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Ilyas Saliba

Change or charade?

Morocco's constitutional reform process 2011

I. Morocco's constitutional reform process 2011 in context

The constitutional reform process adopted in Morocco during 2011 was a direct response to the popular mobilisation and unprecedented political contestation of spring 2011. The swift and noticeable response by the palace aimed to appease the tense situation and restore control over the discourse on political transition in the kingdom.¹

It culminated in a constitutional reform, a referendum and early parliamentary elections. On 6th July 2011, Catherine Ashton, at that time the High Representative for Foreign Affairs and Security Policy of the European Union, stated: "The reforms proposed are a significant response to the legitimate aspirations of the Moroccan people."² This statement conveys the positive external perception of the political events in Morocco during the course of the 2011 Arab Uprisings. But how democratic was the Moroccan constitutional reform process really? And do the constitutional reforms truly constitute a change towards meaningful participation and a democratically tamed constitutional monarchy?

Regardless of whether one classifies Morocco as a 'defective democracy' or a 'monarchy with democratic elements,' the year 2011 was remarkable. The kingdom experienced swift constitutional reforms that were the result of a seemingly democratic process of consultation and participation and a subsequent constitutional referendum. These events are unprecedented in the era of King Mohammed VI. Although the palace drew upon established instruments of crisis management, such as in-

tervening as the arbiter and initiating reforms from above, the response can be understood as the product of increasing pressure through the popular mobilisation across the kingdom during the spring of 2011. However, politics in the Alaouite kingdom still remain dominated by the palace.

Inspired by the Arab Uprisings in Tunisia and Egypt that started in December 2010, the so-called 20th February Movement was able to unite diverse groups of the Moroccan society and mobilise the largest demonstrations in Morocco in at least a decade. The heterogeneous groups and individuals that assembled under the umbrella of the 20th February Movement were first and foremost united by their criticism of the oppressive autocratic practices in the kingdom.³ At the centre of the movement's political demands were meaningful participation and representation, accountability, an end to corruption, and transparency.

The response by the palace was remarkably fast and effective. Within weeks of the seminal speech by King Mohammed VI on 9th March, the protest movement's ability to rally large demonstrations and keep up the pressure for political change faded. As one activist put it:

"I think that the palace reacted quickly with the king's speech on 9th of March after just two big demonstrations. The announced reform of the constitution led to splits amongst the movement. The reaction of the palace was seen as a success by many sympathisers. Thus after the speech it was more difficult to mobilise large crowds of protesters."⁴

¹ Hoffmann and König, *Scratching the Democratic Façade*, 2013.

² Speech on North Africa and the Arab World at the European Parliament Strasbourg, 6 July 2011.

³ Madani, Maghraoui and Zerhouni, *The 2011 Moroccan Constitution: A Critical Analysis*, 2012.

⁴ Founding member of the 20th February movement, interviewed in Rabat 2015.

II. Constitutional reform 2011: Plus ça change?

II.1 An anatomy of the constitutional reform process

Setting out its ambitions and guidelines in his seminal speech on 9th March 2011, King Mohammed VI commenced the constitutional reform process. However, no elected body – such as a constituent assembly – was established. Neither was parliament directly consulted. Instead, the king appointed an advisory commission for the revision of the constitution. Abdellatif Menouni, a close advisor to the king, headed the commission, which allowed the palace to keep control of proceedings at all times. The members of the advisory commission on the constitution were, as one member put it, known experts selected from various backgrounds:

“The palace has experience how to select the right people for such a commission. It is based on cooptation of important political forces and experts that represent different strands of society. It is in general the aim to be representative while staying in control through selecting the participants. The commission represented the mosaic of the Moroccan society.”⁵

In addition to the advisory commission on the constitution, a political commission was established. In this second commission the largest eight parties in parliament were represented.

