

# كسر القوالب Breaking the mold

#Breaking\_The\_Mold

## Arab Civil Society Actors and their Quest to Influence Policy-Making

Country: **Morocco**

### Article 288 of the Moroccan Penal Code: Restricting Freedom of Association

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#### HISTORICAL BACKGROUND

Article 288 of the Moroccan Penal Code dates back to the colonial era, as it was repealed from its French counterpart (Articles 414 and 415 of the French Penal Code), which was enacted to be implemented in France in 1810 and amended in 1972, as Article 415 was repealed. Article 414 was changed by making it Article 431-1, which established in France the balance between freedom of work, expression, assembly and protest. However, France adopted it in Morocco to restrain association and political freedoms by prohibiting Moroccan female and male workers from practicing or establishing union work to discourage them from contributing to the country's independence<sup>1</sup>.

After Morocco's independence in 1956, the successive governments preserved this Article by including it in the Penal Code in 1962. Its implementation contributed to the expulsion of many female and male workers, and it prohibited strikes. It led female and male workers imprisonment and made the security forces prohibit labor protests, rush through production centers and use bullets, as happened in several stations, most notably occurred on June 20, 1981, in Casablanca, and December 14, 1990, in Fez, which resulted in the arrest, displacement and seizure of the rights and freedoms of female and male workers, by using the confusion created by drafting this Article. Thus, a strike is defined "as a collective cessation of work". The criminal act is punishable by virtue of this Article of the Penal Code, which makes strikes a double-edged sword, as a constitutional right and a punishable crime by law<sup>2</sup>. Article 288 states that: "Whoever commits a collective cessation of work, continues with it or attempts to do so

using harm, violence, threat or any mean of fraudulence shall be punished by imprisonment from one month to two years and a fine estimated between two hundred and five thousand dirhams, or by one of these two penalties, whenever it aims at forcing the increase or decrease of wages or harm on the expense of the freedom of industry or work. If violence, harm, threat or fraud was committed based on a complicit plan, the perpetrators of the crime shall be sentenced to a local expulsion for two to five years"<sup>3</sup>.

As a result of this legislative ambiguity, this Article was implemented to oppress the rights of workers in the private sector, which prompted trade unions and human rights activists to engage in calling for its abolition after successive governments were unable to issue a public policy that would reconsider its contents, despite their repeated promises in this regard, especially during their agreements with workers' representatives in 1996, 2003 and 2011. However, those promises remained unfulfilled, thus, contradicting the international conventions and the guarantee of the right to strike and trade union affiliation, which was stipulated in all Moroccan Constitutions from 1962 until the Constitution of 2011, and the guarantees established by the Labor Code in 2003.

Nevertheless, in the wake of the revolutionary movement in the Arab world, and due to the increase of victims' numbers of judicial implementation of the contents of Article 288, the female and male workers organized themselves. They demanded its abolition through strikes, demonstrations and rallies, especially the yearly rallies of May 1st.

<sup>1</sup> (The Moroccan Labor Union team in the House of Councilors, 2016, a proposed law to repeal Article 288 of the Penal Code).

<sup>2</sup> (Ibid.)

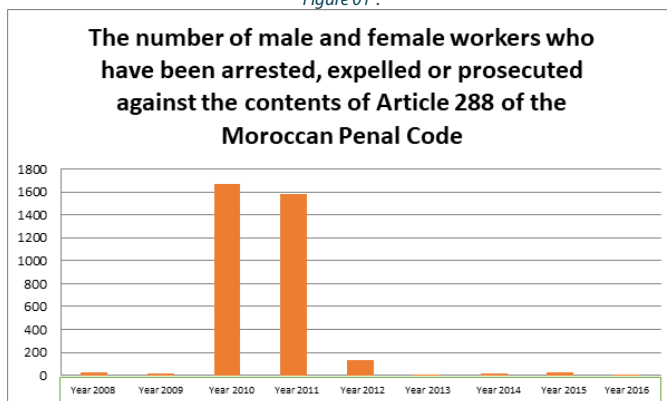
<sup>3</sup> (Moroccan Penal Code, Article 288)

