



Constitutional Reform

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Constitutional Reform in Morocco: Reform in times of revolution

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On 9 March 2011, in an unexpected speech that took the world of Moroccan politics by surprise, King Mohammed VI announced the introduction of a “global constitutional reform based on seven key elements”¹. A commission appointed by the King and presided over by university professor Abdellatif Mennouni was made responsible for drawing up and developing this new Constitution, then submitted to the Moroccan people and adopted by a referendum of 1 July 2011.

The constitutional reform undertaken by Mohammed VI has been seen as a subtle way of avoiding the influence of the “Arab Spring” in Morocco. Popular protests were organized by the February 20 Movement² to demand more freedom, and the setting up of a parliamentary monarchy giving more power to the Government and Parliament, which would curb the excessive powers of the Monarchy. In this context, the adoption of a new constitution was seen as a way to defuse the emerging wave of popular protest³.

The way in which the reform plan was drawn up and adopted illustrates the reformist culture that dominates Moroccan political life and conditions the behavior of the actors involved.

The constitutional reform received overwhelming approval in a popular referendum, and is an important benchmark for the codification of rights and freedoms, the

¹ For the full text of Mohammed VI’s speech, see <http://www.moroccoboard.com/news/5302-morocco-text-of-kings-speech-english>.

² For an analysis of this movement, see Tourabi Abdellah and Zaki Lamia, “Maroc : une révolution royale?”, *Mouvements*, 2011/2, 66, 98–103.

³ Ferrié Jean-Noël and Dupret Baudouin, “La nouvelle architecture constitutionnelle et les trois désamorçages de la vie politique marocaine”, *Confluences Méditerranée*, 2011/3, 78, 25–34.

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reinforcement of executive power, broadening of the rule of law and the independence of the judiciary. It does not reduce the powers of the King, who remains at the centre of Moroccan political life.

The Morocco's constitutional tradition

In the wake of Morocco's independence in 1956, the Monarchy and the parties of the Moroccan nationalist movement engaged in a fierce battle for power and the domination of the country's political institutions. The control of the development of the constitution, and the control of the authority responsible for drafting it constituted major challenges for the protagonists. Two options emerged for the development of the country's first Constitution in 1962: a text drafted by a group of experts and submitted to popular referendum, on the model of the French Constitution of 1958; or the election of a constituent assembly responsible for drawing up a constitution. The Palace defended the first option, while the nationalist parties mobilized their forces and resources to back the second. For the Moroccan Monarchy, it was vital to avoid a scenario "à la tunisienne", where on 25 July 1957 a constituent assembly decided to abolish the beylicat and to set up a republican regime, presided over by Habib Bourguiba. To avoid this sort of outcome, Hassan II was quick to take things in hand: he appointed a group of mainly French lawyers, who were responsible for drawing up the country's first constitution. On 7 December 1962, the text proposed by these lawyers was adopted by referendum with an overwhelming majority (80 % of the vote)⁴, despite the protests of the opposition who criticized it as undemocratic.

The 1962 Constitution has served as a basis for all subsequent Moroccan constitutions and definitively codified the supremacy of the Monarchy at the head of Morocco's institutional apparatus, giving it legal and

political ascendancy over Parliament and Government. Political pluralism, multipartism and the development of areas of participation for various political actors – including those contesting the powers of the Monarchy – have been constants of Moroccan political life, and were ratified and protected by successive constitutions. The autocratic Constitution of 1970 was an exception in this sense. After a five-year state of emergency, marked by popular riots and political tension between the Palace and the opposition, on 31 July 1970 Hassan II adopted a Constitution that concentrated all power in the hands of the King and reduced Government to an auxiliary role without even regulatory power. In wanting to rely exclusively on the army in the exercise of unlimited and autocratic powers, Hassan II effectively reduced the space of political participation, hence pushing the opposition parties towards a strategy of political boycott and of refusal to negotiate with the regime. The two coups d'état in 1970 and 1971 demonstrated the pointlessness and shortcomings of this choice.

