

CONSTITUTIONAL REFORM AND CONSTITUTIONAL REALITY IN MOROCCO

BETWEEN MONARCHICAL STABILITY AND DEMOCRATIC RENEWAL

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Compared to similar processes in other countries of the region, such as Tunisia and Egypt, the 2011 constitutional reform in Morocco proceeded at a truly breathtaking pace. It was merely four months from the time the reform was announced and the King appointed a constitutional commission¹ in March 2011 to the referendum and the date the constitution subsequently came into force in July 2011. The actual drafting of the constitution in the constitutional commission in consultation with the political parties, trades unions and associations took just over three months.

This striking pace was due in part to the fact that the Moroccan kingdom had undergone neither a social revolution nor a violent changeover of power and therefore did not have to overcome a difficult transition phase. Furthermore, the reform was a “royal project”, which enjoyed top priority and whose scope and room for negotiation had been pre-determined in their fundamental details. Ultimately, the purpose of the changes to the constitution was to prepare Morocco’s monarchy for the future and create “stability through reform”.

After the trouble-free adoption of the constitution, some criticisms remained regarding the development process and its contents. One formal aspect that was criticised was that the constitutional commission appointed by the King



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1 | The *Commission consultative de révision de la Constitution* consisted of 18 members, mainly lawyers and university professors, presided over by Professor Abdelatif Mennouni.

was not democratically legitimized and sat behind closed doors.² Criticisms of the contents included the resurfacing of the controversial former article 19, which defined the King's dominant political and religious position of power, in article 41 and 42. The abolition of article 19 had been one of the main demands of the Moroccan protest movement of the Arab Spring.³ Some information also emerged subsequently from among the ranks of the constitutional commission confirming that there are different versions of the text of the constitution.⁴

Compared to the 1996 constitution the new one establishes the independence of the judiciary in law and enshrines far-reaching basic and human rights.

Despite the criticism, the 2011 constitution can be regarded as a milestone in Morocco's constitutional history. Compared to the 1996 constitution, it gives the government and parliament greater scope for political action vis-à-vis the King, establishes the independence of the judiciary in law and enshrines far-reaching basic and human rights. Theoretically, it could thus form the basis for a constitutional and even a semi-parliamentary monarchy.⁵ The constitutional foundations exist, but the challenge now is to achieve an effective and credible implementation and application of the constitutional principles. This will require the reform of existing legislation as well as the passing of

2 | See Souleiman Bencheikh, "Bilan. Constitution: Deux ans pour rien", *TelQuel*, 8 Jul 2013, <http://telquel-online.com/content/bilan-constitution-deux-ans-pour-rien> (accessed 29 Jan 2014).

3 | According to Anja Hoffmann and Christoph König, the abolition of article 19 was one of the few points on which the different activists of the M20 movement agreed. Anja Hoffmann and Christoph König, "Scratching the Democratic Façade: Framing Strategies of the 20 February Movement", *Mediterranean Politics*, No. 1, Vol. 18, 16; see also Vish Sakthivel, "Morocco's Adl wal-Ihsan: They'll Be Back", *Fikra Forum*, 17 Apr 2013, <http://fikraforum.org/?p=3214> (accessed 13 Jan 2014).

4 | On the one hand, there are differences in terminology between the Arabic and the French versions; on the other, there are also differences in the text presented by the King, the text of the referendum and the text ultimately published in the *Bulletin Officiel*. See Souleiman Bencheikh, "Le match parfait de Mohammed VI", *TelQuel*, 10 Jul 2013, <http://telquel-online.com/content/le-match-parfait-de-mohammed-vi> (accessed 29 Jan 2014).

5 | Mohammed Hashas remains more sceptical. He considers the new constitution a "transitory constitution" that cannot, in its current form, give birth to a parliamentary monarchy. See Mohammed Hashas, "Moroccan Exceptionalism Examined: Constitutional Insights pre- and post-2011", *IAI Working Papers*, 10 Dec 2013, <http://iai.it/content.asp?contentid=1032> (accessed 3 Feb 2014).

new organic laws, without which the constitutional principles would remain pure lip service. The new constitution envisages 19 of these organic laws (*lois organiques*), which are intended to determine the details. Only four of these laws have been implemented to date.

In view of the fact that the constitutional reform proceeded successfully and virtually without any problems, Morocco is frequently depicted within the kingdom as an “island of stability” and an “exception” within the region. The constitution indeed represents a legal template for political stability through democratic renewal. The question now is what balance between monarchical stability and democratic change the kingdom will aim for. To assess the success⁶ of the 2011 constitutional reform one needs to examine the constitutional innovations and principles on the one hand and constitutional practice and application on the other. The most important points to consider when carrying out the assessment are the separation of powers within the state as well as the available measures to counter any attempts to monopolise power. The second important area to consider is the granting of basic rights, freedoms and participatory rights of individual citizens against the state as well as the degree to which the state respects pluralism and diversity.