The foregoing circumstances contributed to spreading relative sympathy at the national public opinion level with those affected by the implementation of Article 288. They prompted some politicians to adopt several steps to repeal it. In this context, the Socialist Union of Popular Forces in the Parliament submitted a bill proposal to be repealed in July 2015, based on Article 29 of the Constitution and the contents of the Labor Code, international organizations' recommendations, the National Human Rights Council, and the government obligations during its agreement with the unions on April 30, 2003, and April 24, 2011<sup>4</sup>. In the same direction, the Moroccan Labor Union team in the House of Councilors followed the same path, where it submitted a bill proposal to repeal Article 288 of July 27, 2016, focusing on the legal reasons that the Socialist Union team focused on highlighting some of the articles in the Penal Code, which can be implemented in some cases and that may lead to obstruction of work, through beating and wounding, such as Article 400 of the Penal Code<sup>5</sup>. In the same context, the Authenticity and Modernity Party team in the Parliament also submitted a bill proposal to repeal it, focusing on Article 29 of the Constitution, the Labor Code, and the image of Morocco in the international community, which is ruined by the contents of Article 288, as they believed<sup>6</sup>.

The human rights associations followed the same path. The Moroccan Association for Human Rights included in its annual reports some cases of imprisonment or expulsion from work due to this Article. It also reminded the government, more than once, of its international obligations and the need to harmonize national legislation with the international legislation in this regard. The same thing was demanded by the National Human Rights Council in 2006, being an official institution.



Figure 017:



According to Figure 01, it is clear that the number of female and male workers who were subjected to dismissal, suspension or trial, against the content of Article 288 increased significantly in 2010 and 2011, and to some extent in 2012, as a result of the government's adoption of neoliberal economic policies.

#### ARTICLE 288 IN THE AGENDA OF CIVIL ACTIVITIES

It can be said that the struggle for abolishing Article 288 began explicitly in the 1990s, as a result of the harmful experience of large groups in the private sector from the activation of its contents and as a result of the relative political relief in Morocco at that time, which made the unions to clearly frame this problem during the last ten years, by mobilizing workers, issuing statements and

announcements, and raising/distributing posters calling for its abolition in May rallies, for instance, but not limited to. It even led to a rally on Sunday, April 6, 2014, under the slogan of abolishing Article 288<sup>8</sup>. Civil organizations also interacted with it, especially the human rights organizations, with this demand, through its annual reports shedding light on workers' suffering from its implementation. It also issued several statements supporting the demands of the trade unions, from the political or ideological relation between these societies and unions, which in the end, are branches of political organizations, except for the Moroccan Labor Union and the Democratic Confederation of Labor embracing many political movements and parties, despite the control of certain parties over their leadership, which negatively affected/affects their struggle practices.

On the other hand, the successive governments have not yet included the amendment/repeal/abolition of Article 288 into their public policies. Yet, some of their members have made negative statements on the subject, particularly the Minister of Justice and Freedoms, Mustafa Ramid, in the first and second government of Ibn Kiran, the Minister of Human Rights in the government of Othmani, and a prominent leader in the ruling Justice and Development Party, who said: "Article 288 of the Penal Code protects freedom of work and achieves balance with the right to strike stipulated constitutionally". It also accepted any proposal preserving this balance, which is lost in reality. However, the former president of the National Human Rights Council, Idris Al-Yazami, called on the government to abolish it from the Penal Code during a seminar on evaluating 10 years of the Labor Code<sup>9</sup>.

Facing this confusion in the official rhetoric, three union centers, the Moroccan Labor Union, the Democratic Confederation of Labor and the Democratic Federation of Labor, were forced to enter into tripartite coordination (2014) to demand the abolition of Article 288, as it is unconstitutional, and the government had pledged since the social dialogue in Agreement of August 1, 1996, to an agreement on April 26, 2011, to establish legislation that guarantees freedom of association. Given that Article 288 criminalizes striking, that is considered a constitutional right, and

4 - (The Socialist Union of Popular Forces team in the Parliament. 2015. A bill proposal to repeal Article 288 of the Moroccan Penal Code.) <http://www.guercifusfp.com>

5 (Moroccan Labor Union team. Previous reference).

6 (The Authenticity and Modernity Team in the Parliament, 2017, a proposal to repeal Article 288 of Penal Code).

7 - (Moroccan Association for Human Rights, from 2008 to 2016, annual reports).