The monocratic experience, enshrined in 1970 Constitution, was rapidly brought to an end after two stressful and traumatic years. Hassan II then began a new process of political "opening up", by restarting negotiations with the opposition, at the time regrouped in the Nationalist bloc ("Al-koutla al-wataniya"). Talks were held between the protagonists for setting up a government of national coalition, in which all components of the Moroccan political spectrum were to participate. Notwithstanding the failure of negotiations between the King and the opposition, a new political trend was thus in place, putting an end to a situation of tension and total breakdown in the relations between the King and the political parties. The adoption of the 1972 Constitution restored their powers, removed by the previous constitution, to the Government and

⁴ Louis Fougère, "La constitution marocaine de 7 décembre 1962", in Maurice Flory, Jean-Louis Miège (eds.), *Annuaire de l'Afrique du Nord*, Centre national de la recherche scientifique, Paris, Editions du CNRS, 1964/1, 155–65.

Parliament, and marked a return to the tradition of compromise and participation within official institutions. The theme of “territorial integrity” and of the sovereignty of Morocco over the Western Sahara was also a new source of legitimacy for the Monarchy – a way to urge the opposition parties to rally around the King. The conflict with the independentist front POLISARIO (supported by Algeria) allowed Hassan II to obtain national unity around the institution of the Monarchy, whose legitimacy and supremacy were not challenged anymore.

A long history of submitting memoranda

In this context, for the opposition parties the question of constitutional reform became the main way to obtain more rights and liberties and to demand greater institutional change. This would then allow a clearer separation of powers and the setting up of a genuine parliamentary regime able to operate alongside a governing Monarchy.

Having finally renounced the idea of electing a constituent assembly, the opposition parties advocated new modes of participation to develop a constitutional framework: the memoranda⁵. Before the constitutional reforms of 1992 and 1996, the parties addressed memoranda to the King, in which they expressed their demands, complaints and desired changes with regard to the content of the Constitution. In particular the parties sent memoranda to the Monarch in moments of tension or when Hassan II was seeking the participation of the opposition and its collaboration in the management of public affairs. Hence, while the goal of 1996 constitutional reform was to prepare the ground for the experience of alternating power – that is to say, the formation of a government consisting of the parties of the Nationalist bloc – the latter submitted a memorandum to the King on 25 April 1996 in which they set out their political vision. In

particular, they insisted on the enshrinement of principles of respect for individual rights and on the setting up of legal and institutional mechanisms to protect these rights and freedoms.

This practice of memoranda affirmed the domination and authority of the King in the process of drafting the constitutional text, but at the same time it allowed other parties to get involved in the process and add their remarks and demands to the reform agenda. The fact that the parties of the Nationalist bloc called on Moroccans to vote for the 1996 constitutional reform indicated the innate presence of this culture within the Moroccan political class. It highlighted the need for a gradual and realistic reformism, which would take into consideration the nature of the power relations with the Monarchy, but which would at the same time allow political actors to reinforce the powers of Parliament and Government and to expand the room for political participation. In the same way the influence of this culture can be detected in the process of constitutional reform initiated in 2011, but in this case its development has been influenced by the political upheavals taking place in the Arab world.

The King sets the rules of the game

In his speech of 9 March 2011, Mohammed VI set out seven major axes of constitutional reform:

~ The confirmation of the pluralist nature of Moroccan identity, in particular its Amazigh component, described by the King as the “common patrimony of all Moroccans, without exclusion”.

~ The consolidation of the rule of law, the enlarging of freedoms and the guarantee for their exercise. This was to be done on the basis of the constitutionalization of the “judicious” recommendations of the Equity and Reconciliation Commission (IER), a body set up in 2004 by Mohamed VI to investigate violations of human rights in Morocco since independence, and to compensate and rehabilitate the victims.

⁵ See “L’évolution et les perspectives constitutionnelles au Maroc”, <http://www.rdh50.ma/fr/pdf/contributions/GT10-1.pdf>.

The reinforcement of the independence of the judiciary and the expansion of the prerogatives of the Constitutional Council.

Consolidation of the separation and balance of powers by the transfer of new competences to Parliament and by the extension of the rule of law. The reform must also confirm the principle of the appointment of a Prime Minister by the political party which wins the elections to the Chamber of Representatives, on the basis of election results. The status of Prime Minister must also be reinforced as head of the executive.

Reinforcing the role of political parties as tools to involve citizens.

Consolidation of mechanisms to boost moral integrity in public life and to encourage accountability during a public mandate.

Confirmation of the constitutional of the authorities responsible for the protection of human rights and freedoms as well as good governance.

