus, articles 8 and 9 require ISPs to operate as monitors and enforcers for the government.

Retention of personal, private information. Article 8 requires service providers to retain removed content as possible evidence for four years, which jeopardizes participants' privacy, especially this content can be accessed at any time by state security and other officials.

Prohibitive penalties. Articles 10 and 11 grant authorities the power to punish ISPs by imposing fines of 500,000 dirhams, suspending service their operations temporarily or withdrawing their licenses

altogether if they do not fulfill their obligations. No judicial review is required, which means the government department the power to decide if the content in question is illicit or not.

As for the persons who post the offending content, articles 25-13 address them:

المادة 14:
يعاقب بالحبس من ستة أشهر إلى ثلاث سنوات وغرامة من 5000 إلى 50000 درهم أو بإحدى هاتين العقوبتين فقط، من قام عمدا عبر شبكات التواصل الاجتماعي أو عبر شبكات البث المفتوح أو عبر الشبكات المماثلة بالدعوة إلى مقاطعة بعض المنتجات أو البضائع أو الخدمات أو القيام بالتحريض علانية على ذلك.

المادة 15:
يعاقب بالحبس من ستة أشهر إلى ثلاث سنوات وغرامة من 5000 إلى 50000 درهم أو بإحدى هاتين العقوبتين فقط، من قام عمدا عبر شبكات التواصل الاجتماعي أو عبر شبكات البث المفتوح أو عبر الشبكات المماثلة بحمل العموم أو تحريضهم على سحب الأموال من مؤسسات الإئتمان أو الهيئات الاعتبارية في حكمها.

المادة 18:
يعاقب بالحبس من ستة أشهر إلى ثلاث سنوات وغرامة من 2000 إلى 20000 درهم أو بإحدى هاتين العقوبتين فقط، من قام عمدا عبر شبكات التواصل الاجتماعي أو عبر شبكات البث المفتوح أو عبر الشبكات المماثلة بنشر أو ترويج محتوى إلكتروني يتضمن خبرا زائفا من شأنه التشكيك في جودة وسلامة بعض المنتجات والبضائع وتقديمها على أنها تشكل تهديدا وخطرا على الصحة العامة والأمن البيئي.

- Articles 14 and 18 impose penalties (imprisonment for three months to five years and fines of up to 100,000 dirhams) on those who publish calls to boycott certain goods or who question their quality and safety. This subordinates the law and the state to commercial enterprise, while silencing citizens who object

to prices or quality—thus leaving them open to exploitation by manufacturers and merchants and allowing unethical practices to go unfettered. Additionally, these provisions are discriminatory. While companies are granted the right to advertise and promote their goods and products, members of the public are not allowed to express their opinions.

- Article 15 states that individuals who incite others to withdraw funds or investments from institutions can be fined and imprisoned for up to three years—a clear restriction on citizen's freedom to critique the performance of executive bodies, including their management of funds.
- Article 16 and 19 allow imprisonment for up to two years, and a fine of up to 5,000 dirhams, for publishing false news. If those false statement damage a person's reputation, imprisonment may be three years. No definition of false news, or explanation of who assigns designation, is provided.
- Article 17 targets disruption of public order and state security, imposing prison sentences of up to five years. No definition of those terms is provided, leading to concerns that this provision will be used to squelch dissent.
- Article 22 calls for imprisonment of up to three years for anyone who publishes digital content that promotes violence—a reference that is vague and ill-defined.

- Articles 25-23 condemn the publication of digital content that could harm to the psychological and physical safety of minors and persons with mental disabilities. Although there is broad consensus on the goals, the wording is so broad the authorities could use the law to restrict freedom of expression. For example, what is meant by psychological safety? And what and who determines whether a post affects it?



Conclusions

- The draft law was introduced at a suspicious time, when the public was preoccupied with the coronavirus pandemic.
- Civil society organizations and legal experts were not consulted on the draft wording.
- The draft law, if passed, would violate the Moroccan constitution by infringing on freedom of expression.
- The right to freedom of expression should have been explicitly protected.
- The content of the draft law is not compatible with the human rights covenants signed by the government of Morocco, especially the International Covenant on Civil and Political Rights and the U.N. Human Rights Committee's General Comment No. 34.



- Prison sentences and fines allowed by the law, if passed, are excessive and can be imposed on individuals who merely react to the content.
- No limitations are placed on the amount of time that can pass before perceived crimes are prosecuted.
- Internet service providers are forced to monitor content published online, mandating them to remove, block or suspend it, often without any legal basis. ISPs thus become informants with police powers.
- Many terms used to justify punishment are fuzzy and vague, such as “public order,” “security,” “violence,” and “false news.”
- Censorship is legitimized, restricting freedom of expression. The resultant fear can be expected to cause people to self-censor, in anticipation of punishment.

Recommendations

- The draft law must be officially and publicly withdrawn to preserve national cohesion and avoid charges that Morocco exploited the coronavirus pandemic to rescind basic rights and freedoms.
- A comprehensive review of the draft law by civil society should be conducted to ensure its compatibility with international human rights standards.
- The final wording of the law should specifically protect freedom of opinion and expression.
- Confusion about who is subject to the law must be dispelled, including journalists.
- National laws must be reviewed and unified to eliminate duplication and overlap.
- A clear and specific definition of all terms mentioned in the law should be provided.
- The proposed punishments for violations, whether intentional or not, should be reconsidered.
- Courts should be delegated the authority to determine if a criminal offense occurred, not ISPs or government officials.
- All forms of censorship should be abolished to cultivate an atmosphere of freedom of opinion and expression.

- Restrictions on boycotting or criticizing goods should be repealed, since such actions are protected under the constitution's guarantee of expression.