“DUAL EXECUTIVE”: KING AND HEAD OF GOVERNMENT IN AN UNEQUAL POWER GAME

According to the new constitution, the King remains the head of state (article 42), the highest religious authority (*amir al-muminin*) (article 41), guarantor of state security, national unity and independence, guarantor of the independence of the justice system, commander-in-chief of the military as well as the chief arbiter between the institutions. With the new constitution, the King is no longer sacred, but an inviolable person to whom respect is due (article 46). He remains the central figure within the state. His role is not limited to symbolic and representative functions. As head of state and highest religious authority, he has crucial influence over the country’s political, socio-cultural and religious orientation. The King manages all issues

6 | What is meant by success in this context is political stability through democratic renewal.

crucial to the interests of the state and important political and religious decisions by *dahir* (royal decree). In addition, the King can issue directives (*hautes instructions royales*) to the head of government or other decision-makers. The constitution does not specify precisely where the royal directives are placed in the hierarchy of Moroccan law.⁷ However, one can assume that they will not be questioned or overseen by any other government body.

Where religion is concerned, the King has the exclusive prerogative to make decisions. Official religious rulings (*fatawa*, sing. *fatwa*) can only be issued by the Supreme Ulama Council, headed by the King. This bundling of political power (in the role of the head of state) and the highest religious authority (as Commander of the Faithful) constitutes the King's special power status and inviolability. It is also one of the aspects of the present system that attracts the harshest criticism from the non-parliamentary Islamist opposition (*al-Adl wa al-Ihsan*).

The 2011 constitutional reform gave the office of the head of government greater legal authority and enhanced its importance within the executive as the second political pole beside the prominent role played by the King. Changing the designation of the office from "Prime Minister", who had been *primus inter pares*, to "Head of Government" was intended to emphasise this adjustment in

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importance. According to article 47, the King will appoint the candidate whose party has gained the majority in the parliamentary elections Head of Government for the first time. This should prevent him from appointing minority candidates or technocrats in the future, as happened in 2002 with the appointment of independent Prime Minister Driss Jettou, for example. This new constitutional provision strengthens the political office and the political reputation of the Head of Government.

A further innovation illustrating the "dual executive" is the legal embodiment of the Government Council headed by the Head of Government (Conseil du Gouvernement)

7 | According to Mohammed Madani, a lawyer at the Mohammed V University in Rabat, the directives are above the law. Statement made on 7 Jun 2013 at a political debate in Rabat.

in conjunction with the Council of Ministers (Conseil des Ministres) presided over by the King. While the Council of Ministers (article 49) has sole authority to make strategic political decisions, involving matters such as fundamental draft bills and proposals for constitutional changes as well as the appointment of walis, governors and other high officials of particular strategic importance, the Council of Government (article 92) is left with general political decisions and directives.

This allocation of complementary functions to the Council of Government and Council of Ministers and other areas where the King and the Head of Government have to act in collaboration with each other suggest a certain amount of constitutionally enshrined “sharing” of executive power. This power sharing includes, for instance, the fact that, with a few exceptions, all royal *dahirs* have to be countersigned by the Head of Government (article 42). Mutual consultation between King and Head of Government, for instance in the event of the dissolution of parliament or the dismissal of ministers, as well as the requirement for the Head of Government to countersign many royal actions represent first signs of a system of checks and balances.

The majority of the Moroccan media and experts in constitutional matters have a similar opinion on the question whether the new constitution means that the model of the “executive monarchy”, in which the King not only rules, but governs as well, has been replaced by the model of a “constitutional parliamentary monarchy”.⁸ The consensus is: “The King continues to govern – but no longer on his own.”⁹ There are now two poles in the executive, albeit two very unequal ones. The Head of Government has become a second person to hold executive power besides the King. The King continues to make the decisions about the general course to follow in political, social, economic or religious matters without having

The Head of Government has become a second person to hold executive power. The King continues to make the decisions about the general course to follow in political or social matters.

8 | Article 1 of the new constitution describes Morocco as a “constitutional, democratic, parliamentary and social monarchy”.

9 | According to Abderrahmane Haddad, “Le partage des compétences en matière de nomination des hauts fonctionnaires de l’Etat entre le roi et le chef du gouvernement”, *L’Opinion*, 23 Aug 2012, http://lopinion.ma/def.asp?codelangue=23&id_info=27384 (accessed 13 Jan 2014).

to fear substantial restrictions. Jurist David Melloni speaks of “collaboration” or “cohabitation” between the King as the established actor and the Head of Government as a new actor. According to Melloni, the new constitution has introduced a far-reaching rebalancing of powers as well as a strengthening of the Head of Government through the recognition of democratic majorities, albeit with the King retaining his supremacy.¹⁰

Political practice has shown that the King and the *makhzan* power centre established around the King continue to exert political and economic influences that are not reflected in the constitution. According to Larbi Benothmane, a lawyer and professor at the Mohamed V University – Agdal in Rabat, the balance of power and the power sharing described in the constitution do not correspond to the King’s actual position and to political reality.¹¹ Informal power sharing and informal centres of power continue to determine political reality beyond the constitution. The informal centre of power around the Palace includes, in particular, the circle of royal advisers, which was developed into a type of shadow cabinet when the PJD took over the government in 2012. The royal advisers work on all important political dossiers affecting the country and are able to act as the agenda setters and provide impulses for decisions on political strategy.