To implement this reform, Mohammed VI created an ad hoc commission responsible for the revision of the Constitution. The Consultative Commission on Constitutional Reform (CCRC) was presided over by Abdellatif Mennouni, an experienced lawyer and member of the Constitutional Council. The CCRC had eighteen members all appointed by the King⁶, for the most part university professors, generally experts in public law, but also activists in human rights' associations, such as Omar Azziman, president founder of the Moroccan Human Rights Organization (OMDH), and former Minister of Justice, Driss El Yazami, former secretary general of the International Federation for Human Rights (FIDH), or

⁶ Omar Azziman, Abdallah Saaf, Driss El Yazami, Mohamed Tozy, Amina Bouayach, Ahmed Herzenni, Rajae Mekkaoui, Nadia Bernoussi, Albert Sasson, Abderrahmane Leibek, Lahcen Oulhaj, Brahim Semlali, Abdelaziz Lamghari, Mohamed Berdouzi, Amina Messoudi, Zineb Talbi, Mohamed Said Bennani, Najib Ba Mohamed.

Amina Bouayache, president of the OMDH and vice-president of the FIDH. The presence of these respected figures with an extensive network of contacts abroad, especially in international NGOs, gave the CCRC a credibility and moral integrity that guaranteed its independence and that allowed it to reassure international civil society as to the nature of the reforms underway. On the other hand, there were no religious figures or scholars (oulémas) on the CCRC, with the exception of Rajae Mekkaoui, a member of the Higher Council of the Ulemas and the first woman to have presented a religious lecture before the King in 2003. This exclusion of the oulémas in the development of the constitutional charter was done in order to highlight the drive for secularisation and modernisation within the new constitution. This impression was reinforced by the political careers and former ideological loyalties of some members of the CCRC. Those responsible for drawing up a draft constitution included former militants of leftist parties and movements, and reflected the president of the CCRC, Abdellatif Mennouni, former president of the National Union of Moroccan Students (UNEM), and heavily leftist in the 1960s. Similarly, Ahmad Herzenni, Abdallah Saaf, Mohammed Berdouzi, Lahcen Oulhaj had also been leftist militants, and some of them had been imprisoned or taken part in clandestine political action in the past. The political and ideological background of the members of the CCRC influenced the content of the draft submitted to the King.

A participatory, yet controlled, process

The process of developing a new constitution was intended as participative and based on the implication of various political and associational actors. In parallel with the CCRC, Mohammed VI ordered the creation of a Political Mechanism Accompanying the Constitutional Reform ("Mécanisme politique de suivi de la réforme constitutionnelle"), an authority directed by his advisor Mohammed Moatassim, university professor of renown and an expert in constitutional law. The

mission of this authority, which composed of the President of the CCRC and representatives of political parties and trade unions, was to work alongside the CCRC during the development of the constitutional charter, to serve as a forum of dialogue and concertation between the different political actors, and to be a channel of communication between the CCRC and the political parties and trade unions. The action of the Political Mechanism was important and proved decisive in the final phase of the drafting of the constitution.

The CCRC also sent the invitations to a hearing to the political parties, trade unions, associations, but also to young activists so that they could present their visions of the constitutional reform and supply the documents expounding their proposals. March 28 marked the official start of a series of meetings with different actors. All Moroccan political parties responded to the invitation of the CCRC, with the exception of the United Socialist Party (PSU), and the Democratic Way Party (Annahj). Both decided to boycott negotiations with the CCRC on the grounds that its composition was not representative of all the viewpoints present in Moroccan society and that it was nothing less than a form of “received constitution” handed down by the King⁷.

In its general assembly, the February 20 Movement, responsible for the demonstrations that then took place in the country, also decided to boycott the work of the CCRC, arguing that it had been unilaterally appointed by the King, who had also predetermined the direction taken by the reform. For the movement, the Constitution should be democratic, popular and formulated by an elected constituent assembly. Using these arguments, young activists in the February 20 Movement, many of whom came from, or revolved around, parties and groups on the left, revived the arguments of the Moroccan nationalist movement, which had

criticised the 1962 Constitution for being a “received constitution” and which had called for the setting up of a constituent assembly. Young activists dug up the writings of icons of the nationalist movement critical of the Constitution proposed by Hassan II, such as those of Abdelkrim Khattabi, hero of the Moroccan resistance who in 1962 had criticized “the masquerade of the received Constitution”. In so doing, the young activists literally deprived the reform advocated by Mohammed VI of its legitimacy, placing it in the non-democratic tradition of the “received constitutions”⁸. They positioned themselves as the heirs of the struggle by the parties of the nationalist movement against the powers of the Palace.