Reflecting the crown’s preference for a “participatory approach”⁶ instead of an elected representative body, the advisory commission drew on a method that had already been used previously in the deliberation process on re-

gionalisation reform. Accordingly, a consultative body named *mécanisme de suivi* was established. For its part, the advisory commission initiated hearings with political and societal actors in which they put forward their demands regarding the revised constitution in the form of written memoranda and oral presentations, followed by discussions with the present members of the commission. Most of the invited political organisations, labour unions, business associations and NGOs participated in these hearings.⁷

However, some crucial organisations, such as the country’s most important labour union Confédération démocratique du travail, three leftist parties,⁸ the Islamist movement Al-’Adl wa-l-Ihsān and the independent Moroccan human rights organisation Association marocaine des droits humains (AMDH) boycotted the participation, criticising the lack of credibility due to the composition of the advisory commission and the lack of transparency with regards to the decision-making procedures in the commission.⁹ Likewise, the umbrella organisation that organised the major protests across the country during 2011 – the 20th February Movement – did not participate in the hearings of the consultative commission as an organisation. The level of inclusivity of the participative mechanism embedded in the constitutional reform process hence remains ambiguous.

It was thus only the aforementioned participating groups that submitted their input for the new constitution. However, according to several members of the advisory commission, there was no formal procedure on how these suggestions would be debated or fed into the actual debating and writing of the constitution. In the actual writing process the commission was split into several smaller thematic groups, which was followed by a joint discussion of the entire

⁵ Member of the advisory commission on the constitution, interviewed 2015 in Rabat.

⁶ Member of the consultative commission on the constitution interviewed in Rabat 2014.

⁷ Most political parties that hold seats in the newly elected parliament participated.

⁸ Parti Annahj Addimocrati, Parti socialiste unifié and the Avenue de la résistance.

⁹ Statement by the CDT.

framework prior to its submission to the king within three months. A member of the commission described the discussions as follows:

“Generally the decision-making process in the commission was deliberative with the possibility of voting if necessary. But there was only once a vote.”¹⁰

This assessment was shared amongst all seven members of the commission that were interviewed for this paper. The lack of transparency and formality when it came to the decision-making processes in the commission and regarding the role of the consultative commission itself became quite evident throughout all interviews.

In fact, the debate on the various submissions and the final text of the constitution was principally limited to the advisory commission. Neither parliament nor the media or any other organisation participated in a public discourse on the actual constitution. The discourse surrounding the new constitution was limited in scope and depth not only because of the untransparent nature of the reform process, but also due to the lack of information available to the media and the public.

The organisations that participated in the *mécanisme de suivi* were presented a written draft of the constitution on 16th June, just one day before the second important speech by King Mohammed VI concerning the new constitution was televised. Just two weeks later, the constitution was put to a referendum in front of the Moroccan people with a simple yes or no vote. This narrow time frame between the first publication of the draft and the referendum hindered a comprehensive public debate on the constitution. No forum for an open debate was established. There was no possibility to submit applications to change the text or present alternative texts.

Some members of the advisory commission mentioned in interviews that the final text put to the vote differed from the final version which the commission submitted to the king through the head of the commission Abdellatif Menouni.

Despite this, the referendum approved the new constitution with a landslide majority of 98.5% yes votes against 1.5% no votes. But in this case, these numbers do not tell the whole story. The overall population of Morocco is estimated at around 35 million.¹¹ Due to the kingdom’s young population, only around 20 million are eligible to vote. However, according to official numbers only 13.4 million people registered to vote and 9.8 million actually cast their vote at the referendum’s ballot box. Overall, this means that the turnout at the referendum in relation to the population was below 50%. If one also takes the calls by opposition groups to boycott the referendum into account, the numbers tell a different story regarding popular support for the constitution than is often portrayed.¹² The palace declared the constitutional reform process inclusive and participatory, yet it violated meaningful deliberation and democratic standards.

II.2 How much change is really in the 2011 constitution?

The new constitution introduced a number of changes. The following analysis will focus on the ones that are expected to influence the balance of power between the elected institutions, government organisations and the monarchy. First, the king is no longer described as “sacred”, but the integrity of his person is inviolable (§46). However, his role as commander of the faithful and thus his ability to influence politics through his religious function remains unchallenged, as does his role as the supreme arbiter between the institutions (§42).

¹⁰ Member of the consultative commission on the constitution interviewed in Rabat 2016.