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Since the constitutional reform, political practice has proved highly consistent with respect to the King’s dominant executive position. It was, in fact, not only the King himself who bolstered his executive position through occasional interventions in political decisions made by the government. It was above all leading political actors from the governing coalition who emphasised and strengthened the King’s special executive position through their political actions.

During his first governing coalition (2012 to 2013), the Head of Government and PJD party leader Abdelilah Benkirane was occasionally accused of an excessive strategy

10 | See David Melloni, “La Constitution marocaine de 2011: Une mutation des ordres politique et juridique marocains”, *Pouvoirs*, 2013, No. 145, 10 and 17.

11 | According to Benabdallah on 7 Jun 2013 at a political debate in Rabat.

of ingratiation and appeasement towards the King. He was said to be “more royalist than the King” in his behaviour and “to degrade himself to merely following orders”.¹² Even within his own party, Benkirane was criticised for not sufficiently exercising the rights he has against the King, which are guaranteed in the constitution.¹³ Over the last few years, Head of Government Benkirane has demonstrated his loyalty and subordination to the King by making statements such as “le patron c’est Lui (le Roi)” (he [the King] is the boss) and “on ne marchand pas avec le Roi” (one does not bargain with the King), indicating his unwillingness to take up a potential fight for power to strengthen the government.

The government leadership has largely accepted the fact that the King intervenes in the political action, sometimes (pro)actively, sometimes reactively,¹⁴ and occasionally in direct competition with government activities. In some instances, the King ignored the opinion of the Head of Government or even counteracted or reversed decisions made by the government. The media interpreted the royal speech

12 | According to Mohammed Madani, quoted by Beat Stauffer, “Glänzende Fassaden, wackliger Untergrund”, *Neue Zürcher Zeitung*, 29 Nov 2013, <http://nzz.ch/1.18194364> (accessed 13 Jan 2014).

13 | See Ali Hassan Eddehbi, “Portrait. L’enfant terrible du PJD”, *TelQuel*, 24 May 2013, <http://telquel-online.com/Actualite/Maroc/Portrait-L-enfant-terrible-du-PJD/571> (accessed 29 Jan 2014).

14 | See Thierry Desrues, “First Year of Islamist Government in Morocco: Same Old Power, New Coalition”, in: *IEMed Mediterranean Yearbook 2013*, 170-173. Desrues cites the King’s intervention in the media reform of Minister of Communications El Khalfi (PJD) as an example of reactive intervention. The King stopped a reform project for the Arabisation and the announcement of prayer times over the state media and appointed a new commission, which continued the work, but watered down or withdrew many intended changes. An instance of proactive intervention by the King was the appointment of the members of the commission for the reform of the justice system, which the King made without consulting the government. Another example is a meeting with the Minister of the Interior and further high-ranking military personnel and state security experts that the King convened for August 2012, where a large-scale crackdown on police and customs officers suspected of corruption was discussed. The meeting and the subsequent activities were conducted without having informed or consulted the Head of Government. See also Maati Monjib, “Al-malik wa rais al-hukuma min asma ila asma” (The King and the Head of Government: from crisis to crisis), *Sada*, 20 Sep 2012.

of August 2013, in which the King focused on the subject of education and denounced the poor state of education in the country, as clear criticism of the government's work by the King.

Similarly, the power struggle between the two party leaders of the governing coalition at the beginning of 2013 and the subsequent government crisis ultimately benefited the King's position. For several months, PJD party leader Benkirane and the newly elected leader of the Istiqlal Party Hamid Chabat failed to overcome the government crisis by their own efforts after Chabat had announced the withdrawal from the PJD-led government. Instead, Chabat placed the King into the role of supreme arbiter by requesting him to mediate. Istiqlal leader Chabat did not base his appeal to the King on article 47 of the constitution, which enables the Head of Government to request the resignation of members of government from the King. Instead, Chabat made reference to article 42, which describes the King as supreme arbiter and guarantor of the stability of the state. The fact that Chabat did not solve the government crisis as a normal conflict among parties but involved the King as supreme arbiter between state institutions is described as follows in the Moroccan weekly newspaper *TelQuel*: "A retrograde step for the democratic attainments that have only just been gained".¹⁵

2013 was also a year during which King Mohammed VI experienced the worst crisis of his rule since ascending the throne in 1999 because of the so-called "paedophile scandal".¹⁶ The royal pardon for the Iraq-born, Spanish perpetrator Daniel Galván Viña at the end of July had led to countrywide protests once the decision had filtered through to the national media. Demands for the royal decision to be revoked came from across all sections of society. Only a few days later, the royal cabinet conceded that an incorrect decision had been taken due to erroneous information and then revoked the pardon within a week. The situation where the Moroccan people demand the King to revoke

15 | See Mohammed Boudarham, "Gouvernement. Chabat, Benkirane et le roi", *TelQuel*, 22 May 2013, <http://telquel-online.com/Actualite/Maroc/Gouvernement-Chabat-Benkirane-et-le-roi/571> (accessed 29 Jan 2014).