Mainly weak proposals

The proposals and opinions submitted by the thirty-three political parties that accepted to the CCRC’s invitation are all different, but all reflected the same surrender of most of the political groupings vis-à-vis the Monarchy. With the exception of the proposals formulated by a few parties, most of the documents received by the CCRC were thus shaped along the lines already set by the King in his speech of 9 March and presented recommendations that were generally rather timid and took few risks. Their proposals essentially concern four broad themes: Monarchy, Government, Parliament and Moroccan identity.

1- The Monarchy

In Morocco there was unanimous agreement as to the legitimacy of the Monarchy and its place at the centre of the Morocco’s institutional apparatus. Some parties nevertheless expressed a desire to reduce the powers of the King with a view to creating a genuine parliamentary monarchy. Thus, the main Islamist party in Morocco, the Justice and Development Party (PJD), called for the creation of a High Council of State responsible for

⁷ See http://www.telquel-online.com/469/actu_maroc2_469.shtml.

⁸ See http://capdemocratiemaroc.org/doustour/?page_id=92.

taking key decisions regarding the country (declarations of war, states of emergency, appointment of ambassadors, governors and senior civil servants). This authority is to be presided over by the King and brings together the Head of Government, the presidents of the two Chambers of Parliament, the President of the Judiciary and the President of the Constitutional Council. The High Council of State will operate on a collegial basis and its remit will be the partition of powers and competences vis-à-vis the King. The Socialist Union of Popular Forces (USFP) demanded that the King assume a strong steering role in the areas of national defense, internal security and foreign affairs, but that the Head of Government must countersign the Royal Decrees relative to these sectors. The Party of Authenticity and Modernity (PAM), founded by Fouad Ali El Hima, friend and advisor to Mohamed V, proposed changing Art. 23 of the Constitution that stipulated that the person of the King was “sacred” and to replace it with the following formulation: “The integrity of the person of the King shall be inviolable”.

Given the nature and importance of the status of the Commander of the Faithful (Amir al-Mu’minin), confirmed by Art. 19 of the Constitution⁹, proposals were made regarding the exercise of religious and political power in Morocco. Article 19 has been seen as “a Constitution within the Constitution” and at the whim of successive interpretations made by Hassan II, it became a real political and legal machine that abolished the separation of powers placing the King, as head of

Morocco’s religious community, above all other institutions. The article has been criticized as a way to justify and legitimate absolutism, and was openly attacked in the protests organized by the February 20 Movement. In its memorandum to the CCRC, the Vanguard Party (“Attaliâa”, PADS) called for the suppression of Art. 19, on the ground that it was “formulated vaguely” and gave unlimited powers to the King. For this leftist party, the abusive use Hassan II made of this article justifies its suppression in the new Constitution. The proposal made by the USFP went in the same direction but was more nuanced. According to the USFP, the King’s role as Commander of the Faithful had to be maintained in the Constitution, but its domain of application had to be limited and its powers clarified. For the Socialist Party, the role of Commander of the Faithful had thus been limited to “the supervision and management of the religious domain”, in which it exercises sovereign and undivided powers, through dahirs (Royal Decrees). The position taken by the Socialist Party was justified by the fear that the total absence of a neutral authority, transcending the political cleavages, and responsible for regulation in the religious domain, would open the way to anarchy or to the domination of the Islamic parties in the religious and spiritual domain. The PJD gave its continued support of the religious status of the King on the grounds that the Commander of the Faithful reflects Morocco’s deep identification with the Monarchy. This position is explained by another fear: that the draft constitution would be “secularized” by the suppression of any reference to Islam, starting with the removal of the religious status of the King.