8 - (Al-Khattabi. 2019. Why are trade unions calling for the removal of Article 228 of the Penal Code?) <https://www.anfaspress.com>

9 (Alyaoum 2014. 24. Al-Ramid: This is my opinion on the call to abolish Article 288 of the Penal Code) <http://m.alyaoum24.com>

until now, many union activists and workers, in general, are still imprisoned and under trial according to this Article for they only exercise the constitutional right to strike<sup>10</sup>.

### THE ROLE OF CIVIL SOCIETY REPRESENTATIVES IN CALLING FOR THE ABOLITION OF ARTICLE 288

Civil society actors and calls for the abolition of Article 288 of human rights associations and trade unions were formed as representatives of workers subjected to abuse due to implementing the contents of this Article, as they were arrested, expelled or under trial.

The foregoing events prompted civil actors to rely on many means while calling for abolishing the Article as mentioned above. The human rights associations included in their annual reports, facts about the negative effects of implementing this Article on workers, and the resulting trials, dismissal from work, imprisonment and financial fines. As for the unions, most of the data of their strikes included the demand for its abolition. They also sent several memoranda to the government, calling it for the abolition, based on the contents of the letter sent by the National Council for Human Rights to the Moroccan Labor Union, under No. 1005/13 on 29 April 29, 2013, which endorses repealing Article 288<sup>11</sup>.

The advocacy process was based on volunteerism within the organizations that have legal licenses and some unrecognized parties that also supported some demonstrations and protests by the workers who were targeted in this Article. The Moroccan Labor Union was the pioneer in calling for the abolition of the Article as mentioned above, through the preliminary memorandum on constitutional reforms submitted to the Advisory Committee on Constitutional Reform in April 2011 and to the Democratic Confederation of Labor and the Democratic Federation of Labor, as it organized tripartite coordination during 2014 demanding the government to abolish it. It submitted a demand memo to the government in parallel with its team in the House of Councilors presenting a bill proposal in the same context in 2015.

The foregoing events contributed to developing the performance of trade union and human rights activities, as it was able to force some political actors to adopt the demand to abolish Article 288, by submitting bill proposals to the first chamber of the Parliament (the House of Representatives), just like the Socialist Union of Popular Forces and the Authenticity and Modernity Party. However, civil organizations, particularly trade unionists, were unable to expand the scope of solidarity at the level of public opinion, which did not interact with this demand, despite its importance, particularly among the people to which the relevant working groups belong to the issue.

### STRATEGIES AND TACTICS ADOPTED BY THE CIVIL ACTORS

The unions were able to unify their actions calling for the abolition of Article 288 by tripartite coordination at the strategic level, which they tried to conduct through tactics that were represented in May 1 rallies, tripartite rally on April 06 2014, memoranda directed to the government, press statements, rhetoric festivals, banners and labor bulletins, which contributed to informing public opinion on this subject.

However, there was no qualitative change noticeable due to the decline in trade union action after the outburst of the revolutionary movement in the region, and due to the absence of democracy within trade union frameworks, and the consequences of ideological difference and political affiliation within these frames.

### INFLUENCING FACTORS IN RESTRICTING CIVIL ACTION

The political movement in the Arab region was a fundamental factor in breaking the silence, which prompted civil actors, particularly trade unions, to shed more light again on the contents of Article 288 and demand its abolition. Along with the National Council for Human Rights position being an official entity, the relevant international treaties ratified by Morocco represented several assistances to defend this demand. On the other hand, the absence of democracy within these frameworks, the internal conflict between their political components and the lack of media interaction, in parallel with the government's leadership by a coalition of most of its components aligned with the owners of production's means, had a negative impact that impeded the role of trade unions in exerting pressure on the decision-maker to repeal or amend Article 288.

One of the manifestations of the government's alignment with the owners of production's means is not representing the proposals submitted by parties and trade unions to repeal this Article for discussion, as they were kept at the level of the general secretariat of the government, without any answer being presented to those who submitted them, but it presented the regulatory bill for strikes at the level of Parliament on October 6, 2016, to refer it to the social sectors committee on February 3, 2017, instead of presenting it in the social dialogue, which brings together the government and representatives of producers and unions, as it is the normal place for such legislation<sup>12</sup>. This indicates the absence of a political will to repeal this Article, especially that the representatives of the producers, i.e., the employers, insist on preserving its contents at the level of the regulatory law for a strike; they also confirm that it cannot be dispensed with, especially that they use it to face the struggler trade union centers, according to counselor Abdelhak Hissan. Three to six trade unionists from the Democratic Confederation of Labor were arrested during each of the professional elections between 1999 and 2015, which led to the withdrawal of many of those involved from the union as they feared being fired or arrested<sup>13</sup>.