16 | Cf. Youssef Aït Akdim, "Grâce et châtement", *Jeune Afrique*, 11-24 Aug 2013, 56-58.

a decision and are, in fact, successful in their demand represents an absolute first in the kingdom. Mohammed Ennaji describes the right to grant royal pardons (pursuant to article 58) as an expression of “absolute power and of the relationship of dependence on the King”.¹⁷ However, according to article 42, a decree of pardon requires the Head of Government’s countersignature. There were some voices raised in the social media questioning the right to grant pardons. While the PJD-led government had trouble in enforcing its own positions vis-à-vis the Palace or did not even try to do so, the united will of the people was able to make a stronger political impact in the case of Daniel Galván.



“More royalist than the King”? Head of Government and PJD party leader Abdelilah Benkirane was occasionally accused of ingratitude towards the monarchy. | Source: Magharebia, flickr ©©.

Similarly, there has been repeated criticism in the social media in 2013 about the annual *bai’a* ritual, a ceremony during which high state official pledge allegiance to the King.¹⁸ This ceremony, which has been practiced since

17 | See Mohammed Ennaji, quoted in: “À la grâce du roi”, *Jeune Afrique*, 12-18 Feb 2012, 45.

18 | In the critical online magazine *Lakome*, readers overwhelmingly described the practice of *bai’a* as not in keeping with the times, as a culture of subservience or as un-Islamic. Another issue regularly discussed on the occasion of the annual Holiday of the Throne is the symbolic kissing of the King’s hand during the *bai’a* ceremony. While modernists condemn this as an archaic gesture of subservience, advocates regard it as an expression of respect and reverence. See also Fatima El Ouafi, “La bey’â, contrat moral et serment d’unité”, *L’Economiste*, 31 Jul 2012, 27 et seq.

the 16th century, symbolises the feudal relationship of dependence and trust between the King and his civil servants.¹⁹ In July 2013, the *bai'a* was boycotted for the first time by a representative of the Istiqlal Party, which attracted a great deal of support from readers of the critical online portal *Lakome*. The annual renewal of allegiance to the King (*tajdid al-bai'a*) is not regulated by the constitution, and it is, in fact, outside or even above the constitution in the opinion of some lawyers.

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In a review of the last two years of constitutional practice and interpretation, the national media confirm that the country has a "King who rules and governs" ("un roi qui règne et gouverne"). During the government crisis of 2013, Mohammed VI was also able to set himself up as an independent "arbiter" as well as a political "player" (*arbitre et joueur*).²⁰ The new constitution has thus not brought about a genuine break in political practice and in the way the country is governed.²¹

The *makhzan* circle that has emerged around the King comprises a political and economic elite with close links to the Palace, which also benefit financially from the existing structures through a network of economic ties. It continues to have significant influence in all important political and economic strategic issues affecting the country. The *makhzan* system is built on a logic of privileges and not of rights and responsibilities (guaranteed by the constitution).²² In the opinion of many observers, these informal power structures and the continuing dominant position of the King describe political reality and are not embodied in the new constitution. While the new post of Head of

19 | The regular renewal of allegiance (*tajdid al-bai'a*) was introduced by Sultan Ahmad Al-Mansur Al-Dhahabi in the 16th century. During this ceremony, which has been extended considerably since the rule of Hassan II, several thousand religious dignitaries, high-ranking army officials, specific representatives from the tribes and from civil society as well as high-ranking civil servants from the Ministry of the Interior now pledge their allegiance to the King face to face, sealing it by a kiss of the King's hand (or shoulder).

20 | See Bencheikh, n. 4.

21 | See Bencheikh, n. 2.

22 | See Younes Abouyoub, "Morocco – A 'Democratic Moment'?", *Jadaliyya*, 20 Mar 2012, <http://jadaliyya.com/pages/index/4750> (accessed 13 Jan 2014).

Government has given the executive a new pole, it is not sufficiently powerful to act as a counterbalance.

PARLIAMENTARY OVERSIGHT: PARLIAMENTARY AND INFORMAL TYPES OF OPPOSITION

In parliamentary systems, keeping a check on government is traditionally first and foremost a role performed by parliament. The new Moroccan constitution therefore also envisages a new balance in the relationship between legislative and executive powers. On the one hand, the number of areas where parliament has sole legislative responsibility was increased from twelve to thirty.²³ On the other hand, parliament's oversight function with respect to the government was strengthened by the introduction of parliamentary questions and boards of inquiry.²⁴

In political practice, the Moroccan parliament has not yet been able to sufficiently assert its importance as the central legislative and oversight body. The President of the House of Representatives in office since 2011, Karim Ghellab, was mainly engaged in trying to transform the first chamber into a more efficient and effective body through new internal regulations and disciplinary measures for its own members.²⁵

One particular innovation is the institutionalisation of the parliamentary opposition. In article 10, the role, rights and participation options of the parliamentary opposition were enshrined in the constitution for the first time. Among other things, there is mention of the right to freedom of expression and assembly, guaranteed transmission times in the state media, the right to public funds as well as the oversight of government activities through inquiries, boards of inquiry or motions of no-confidence. Additionally, effective cooperation by the opposition in the legislative

23 | Article 71 lists the areas of responsibility of parliament (*domaines de la loi*). According to article 70, the government can only issue regulations or directives in these areas if they have been preceded by enabling acts (*loi d'habilitation*).