2- The Government

In the memoranda submitted to the CCRC, most of the parties have concurred as regards the speech of Mohamed VI and his intention to extend and reinforce the powers of the Prime Minister. The political

⁹ According to Art. 19 of the Constitution, “The King [as] Commander of the Faithful, shall be the Supreme Representative of the Nation, and the Symbol of its unity. He shall be the Guarantor of the perpetuation and continuity of the State. As Defender of the Faith, He shall ensure respect for the Constitution. He shall be the Protector of the rights and liberties of the citizens, social groups and organizations.”

parties interviewed by the CCRC have all recommended that more weight and powers be accorded to Government. For the Independence Party, Istiqlal, the Prime Minister must “actually hold the executive power and (...) be fully responsible for the Government, public administration, public institutions and companies”. According to Morocco’s oldest political party, of which the Prime Minister, Abbas El Fassi, is a member, the appointment to positions of civil responsibility must be made by the Head of Government and submitted for the approval of the Council of Ministers, presided over by the King. The Islamists of the PJD have formulated proposals for the introduction of a certain balance between the King and the Government in the exercise of regulatory and administrative power. They have thus proposed to enlarge the powers of the Prime Minister even further within the Council of Government. In the document presented to the CCRC, the PJD recommended that the appointment of governors and senior officials in security be decided in the Council of Government, presided over by the Prime Minister, putting an end to the King’s control of this type of nomination. The PJD has also proposed that the laws, once validated by the Council of Government, be presented to Parliament by the Prime Minister. On the question of governmental responsibility, the PADS demanded that Government be responsible solely to Parliament, sole source of legitimacy, and not to the King, as was the case under earlier constitutions. Other parties did not agree with this proposal and in most of the memoranda advocated that the Government be responsible to the King and the Parliament. Finally, the USFP presented a list of posts where the Prime Minister, now referred to as the Head of Government, exercises the right of appointment (senior civil servants in the public administration, central and regional government, directors of public institutions, state enterprises, heads of universities and directors of academies).

3- The Parliament

The work and functioning of the Moroccan Parliament are always the subject of criticism, including by its deputies, who complain of the lack of means and competences at their disposal. Bicameralism, as designed by 1996 Constitution, has been criticized for the powers it gives to the Chamber of Councilors (upper chamber) which are considered excessive and undemocratic, such as the power to return a Government with a motion of confidence. The memoranda presented by the parties to the CCRC largely expressed the order to strengthen the powers of the Parliament, particularly in drafting laws and in control of the executive. All the parties thus agreed that the Parliament should be made the sole source of legislation in Morocco and that the rule of law should be extended, as also indicated the King in his speech of 9 March 2011. The PAM insisted on the consolidation of the control mechanisms of Government action by Parliament, by requiring, especially of Government that it submit a detailed annual progress report of its actions, with a debate to follow. According to the PAM, currently the largest parliamentary group, the presentation of a motion of censure must be the exclusive prerogative of the Chamber of Representatives (lower chamber), and the quorum necessary to submit this motion must be lowered to below the quarter of deputies stipulated by the 1996 Constitution. A large part of the PJD memorandum concerned the actions of Government, and stood out from other parties in recommending the possibility of renewing a Minister following the vote of one-third of the elected. The Islamists were strongly hostile to the parliamentary “transhumance” and also demanded the abolition of the mandate of any deputy who changed party, to end a current practice in the Moroccan Parliament where some deputies change political affiliation according to their personal interests. The PADS made a radical and decisive

proposal, which simply called for the total suppression of the Chamber of Counselors in order to simplify the legislative procedure and to avoid deadlocks, but also in order to “economize in the State budget”.

4- Questions of identity

Two elements touching on the question of identity were central in the memoranda presented to the CCRC: language and religion. In his speech announcing the constitutional reform, Mohammed VI raised the issue of the Tamazigh language and this became a major component of the CCRC’s work. The political parties then followed the course taken by the King and developed proposals on the status of Tamazigh and its place in relation to Arabic, considered by the 1996 Constitution as “the official language of Morocco”. Two positions emerged from the memoranda presented by the political parties. The first was to make Tamazigh an official language of the country on the same level as Arabic. The second was to make Tamazigh a “national language”. The officialization of Tamazigh would mean its use by all the services of the State and public administration, alongside Arabic. Two parties supported this option, the Popular Movement and the Party of Progress and Socialism, but specifying that a specific law would be needed to officialize the use of Tamazigh and its development. The other parties supported giving Tamazigh the status of a “received national language” without legal or administrative effect, but which recognizes the place of the language as an element of national identity. In its memorandum the PJD specified that Arabic needed to be reinforced as an official language, and criticized the hegemonic use of a “foreign language”, that is, French, in business, higher education, public administration and media. For the Islamist party, Tamazigh should be recognized as a national language with a specific law to decide “its protection and use”. The

document presented by the USFP proposed a different solution, which excluded the notion of “official language” and recommended that both Arabic and Tamazigh be treated as the two “national languages” of Morocco. In 2001 the activism of associations for the defense of Tamazigh led to the creation of the “Institut royal de la culture amazighe” (IRCAM) and largely explains the inclusion of this issue on the agenda of constitutional reform and the need for political parties to create a legal and political formula in response to this question of Moroccan identity.