¹¹ According to the CIA factbook estimate for 2013.

¹² Media reports usually report a near 73% turnout at the ballot box, treating the registered 13.4 million voters as 100% of the population.

In 2013 the king engaged in his function as arbiter, leading to a cabinet reshuffle after the initial government coalition established following the 2011 parliamentary elections fell apart. The new leadership of the Istiqlāl Party – internally elected in 2013 – called upon the king to resolve the dispute between the government parties in his role of supreme arbiter. Ultimately, the Istiqlāl Party left the government coalition to join the opposition and left the governing leader of the moderate Islamist Parti de la Justice et du Développement (PJD) and Head of Government (HoG)¹³ Abdelillah Benkirane in limbo, needing to either find a new coalition partner or call for new elections. Although the palace did not step into the spotlight, the newly formed government coalition with the palace-backed Rassemblement National des Indépendants (RNI) – a rather administrative party made up of palace loyalists and leftist bureaucrats – saw the PJD lose important ministerial positions to the RNI and several non-partisan, pro-palace technocrats.^{14,15}

The new constitution entails a comprehensive body of human rights and fundamental freedoms (§19-40). This is surely a step forward. However, some of the guaranteed rights and freedoms are curtailed by other constitutional principles, such as the restrictions on blasphemy or the criminalisation of “unconventional” relationships – to name just a few.

Now the king has to select the HoG from the largest party in parliament (§47), subsequently appointing the members of the government based on the proposal of the HoG. Despite this, the constitution has also institutionalised and preserved an opaque dual cabinet structure: one headed by the HoG, who presides over the government; and a second presided over by the king, called the council of

ministers. Both executive bodies consist of their ministers and the HoG (§48).

The council of ministers, chaired by the king, nevertheless holds the authority to veto all decisions made by the council of government (presided over by the HoG). Manifold control mechanisms and veto rights reinforce an opaque executive decision-making system in which the monarch ultimately holds the veto power over virtually any decisions taken by the HoG and his government. On top of this shifting authority that essentially gives the monarchy an omnipresent power of veto over almost all cabinet decisions, the informal so-called ‘cabinet royal’ – consisting of the king’s advisors designated to specific policy areas – also plays an important role, especially in strategic decisions and important political or developmental projects of the palace.

Furthermore, high administrative and diplomatic posts (ambassadors, directors of state-owned enterprises and regional governors) are now appointed by the head of government in consultation with the council of ministers, which is presided over by the king (§49). Previously, the king exclusively held this power. Such arrangements seem to weaken the authority of the king vis-à-vis the HoG, but they effectively still grant the monarch veto rights over the decisions taken by the HoG.

A number of new, seemingly independent organisations and commissions have been established to contribute to the discourse on important policy issues, such as human rights abuses, economic development, regionalisation, education and youth and family issues (§161-171). However, all of these new institutions reside in a parallel structure to the government and the ministries. In this way they effectively undermine the competencies of the

¹³ Formerly named prime minister in the pre-2011 constitution.

¹⁴ Masbah, *Morocco’s Slow Motion Reform Process*, 2014, 3.

¹⁵ Such strategies of indirect palace interference in parliamentary politics through introducing new parties headed by palace loyalists of different political colour, have been a common strategy by the monarchy to pre-emptively hinder any political party gaining a dominant role through diversifying and the party landscape – recently with the Parti Authenticité et Modernité (PAM) – and guaranteeing participation of palace loyalists in every government.

ministries and parliament through the diversification and diffusion of authority and resources. By the same token, these institutions are instrumental for the palace in co-opting certain opposition figures by providing them with a stake in the political game and a stable income.

Under the new constitution parliament has gained more legislative competencies and can now pass laws on more policy issues than before. However, crucial policy areas that belong to the jurisdiction of the throne are exempted from parliamentary control. Furthermore, the king is still able to dissolve parliament and the government provided he informs the HoG and the president of the constitutional court (§96).

The new constitution also guarantees the independence of the judiciary, which paradoxically is overseen by the king (§107 & 115). The majority of the judges to be established to the constitutional court will be appointed by the king.