24 | A board of inquiry can be formed at the initiative of the King or of a third of the members of the 1st or 2nd parliamentary chamber (article 67).

25 | In particular, Ghellab has advocated stronger sanctions for unjustified absences of parliamentarians. See "Le Parlement traque les députés absents", *L'Economiste*, 1 Aug 2012, 14.

process, for example through legislative initiatives, is to be guaranteed.²⁶ With the 2011 constitution, the parliamentary opposition obtained a constitutional status for the first time. According to Jallal Essaid, President of the House of Representatives from 1992 to 1998, the constitution awards the opposition an important role in the parliamentary system and may help to rouse parliament from its existing lethargy.²⁷ Of course, the legal strengthening of the opposition could also be seen as a precautionary measure against an election victory by the Islamists, which was already on the cards at that time.

In spite of having been upgraded in legal terms, the parliamentary opposition does not represent a substantial force in constitutional reality and in the political game played out between the government bodies. Other informal types of opposition within the state power apparatus play a larger role. One of the strongest forces counterbalancing the PJD-led government (Benkirane I: 2012-2013) comes from the coalition itself. The multi-faceted coalition comprising Islamists (PJD), national-conservatives (Istiqlal), socialists (USFP) and conservative-liberals (Mouvement populaire) made it more difficult to enforce purely Islamist policies. The subsequent power struggle between the party leaders of the PJD and Istiqlal ultimately resulted in the government becoming incapacitated and a new government being formed. The new coalition partner RNI (Rassemblement National des Indépendants), which is regarded as being close to the Palace, is a long-time ideological opponent of the PJD and will also work against policies that are influenced excessively by PJD views. In its

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According to Mohammed Sassi, member of the PSU party executive committee, other types of opposition are considerably more effective than the classic parliamentary

26 | Article 82 reserves one day a month to deal with legislative initiatives of the parliamentary opposition.

27 | According to y Essaid made at a political debate in Rabat on 8 February.

opposition. Sassi distinguishes four types of opposition within the power apparatus of the state.²⁸

1. According to his idea of the "partial opposition" (*mu'aradha nisbiya*), the opposition parties only attack the government, which constitutes merely a small part of the power apparatus. According to the new constitution, the King retains some 70 per cent of the power and represents the real centre of power that nobody criticises.
2. The "opposition through authority" (*mu'aradha al-wilaya*) is exercised by the conservative and "administrative parties",²⁹ which are close to the Palace. These opposition parties reflect the state apparatus itself and the covert power centre around the Palace, the Ministry of the Interior and the security forces. Benkirane has already experienced their influence in the area of domestic security.³⁰
3. The opposition "by the government itself" (*mu'aradha al-hukumiya*) represents the phenomenon of the PJD occasionally showing that it has not overcome its role as the former opposition party. One example mentioned by Sassi is the fact that numerous PJD ministers criticise the previous government, thus holding former decision-makers responsible for current ills.
4. According to Sassi, there is a further type of opposition "within the government" (*mu'aradha min dakhil al-hukuma*). This refers to the above-mentioned political differences within the previous government coalition and the present one.

Sassi's list illustrates that the dividing lines between the different centres of power do not run along a classic separation of powers as envisaged by the constitution. With the current governing coalition, there are different poles

28 | Mohammed Sassi presented his categories at a political debate in Rabat on 8 February 2013.

29 | These are generally considered to include the PAM, the Union Constitutionnelle as well as the RNI.

30 | One example is a public PJD event that was to take place in Tangiers in 2012 and at which Head of Government Benkirane was going to speak, which was not authorised by the security forces. Benkirane was not informed about this decision in advance.

of power opposing one another within the executive in the wider sense and also within the government, which hold each other politically in check at best and may result in the government becoming incapacitated at worst.

**THE NEW CONSTITUTIONAL JURISDICTION:
INDEPENDENT AND BALANCED MEANS OF OVERSIGHT?**

In view of the rather weak parliamentary oversight of the executive, the question arises whether the justice system and the newly created Constitutional Court, in particular, can establish themselves as effective supervisory bodies for the prevention of potential abuses of power. The 2011 constitution envisages the transformation of the former Constitutional Council (Conseil Constitutionnel) into a Constitutional Court (Cour Constitutionnel) with investigative powers. Modelled loosely on the French Constitutional Court, the Moroccan Constitutional Court is to check all laws adopted in parliament for their constitutionality before they are promulgated (article 132).³¹

Probably the most important innovation in the area of constitutional jurisdiction is the possibility of concrete judicial reviews. In future, the Constitutional Court can check laws for their constitutionality in the course of legal proceedings or legal disputes and declare them unconstitutional if they violate constitutionally guaranteed basic rights and freedoms of one of the conflicting parties (article 133). The Moroccan justice system does not have any provisions for an abstract judicial review³² or complaint of unconstitutionality³³ as contained in German constitutional law.