Some of the parties interviewed by the CCRC openly took up a lay position, supporting the total dissociation between religion and politics in Morocco, or calling for the suppression of any reference to Islam in the constitutional charter. The memoranda, however, presented results from different susceptibilities and opposing tendencies. Most of the parties agreed on the “Islamic” nature of the Moroccan State, but some parties, particularly Islamists, proposed some formulations to corroborate and support the presence of religious references in the constitutional text. The PJD has thus claimed that putting in place constitutional guarantees for a legislative text must not be in contradiction with Islam or fail to conform with its provisions. For the PJD, led by Abdelillah Benkirane, it was necessary to insist on the King’s role as Defender of the Faith as the basis and foundation of a democratic monarchy in Morocco, able to unite all Moroccans and to transcend ideological and cultural differences. Annahda, the small Renaissance Party defining itself as Islamist, also insisted on the religious status of the King and recommended the constitutional confirmation of Malékisme as the official doctrine (or rite) of Morocco.

The place of religion within the Constitution and in Moroccan legislation

moved and indirectly slipped towards another level, through debates on the supremacy of international conventions over national laws. This question has always been a point of disagreement and breakdown between the Islamist parties and those defining themselves as progressive or modernist. In a differentialist and culturalist optic, the Islamic parties believed that international conventions should conform to the tenets of Islam and have always put up strong resistance to any ratification of convention or any lifting of reserve, for example in matters of equality between men and women. For other parties, on the contrary, the universality of human rights and the affirmation of the supremacy of international conventions over national laws constitute the means to securitize Moroccan legislation around a direct debate on the place of religion as a source of law. For example, in its memorandum the USFP recommended that the principle of “the supremacy of international human rights’ conventions” be encoded in the constitution, “together with the criteria of international law and of human rights law in relation to national law, and published in an official bulletin”. The PADS shared this same position and demanded that this hierarchy of legal norms be recognized in the new Moroccan Constitution.

Drafting the text: synthesis and compromise

After having received 185 documents with proposals from political parties, trade unions and associations, the CCRC started to draft the text of the constitutional reform, which would be transmitted to the King and then submitted to popular referendum. During the drafting phase the work of the CCRC was carried out with great discretion, despite some press leaks, but without revealing the final form of the text. By June, the CCRC had completed its work of developing and drafting the plan, and its president, Abdellatif Mennouni, was responsible for presenting it to the political parties and trade unions, in the

framework of the Political Mechanism, directed by an advisor to the King, Mohammed Moatassim. A first meeting was held on 7 June 2001, during which Mennouni made an oral presentation setting out the broad lines of the planned reform, but without distributing a written version of the text for the representatives of political parties and trade unions present; the meeting lasted over ten hours. The leaders of the two rightist parties (PADS and CNI), and the representatives of the trade union confederation (CDT), left the meeting in protest at this way of proceeding and the refusal to produce a written document. Subsequently, on 10 June 2010, at the Royal Palace, Mennouni presented the plan for constitutional reform to Mohammed VI. Moatassim meanwhile reported back to the King with a synthesis of the deliberations of the Political Mechanism, together with the proposals made by political parties and trade unions following the meeting of 7 June.

During the week that separated the return of the constitutional plan to the King and the King’s speech in which he announced that he would submit it for referendum, the greater part of the political parties expressed their satisfaction and support for the work of the CCRC. Only the PJD stood out. Abdelillah Benkirane, general secretary of the Islamic party, had in fact stepped up his media appearances and popular meetings to warn against “any attack on Morocco’s Islamic identity” that the reform might contain or promote. He also urged the King to re-examine the text that he had received from the CCRC, threatening to vote against the reform. The leader of the PJD did not mention the articles explicitly, but accused the lay forces of wanting to “pervert” the reform process and to introduce provisions hostile to the “Islamic nature of the Moroccan State”¹⁰. The Movement for Unity Reform (MUR), close to the PJD, published a virulent communiqué in which it recalled that the

¹⁰ Video of Abdelillah Benkirane speaking at a meeting of the PJD, <http://hespress.com/videos/32839.html>.

