

Morocco: Free Popular Columnist

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Punishment of Rachid Nini Belies Rights Guarantees in New Constitution



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Rachid Nini

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(Rabat) – Moroccan authorities should void the conviction of a journalist who is serving a one-year term for “gravely offending” public officials and disparaging the courts, Human Rights Watch said today. Rachid Nini’s incarceration belies the commitment of Moroccan authorities to freedom of expression as affirmed in the country’s new constitution, Human Rights Watch said.

To harmonize its laws with the new constitution, Morocco should also abolish laws that criminalize “gravely offending” public officials and also those that criminalize defamation, especially of public officials, Human Rights Watch said.

“One of Morocco’s most famous journalists is behind bars because of what he wrote about public officials and state institutions,” said Sarah Leah Whitson, Middle East and North Africa director at Human Rights Watch. “That is plain wrong – whatever one may think of his columns.”

The Casablanca Court of Appeals on October 24, 2011, upheld the prison term against Nini, whose column in the privately owned newspaper he directs, *al-Masa’* (The Evening), is one of the most widely read columns in Morocco.

The National Brigade of the Judicial Police (la Brigade nationale de police judiciaire, BNPJ) summoned Nini for questioning on April 26, releasing him later the same day. On April 28, the police summoned him again and obtained an order to detain him for 96 hours. The interrogation focused on the content of his columns in *al-Masa’*, according to his signed statement and his lawyers.

On May 1, the authorities brought Nini before the Casablanca prosecutor, who notified him he faced charges of “gravely offending” public officials (article 263 of the penal code), accusing public officials of violating the law without providing proof (article 264), and insulting the judiciary or discrediting its rulings or attempting to influence the courts (article 266).

From the earliest phases of the case, the court rejected numerous motions by Nini’s lawyers to release him provisionally pending a definitive verdict.

On June 9, the Casablanca Court of First Instance convicted Nini on all three charges and sentenced him to one year in prison and a fine of 1,000 dirhams (US\$120). The verdict and sentence were both upheld on appeal.

The written verdict of the first-instance trial (misdemeanor case 11/10/3245, ruling 4675) lists nine columns by Nini, all published in March or April. The verdict says that Nini confirmed that he wrote them. In his defense, Nini told the court that some of the information in the articles came from credible sources whose identity he could not disclose. Other parts of the articles, he said, amounted to his own analysis and opinions regarding daily events. Nini denied in court that his writings showed malice toward anyone or contempt for court rulings or a desire to influence them.

The columns by Nini that are mentioned in the verdict include [one](#) attacking Abdellatif Hammouchi for allegedly abusing his authority as head of the General Directorate of Territorial Surveillance, a domestic intelligence agency widely known as the DST (the initials of its former name in French, Direction de la surveillance du territoire). The column, a French translation of which is online at http://www.droitetjustice.org/article_show.php?id=1592&ids=12, appeared in *al-Masa’* on April 18, eight days before the police first summoned Nini. The court, in its verdict, also cites an article in which it says that Nini, without providing the necessary proof, accused Hassan Aourid of enriching himself while he was governor of the Meknes-Tafilalet region.

Nini’s daily column “Chouf Tchouf” (a colloquial expression meaning, “Look and see”) frequently targets what he views as acts of injustice, repression, and corruption for which he

blames Moroccan authorities generally or specific officials or agencies. The columns cited in the verdict, for example, contain numerous references to the torture he says is practiced against suspects at [Témara](#), a facility frequently criticized by human rights organizations as the [site of abusive interrogations](#), but whose existence authorities have repeatedly denied.

Nini, 41, is being held at Oukacha prison in Casablanca. He is not allowed to have paper and writing instruments, a Casablanca lawyer, Reda Oulamine, who visited him on November 30, told Human Rights Watch.

All countries have an interest in providing recourses for people who believe that a news organ has damaged their reputation or, in some cases, gravely offended them. However, to balance this interest against the public interest in press freedom, allegations of defamation, offenses, and insults should not be handled as criminal matters. Defamation should be handled as a civil matter, in which courts may impose monetary damages or propose apologies or corrections, rather than impose prison terms and fines. There is a particular duty to ensure free expression concerning commentary on public officials.

To harmonize its penal code with the freedom-of-expression guarantees provided by the new constitution and the International Covenant on Civil and Political Rights (ICCPR), which Morocco ratified in 1979, Morocco should eliminate prison terms as punishments for the offenses for which Nini is incarcerated and end the criminalization of defamation, especially of public officials, Human Rights Watch said.

“The imprisonment of Rachid Nini dramatizes the need to close the gap between Morocco’s reformist new constitution and its laws that criminalize speech,” Whitson said. “His continued imprisonment calls into question the government’s commitment to guarantee free expression.”

Previous Convictions

Nini has been convicted of criminal charges before for his writing. In March 2008 the Rabat Court of First Instance convicted him for a column he wrote describing a “gay wedding party” in the city of Ksar el-Kabir, in which he said that the town’s homosexuals included a prosecutor. Although Nini did not name the prosecutor, all four prosecutors attached to the Ksar el-Kabir court filed a defamation complaint, and the Rabat court fined Nini 6 million dirhams (\$720,000). He had not paid the fine at the time of his arrest three years later.

On November 16, 2009, the Casablanca Court of First Instance sentenced Nini and a fellow journalist at *al-Masa*’ to prison terms and fines for publishing an article in August 2009 that allegedly contained “false information” regarding the implication of a judicial official in a drug-trafficking ring. An appeals court ruling in January 2010 eliminated the prison terms but maintained fines of 20,000 dirhams (US\$2,400) against the two men.

The New Constitution

Morocco’s constitution adopted by popular referendum on July 1, unlike the previous constitution, contains an affirmation of press freedom. Article 28 says, “Press freedom is guaranteed and cannot be limited by any form of prior censorship. Everyone has the right of

expression and to freely distribute information, ideas, and opinions, limited only by that which is expressly provided for by the law.”

The new constitution’s preamble states that Morocco undertakes to “grant to international conventions duly ratified by Morocco – in the framework of the provisions of the constitution and the laws of the kingdom, while respecting its immutable national identity – upon their publication, primacy over internal law of the country, and to harmonize as a consequence the pertinent provisions of its national legislation.”

The Penal Code

Article 263 penalizes “anyone who gravely offends a judge, public official, or commander or agent of the public forces, with the intent of harming his or her honor, esteem, or the respect due his or her authority.” Article 264 states that the offense of “gravely offending” someone includes accusing the person of a crime that one knows did not occur. Article 266 allows penalties for material that is either written with the purpose of “exercising pressure on decisions on matters that are still before judges,” or “that tends to discredit court decisions and undermine the judiciary’s authority or independence.”

International Law

The UN Human Rights Committee, the treaty body that is an authoritative interpreter of state duties under the International Covenant on Civil and Political Rights, wrote in 2011 with respect to article 19, which guarantees the right to freedom of expression:

Defamation laws must be crafted with care to ensure that they... do not serve, in practice, to stifle freedom of expression.... At least with regard to comments about public figures, consideration should be given to avoiding penalising or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognised as a defence.... States parties should consider the decriminalisation of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.