31 | Article 132 also states that international agreements can be presented to the Constitutional Court for examination before ratification, either by the King, the Head of Government, the president of the 1st or 2nd chamber, a fifth of the Members of the 1st chamber or 40 Members of the 2nd chamber.

32 | The abstract judicial review in German procedural constitutional law allows laws to be checked for their constitutionality outside of any concrete legal dispute. The federal government, the government of a German Federal State or a quarter of the Members of the Bundestag are entitled to apply for such a review.

33 | The purpose of allowing complaints of unconstitutionality to be made is to guarantee the protection of citizens' basic rights and freedoms against the state. According to article 93 of German Basic Law (GG), any citizen who sees one of their basic rights violated by a public power can file a complaint with the Federal Constitutional Court (BVerfG).

The constitution and the competences of the Constitutional Court are intended to introduce a certain balance of power between the constitutional bodies. There are many decisions that require cooperation between the state institutions as the involvement of the Constitutional Court is required. The President of the Constitutional Court must, for instance, be consulted before parliament is dissolved (articles 96, 104). Of the twelve constitutional court judges, who serve a nine-year term, three each are appointed by the first and second parliamentary chambers and six by the King (article 130). The constitution further guarantees that the parliamentary opposition has a say in the proposal and selection of the constitutional court judges. The President of the Constitutional Court is appointed by the King.³⁴

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Despite the clear commitment to the introduction of genuine constitutional jurisdiction, the implementation once again depends on concrete implementation laws. Until a concrete organic law has been passed, it remains unclear what shape the constitutional jurisdiction will take precisely. Experts in constitutional law and in politics also disagree on the degree to which the Constitutional Court can guarantee the protection of citizens' basic rights and freedoms and on how the independence and professional competence of the constitutional court judges can be ensured.³⁵

34 | In an earlier draft by the constitutional commission the King was meant to share his right to propose a person to be appointed as President of the Constitutional Court with parliament. The King's sole power of appointment, which was inserted subsequently, indicates the importance attached to the Constitutional Court.

35 | According to a statement made at a political debate on constitutional jurisdiction among politicians, experts in political science and experts in constitutional law on 27 November 2013 in Rabat. The debated issues included the possibility of citizens to file constitutional complaints in the event of a violation of basic rights and the question to what extent social and economic rights could be enforced as basic rights. The discussions also covered the problem of illiteracy among parliamentarians and elected local representatives as well as ways to guarantee a minimum level of education for those occupying public office.

**PROTECTION OF BASIC RIGHTS AND PARTICIPATION:
LAW AND REALITY**

The 2011 constitution claims to provide the basis for a parliamentary, democratic and constitutional monarchy. The term 'citizen' (the feminine form is generally also mentioned) is quoted in numerous places in order to emphasise the rights and claims that citizens have vis-à-vis the state. Several enshrined principles, such as "participatory democracy", non-discrimination on the basis of gender, ethnicity, faith, language or social or regional origin as well as the principle of good governance are intended to form the basis for the democratic, constitutional and liberal character of the state.

Table 1
**Basic rights, freedoms and participatory rights
in the 2011 Moroccan constitution**

Basic rights	
Right to life and physical (and mental) inviolability, prohibition of torture	Articles 20, 22
Protection from arbitrary arrest and further basic legal rights	Article 23
Inviolability of a person's home and protection of privacy	Article 24
Protection of personal property	Articles 21, 35
Equality principle: equal (civil, political, economic, social and cultural) rights and freedoms for women and men	Article 19
Individual freedoms	
Freedom of opinion and expression, freedom of the press	Article 25
Freedom of the arts and science	Article 25
Freedom of assembly and association	Article 29
Participatory rights	
Right to petition	Article 15
Active and passive universal suffrage	Article 30
The ability of civil society to act in freedom	Article 12

Social and economic rights

Health, social security, education/professional training, adequate accommodation, work, access to water and a clean environment	Article 31
Protection and social support of the family	Article 32

Rights derived from the principles of good governance

Right to information from public administration and elected institutions	Article 27
Sustainable development	Article 31

Source: Own presentation.

The 2011 constitution was further enhanced by the inclusion of a comprehensive catalogue of basic rights, which guarantees citizens essential basic rights, freedoms and participatory rights vis-à-vis the state. This catalogue of basic rights includes fundamental rights such as the right to life and physical inviolability, protection of privacy and private property, and fundamental legal rights, freedoms such as freedom of expression and freedom of the press, freedom of the arts and science, freedom of association and assembly, as well as participatory rights such as the right of petition, universal suffrage and unhindered activity of civil society. In addition, the constitution mentions certain social and economic rights; although these are not enforceable by legal means or guaranteed, they are to be worked towards in line with the goal of good governance. Amongst other things, these include the right to health, social security, education/professional training, adequate accommodation, work as well as access to water and a clean environment. The constitution also includes a separate chapter dedicated to good governance.