questions of Islamic identity of the Moroccan national had established for centuries and could not be questioned. The MUR communiqué warned Moroccans against the “traps laid by lay associations known for their defense of homosexuality and encouraging not fasting during the month of Ramadan, under the pretext of religious freedom”¹¹. The violence of the Islamist attack, several days before the King’s speech, paralyzed modernist parties and human rights associations and recalled the violent and massive Islamist campaign of 2000 against a plan to increase women’s rights¹². This sudden and unexpected reaction of the PJD turned out to be determining. It obliged the Palace to introduce, in extremis, changes to the draft presented by the CCRC so as not to clash with the Islamist mobilization against the draft presented for referendum.

Continuity and innovation

On 17 June 2011, Mohammed VI spoke to the nation setting down the broad lines of the reform, which he intended to submit to referendum on 1 July 2011, calling on the nation to vote for this reform. The plan proposed by the King was an important step forward in relation to the 1996 Constitution, but could not be described as “revolutionary” or “historical” as was done by the official media and the political parties responsible for promoting the constitutional reform.

The Monarchy remains at the heart of the institutional apparatus by the reform, and retains control of the different levers of power, despite some changes that give more competences and room for maneuver to Government and Parliament. The King remains “Head of State, its supreme

representative, symbol of the unity of the Nation, Guarantor of the sustainability and continuity of the State and Supreme Arbitrator between its institutions” (Art. 42). He appoints the Prime Minister, now referred to as the Head of Government, and names the Ministers on the Prime Minister’s recommendation. He can also terminate the mandate of a Minister, after consultation with the Head of Government (Art. 47). The King’s presidency of the Council of Ministers confers broad prerogatives to control the exercise of executive power. Thus, according to Art. 49 of the new Constitution, the Council of Ministers presided over by the King “deliberates the strategic orientations of State policy, constitutional reform, laws, general orientation of the budget, amnesties, military affairs, declarations of state of emergency, declarations of war”. The King also exercises a power of appointment for “civilian jobs of governor of the Bank of Morocco (Bank al-Maghrib), ambassadors, walis and governors, and officials in the public administration responsible for internal security of the Kingdom, as well as those in charge of institutions and strategic public enterprises” (Art. 47). These appointments are made by the Council of Ministers on the recommendation of the Head of Government and on the initiative of the Minister concerned. Regarding Art. 19, criticized and considered as the source of legitimation of an unlimited autocratic power, it was split in two and dealt with in Arts. 41 and 42, and accompanied by some specifications. In this way the King exercises his prerogatives as Commander of the Faithful exclusively within the religious domain, by means of dahirs (Royal Decrees). The King also presided over the High Council of the *oulémas*, sole authority authorized to issue religious judgments (fatwas) on issues brought before it. At a symbolic level, the constitutional reform suppressed the notion of the “sacrality” of the Monarch and replaced it with the “integrity of his person” (Art. 46).

One important innovation in the constitutional reform is that it stipulates that the Head of Government must be nominated from the

¹¹ For the MUR communiqué, see <http://www.alislah.ma/2011-04-10-22-31-48/2011-04-26-11-06-46/view.download/3/24.html>.

¹² In 2000, hundreds of thousands of Moroccans mobilized by the Islamic movement took to the streets to protest against the proposed reform of the “*code du statut personnel*”, promoted by the leftist government. Faced with the size of the protest and of the Islamic reaction, the government had little choice but to redraft its reforms.

political party that wins the elections. The goal was to put an end to the appointment of politically non-aligned technocrats to Head of Government, as was the case in 2002 when Driss Jettou was nominated Prime Minister, and which sparked the anger and criticism of political parties. In theory, the constitutional reform gives the Head of Government broad prerogatives and a strong profile, and responsible for the executive power of the nation's administrative apparatus, something that the Prime Minister previously did not have (particularly governors and walis, subject to the Minister of the Interior, and appointed directly by the King in his capacity of sovereign). The new reform also provides the delegation by the King of the presidency of the Council of Ministers to the Head of Government.