Those circumstances led to the absence of a transformative moment in this context, due to the imbalance in favor of the capitalist at the expense of the employers following the control of a neoliberal political trend, despite the memoranda, announcements, statements, reports and bill proposals, which the civil actors always issued demanding to repeal or cancel this Article being inconsistent with the contents of the Constitution and the relevant international treaties.

<sup>12</sup> This is what the counselor of the Moroccan Labor Union team in the House of Councilors told us, Fatima Zahra Yahyaoui, in a phone conversation with her, on February 2019, 22.

<sup>13</sup> This is what the consultant told us about the Democratic Confederation of Labor team in the House of Councilors, Abdelhak Hissan, during an interview with him, on March 2019, 03, at the headquarters of the Democratic Confederation of Labor in Agadir.

<sup>10</sup> - (Amin. 2012. In interrogation with Al-Masaa newspaper) <https://taalim.org>

<sup>11</sup> (The three trade unions; the Moroccan Labor Union, the Democratic Confederation of Labor and the Democratic Federation of Labor. 2014. The joint memorandum that they submitted to the Prime Minister) <http://www.dafatiri.com>

## OUTCOMES OF CIVIL ORGANIZATIONS' EFFORTS

Civil actors were able to contribute to the definition of the contents of Article 288 of the Moroccan Penal Code, which contradicts the Moroccan Constitution and international treaties. One of the manifestations of that was some political parties' involvement in demanding its repeal through their bill proposals at the level of Parliament.

## SUMMARY

Based on the facts as mentioned above, and by studying this case and the experiences of the relevant major roles, we concluded that:

- The benefit of demanding the repeal of Article 288 lies in its contradicted contents to the Constitution, i.e., the supreme law of the state, in addition to the international treaties ratified by Morocco;
- The limited impact of the civil action, due to the ideological differences and political affiliations, which have negatively affected/is affecting on dealing with the problematic of this Article, requires the relevant parties to overcome it while evoking the importance of the legal, human rights, media and field approach, in a parallel and harmonious manner;
- The presence of semi-liberal political forces supporting the owners of production's means, led by a conservative political party with a neoliberal background, contributed to limiting the civil actors' roles.



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## BREAKING THE MOLD PROJECT

In mid-2018, the "Civil Society Actors and Policymaking in the Arab World" program at IFI, with the support of Open Society Foundations, launched the second round of its extended research project "Arab Civil Society Actors and their Quest to Influence Policy-Making". This project mapped and analyzed the attempts of Arab civil society, in all its orientations, structures, and differences, to influence public policy across a variety of domains. This research produced 92 case studies outlining the role of civil society in impacting political, social, economic, gender, educational, health-related, and environmental policies in ten Arab countries: Lebanon, Syria, Palestine, Jordan, Egypt, Morocco, Tunisia, Yemen, and the Arab Gulf.

Over two dozen researchers and research groups from the above countries participated in this project, which was conducted over a year and a half. The results were reviewed by an advisory committee for methodology to ensure alignment with the project's goals, and were presented by the researchers in various themed sessions over the course of the two days.

## THE CIVIL SOCIETY ACTORS AND POLICY-MAKING PROGRAM

at the Issam Fares Institute for Public Policy and International Affairs at AUB, examines the role that civil society actors play in shaping and making policy. Specifically, the program focuses on the following aspects: how civil society actors organize themselves into advocacy coalitions; how policy networks are formed to influence policy processes and outcomes; and how policy research institutes contribute their research into policy. The program also explores the media's expanding role, which some claim has catalyzed the Uprisings throughout the region.

## THE ISSAM FARES INSTITUTE FOR PUBLIC POLICY AND INTERNATIONAL AFFAIRS AT THE AMERICAN UNIVERSITY OF BEIRUT

The Issam Fares Institute for Public Policy and International Affairs at the American University of Beirut (AUB Policy Institute) is an independent, research-based, policy-oriented institute. Inaugurated in 2006, the Institute aims to harness, develop, and initiate policy relevant research in the Arab region. We are committed to expanding and deepening policy-relevant knowledge production in and about the Arab region; and to creating a space for the interdisciplinary exchange of ideas among researchers, civil society and policy-makers.

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