As the constitutional innovations in the area of institutional power sharing have not yet had sufficient impact because implementation laws are not yet in place or because of the informal centres of power, the constitutionally guaranteed basic rights and freedoms are not yet universally applied. Apart from the fact that the legal provisions are not being publicised sufficiently, this is due to the lack of concrete legal provisions, the outstanding revision of existing laws and incomplete constitutional structures. Socially weak and

disadvantaged groups of the population (illiterate people, people working in the informal sector, women working in agriculture, single mothers, etc.) find it particularly difficult to take advantage of their rights. Insufficient knowledge about their own rights and a justice system with prejudiced, corrupt or simply poorly trained and inadequately equipped judges make it difficult for wide swathes of the population to assert their basic rights. According to Borzou Daragahi, the changes brought about by the new constitution should, in fact, make themselves felt particularly here, in the area of the rule of law and good governance.³⁶ Judges and middle-ranking officials should become actors of the new constitutional reality.

The implementation and interpretation of basic rights and freedoms is impeded particularly in areas where they touch on sensitive matters of state or social issues. These issues include the Muslim faith on the one hand and internal security on the other. Basic rights and freedoms, such as the freedom of religion and belief, women's rights or freedom of speech and press freedom as well as rights that affect national identity and unity, have engendered social debates that are having a long-lasting effect. In many sensitive areas, the implementation of the reform process is therefore only progressing sluggishly or coming up against special evaluation criteria.

FREEDOM OF BELIEF, CONSCIENCE AND RELIGION

In June 2011, PJD party leader Abdelilah Benkirane threatened to boycott the constitutional reform if it was to enshrine the principle of the freedom of belief.

In view of the very extensive catalogue of freedoms and human rights in the constitution, it is striking that one essential human right, namely the freedom of belief, conscience or religion, has been excluded. Although the constitutional commission envisaged freedom of conscience, this was not realised due to strong protests on the part of the PJD. In June 2011, PJD party leader Abdelilah Benkirane threatened to boycott the constitutional reform if it was to enshrine the principle of the freedom of belief. Although Benkirane did not oppose the Islamic principle of freedom

36 | Borzou Daragahi, "États de non-droit", *Jeune Afrique*, 17-23 Nov 2013, 46-49.

of belief ("no coercion in religion"), he considers its enshrinement in law a danger to national identity and public morality.³⁷

It is, in fact, not only the Islamists who are impeding a comprehensive freedom of belief and conscience. On the one hand, the Islamists boycotted a clear commitment to freedom of religion. But on the other hand, genuine freedom of religion and belief would also undermine the religious authority of the King in his dominant role as Commander of the Faithful. A clear indication that the monarchy will not stand for any defection from the community of faith was provided by the fatwa on apostasy issued by the Supreme Ulama Council, which confirmed the death penalty envisaged for apostates at least in theory and came to public knowledge in April 2013.³⁸

The state makes a distinction between an unacknowledged freedom of belief for the Muslim community and a freedom to exercise one's religion enshrined in the constitution (*libre exercice des cultes*). The latter has been exercised for centuries and has been of benefit mainly to members of other faiths such as Jews and later Christians. The members of the country's official faith, however, are subject to restrictions in the way they practice, or fail to practice, their faith. In the last few years, the MALI movement (Mouvement alternatif pour les libertés individuelles) founded in 2009, for instance, has attracted a great deal of attention by the provocative action of holding public picnics

The MALI movement has attracted a great deal of attention by the provocative action of holding public picnics during Ramadan.

37 | Benkirane thus viewed the enshrinement of the freedom of belief as a gateway for the breakdown of values and social customs. Issues that Benkirane counts among the "risks" to Muslim identity and to national customs in Morocco include the failure to observe the rule to fast in Ramadan, sexual licentiousness and homosexuality. See Mohamed Aswab, "Les Islamistes et la Constitution: Le PJD monte au créneau sur la liberté de croyance", *Aujourd'hui*, 14 Jun 2011, <http://www.aujourd'hui.ma/maroc-actualite/focus/m-77697.html> (accessed 22 Jan 2014).

38 | The fatwa had been issued back in 2012, allegedly at the request of the interministerial delegation for human rights issues linked to the Head of Government (Délégation interministérielle des droits de l'homme). See Ayla Mrabet, Mohammed Boudarham and Jules Crétois, "Enquête. Les ouléma de sa Majesté", *TelQuel*, 7 May 2013, <http://telquel-online.com/En-couverture/Enquete-Les-oulema-de-sa-Majeste/> 568 (accessed 13 Jan 2014).

during Ramadan. Public refusal to adhere to the obligation on Muslims to fast during the month of Ramadan is prohibited under Moroccan criminal law and can be punished with fines or with a prison term of up to six months.³⁹ This is where the exercise of religious freedom and the creation of a public nuisance collided.⁴⁰

According to Lahcen Oulhaj, the freedom of belief, i.e. the freedom to make your own choices, and change them, where religion as well as issues of morality and conscience are concerned as well as the freedom to have no faith, comes into conflict with the current legal system. After all,

The Moroccan state reserves the right to assert the precedence of national cultural “constants” should national provisions come into conflict with higher-ranking laws.

article 3 of the constitution⁴¹ defines Islam as the state religion. Comprehensive freedom of belief would also mean giving up part of the royal monopoly on power and part of the royal authority in the religious sphere. Furthermore, the Moroccan state reserves the right to assert the precedence of national cultural “constants” should national provisions come into conflict with higher-ranking laws. Theoretically, international provisions in the area of freedom of belief could be overridden by the “immutable national identity” (*identité nationale immuable*) stipulated in the constitution.⁴²

39 | According to article 222 of the Moroccan Penal Code. There are exceptions for those who are exempted from the obligation to fast according to Muslim law.