A large part of the constitutional reform focused on the affirmation and protection of rights and freedoms. This is the outcome of the composition of the CCRC, which was largely made up of human rights activists and figures of a progressive or modernist persuasion. Title II of the new Constitution (Arts. 19 -40), called "Freedoms and basic rights", is in effect a charter dealing with sexual equality, habeas corpus, the protection of civil and political liberties, and social and economic rights. The same concern for the protection of freedoms and the consolidation of the role of law is reflected in the part on legal power, hitherto often criticized for the lacking independence of the judiciary in relation to the power of the executive. The reformed constitution entails "a divorce" between the two powers, and the creation of Supreme Council of the Judiciary (CSPJ), responsible for "the application of guarantees accorded to judges, especially as regards their independence, appointment, promotion, retirement and discipline" (Art. 113). Despite this autonomization of the judiciary in relation to the executive, the King maintained his control of the judiciary through the presidency of the CSPJ, and through the appointment of some of its members.

One problematic issue, which provoked heated debate before the reform was put to popular vote, was the religious question. According to some members of the CCRC¹³, the initial draft prepared by the CCRC was to include the ratification of the principle of "freedom of expression", replacing the "freedom of religion" of earlier constitutions. The insertion of "freedom of individual conscience" in the constitutional text was to guarantee more room for the exercise of individual freedoms and for recognition of the existence and legitimacy of philosophical and spiritual orientations not easily definable as the religions or cults, which were recognized and protected by the State. However, the polemic and the campaign started by the PJD and the MUR led the Palace to beat a retreat on this issue and modify the draft presented by the CCRC. Mohammed Mouatassim, who directed the Political Mechanism, added the final changes to the text after talks with PJD leaders. The notion of "freedom of individual conscience" was abandoned, and the old formula – which only recognized and protected the "freedom of religion" – was maintained.

The question of amazighe was similarly well defined, and recognized as an official language of Morocco, alongside Arabic. A law is planned to define "the process of implementing the official character of this language, as well as the ways to integrate it in teaching and key domains of public life, and that allow it to fulfill its role as official language" (Art. 5).

The referendum: a success for Mohamed VI

After a campaign of two weeks, the reform plan was adopted by referendum with a sweeping majority of 98.5 % of the vote and a 73 % turnout. This result can be explained first by an aggressive and massive campaign mounted by the State to ensure a high turnout and massive popular adhesion. The campaign was strongly criticized by the opponents of

¹³ In particular, Amina Bouayache and Driss Yazami.

the constitutional reform, who complained of the lack of space given them to express their positions and lodge their complaints. The entire state apparatus, especially the mass media, was used to advocate voting for the new Constitution. The mosques were also mobilized to promote the reform and the imams were heavily involved, exhorting the faithful to approve the reform presented by the King, Commander of the Faithful¹⁴. In order to oppose the February 20 Movement, which had called on people to boycott the referendum, the State also mobilized the religious brotherhoods, mainly the highly influential Zawia Boutchichiya, thousands of whose members took to the streets to demonstrate their support for the King and for the new Constitution. The mobilization of the religious brotherhoods was a show of force on the part of the State, which tried to demonstrate its mobilizing capacity within religious groups in the face of the Islamic movement, Al-adl wal-ihsane, which brought a considerable number of protestors to the February 20 Movement. Most political parties, with the exception of the PSU and Annahj, were called on to vote in favor of the Constitution, and much the same goes for the trade unions. The absence of a voice calling on Moroccans to vote “no” largely explains the massive result of the “yes” vote: the opponents of the reform had advocated a boycott, under-estimated the State’s capacity for mobilization and the support enjoyed by the King among his Moroccan subjects.

For Mohamed VI, the constitutional reform was not only an opportunity to promote the image of a reforming King in the eyes of international public opinion — attested to by the positive reactions of Western governments — it was also a way to consolidate his hold on Moroccan political life, by readjusting the distribution of powers in a way that left the hegemony and centrality of the Monarchy untouched.

This reform only responds partially to the demands formulated by the opposition and expressed in their protests organized by the February 20 Movement to establish a genuine parliamentary monarchy. Notwithstanding the broadening of the powers of the Head of Government and the extension of the rule of law, the Monarchy remains the cornerstone of Morocco’s institutional architecture and the King remains the master of the political game. The legislative elections planned for 25 November 2011 will be the first serious test for the implementation of the new Constitution, since they should lead to the appointment of a Head of Government by the party that wins the elections. This will be the first experience of its kind in the constitutional history of the country and could turn out to be very interesting, especially from the perspective of an electoral victory for the Islamist PJD.

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<http://www.aufaitmaroc.com/actualites/maroc/2011/6/30/lheure-du-choix>.