In sum, the new constitution offers limited improvements with regards to democratic standards. The throne still oversees most political decisions, while the power of the king has barely been restricted by the new constitution. There remain no credible limits to his actions, and no effective control over the power of the palace has been established.

II. A monarch who reigns over the government and parliament

The reform process resulting in the new constitution of 2011 is best understood in the Moroccan tradition as a signal of responsiveness by the king to his people. From a historical perspective, public pressure on the king has

repeatedly led to more concessions towards a real constitutional monarchy.¹⁶ In this light, the new constitution can be considered a baby step in the right direction. To some extent it still remains to be seen how the political actors interpret their roles in political practice within the new institutional framework. Nearly five years after the constitutional referendum, parliament has been struggling throughout its entire term of office to establish a new organic law in line with the renewed constitution. Other innovations, such as participatory mechanisms and the commitment to open public data, both specified in the new constitution, have rarely been exercised in practice to date.

Looking into the post-Arab Spring trajectories in the neighbourhood, many have expressed fear that more fundamental shifts in the political system might lead to instability and give rise to extremism. The need for stability and security in a region in turmoil can provide a strong incentive to settle for the minor concessions that were offered by the authorities and abstain from demanding more substantial change. In this light, the increasing political violence across the region has surely played out in favour of the palace in Morocco. Under increasing pressure from the protests in spring 2011 and the upheaval in the entire region, the *Makhzen*¹⁷ reacted swiftly but in the usual manner. Prompted into a quick response and the notorious pattern of untransparent procedures, a new constitution was quickly put to a vote.

All in all, the constitutional reform process failed to meet fundamental democratic standards and the result left the central power distribution between democratically elected institutions and monarchical power centres largely untouched. Formally democratic institutions such as the government, parliament and po-

¹⁶ Bank, *Jordan and Morocco: Pacification through Constitutional Reform?*, 32f.

¹⁷ In Derija (Moroccan dialect), *Makhzen* means storage house. Historically it was used to describe the palace quarters where goods offered to or expropriated by the sultan's representative were stored. Nowadays the *Makhzen* is used to describe the ruling elite of the Morocco, a patronage network of and allegiance-based relationships built around the palace. It includes the official government institutions and its personnel, such as the royal court, the royal security forces and the ministry for religious affairs, but also informal structures such as the king's advisors, the palace's shadow cabinet and multiple businesses that are owned by the palace and its associates.

litical parties remain under the tight control of a parallel governing structure dominated by the palace. However, the winner of the 2011 parliamentary elections, the PJD, has since – and more openly than other political parties before – made reference to the palace’s interventions in politics. This sheds more public light on the role of the palace in politics.¹⁸

Some observers, such as Moroccan publicist Mohammed Benchemsi, argue that the new constitution has even strengthened autocracy and the absolutist rule by the monarchy.¹⁹ Others argue that the room to manoeuvre for democratically elected representatives and political parties has increased slightly with the changes in the new constitution.²⁰ Taking stock after one election cycle with the 2011 constitution in place, it is safe to say that the potential amplified leeway of parliament and the first PJD-led government vis-à-vis the monarchical institutions has not fundamentally changed Moroccan politics. The main ac-

tors in parliament, including the PJD leadership, still opt to seek consensus with the palace and accept the monarchy’s hegemony over central policy fields.

Although the palace came out on top in the contentious episode of 2011 and the outer parliamentary political opposition has been weakened for the moment, future mobilisations can by no means be ruled out. Evidently, the new constitution and the process by which it came into existence and was put into force have not met many of the popular aspirations for more democracy and an end to corruption. Likewise, the underlying socioeconomic grievances and increasing inequality have not been effectively addressed in the past five years. The current calm may well be more short-lived than it seems. Recent protests against the rise in energy prices and against educational reform indicate that prevailing grievances could still lead to mass mobilisation.

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¹⁸ Masbah, *Morocco’s Slow Motion Reform Process*, 2014, 5.

¹⁹ Benchemsi, *The Arab Exception*, 2014.

²⁰ Madani, Maghraoui and Zerhouni, *The 2011 Moroccan Constitution: A Critical Analysis*, 2012.