40 | Further examples of restrictions on religious freedom are discriminatory court rulings against the Baha’i faith and the arrest of two minors in 2013 in Nador on account of a photo of them kissing published on Facebook. The latter case once more involves a clash between religious freedom in the wider sense (the freedom to extramarital relationships between men and women) and moral values entrenched in society.

41 | Article 3 prescribes Islam as the state religion, but simultaneously guarantees the freedom to exercise one’s faith.

42 | According to Mohammed Madani, the constitution does not clarify the hierarchy of international and national law. There is no unequivocal commitment to the supremacy of international conventions over national law. See Mohammed Madani, “La Liberté de conscience, de conviction et de religion au Maroc: aspects juridiques et constitutionnels”, in: Helmut Reifeld and Farid El Bacha (eds.), *La Liberté de Religion*, Konrad-Adenauer-Stiftung, Rabat, 2013, 67-68.



The only woman in the cabinet up to the formation of the new government in 2013: Family minister Bassima Hakkaoui (PJD), in office since 2011. | Source: Foreign and Commonwealth Office (FCO), flickr, ©©©.

All in all, there seems to be a contradiction in the King having a monopoly on religious and state power, yet he himself emphasising the secular tradition of the monarchy.⁴³ In his dual role as head of a state that is secularised in many areas on the one hand and as Commander of the Faithful on the other, the monarch makes efforts to “reconcile the country’s various secular, lay and religious interests”.⁴⁴ As is the case in many other Arab states that are in part secular in their outlook, Moroccan civil status laws are influenced by religion. Other areas of law are independent of religious principles, but can reflect religious-cultural traditions and values as can be seen in criminal law, for instance. The government is not granted any religious competences whatsoever. Similarly, political parties are prohibited from

43 | In his royal speech of July 2013, King Mohammed VI mentioned Morocco’s secular tradition and culture. A similar concept can be found in the UK, where the Queen is both the head of state and head of the Anglican Church of England.

44 | Helmut Reifeld, “Exception or Pioneer? Political Islam in Morocco”, *KAS International Reports*, 10/2013, 6-21, here: 9, <http://kas.de/wf/en/33.35674> (accessed 22 Jan 2014).

basing their programmes on religious, linguistic, ethnic or regional principles (article 7). These provisions can also be seen as protecting the royal prerogative on interpretation in religious matters as well as protecting national unity and continuity rather than constituting an expression of the consistent separation of state and religion.

GENDER EQUALITY

Moroccan women's rights activists have been fighting for legal and social gender equality since the 1970s. The Moroccan state began to address these demands in the 1990s. Ever since, it has pursued an approach aimed at improving the legal, political and economic position of women. The state has thus become an essential actor of change in this area and has been working hand in hand with various secular women's rights organisations. With the 2004 reform of family law and the most recent constitutional reform of 2011, the top-down "state feminism"⁴⁵ inspired by King Mohammed VI has resulted in considerable improvements in the equality of women in front of the law.⁴⁶ This longstanding pact between the elites and decision-makers close to the King on the one hand and secular women's rights movements on the other is now being challenged by alternative ideas about women's and family policies on the part of the government led by Islamists.

In article 19, the 2011 constitution enshrined a clear commitment to men and women being treated entirely equally in legal, political, economic, social and cultural matters and an absolute ban on discrimination. The constitution thus represents a further milestone in the process of achieving legal gender equality in Morocco. It was celebrated as an achievement by the Moroccan women's rights movement. Political equality had already been enshrined in the 1996 constitution. In addition, the 2009 *Charte communale* had introduced an equality strategy at the local level. However, the most influential innovation in the area of equality

45 | According to Houria Alami Mchichi, "Les effets du printemps arabe sur la participation des femmes dans les sphères publiques et politique au Maroc", CARE International Maroc, 20 Nov 2012, 29.

46 | King Mohammed VI also initiated the reform of the citizenship law. Under the new citizenship law of 2006, a woman can now also pass her Moroccan citizenship on to her children.

during the last decade was the 2004 reform of Moroccan family law (Moudawana reform). This reform introduced the principle of joint responsibility (*coresponsabilité*) of man and wife as well as enshrining clear legal improvements for women with respect to marriage, divorce and conduct within marriage.⁴⁷

The new constitution of 2011 envisages the establishment of a new Equality Authority,⁴⁸ charged with defending the rights pursuant to article 19. However, the authority is intended more as an advisory body, which records cases of discrimination, produces annual progress

reports and renders account to parliament. **Women's rights activists have commented that the equality laid down in article 19 is described more as a goal than an enforceable right.**

To what extent it will be able to bring about real change in women's daily lives is still completely unclear. Women's rights activists have commented that the equality set forth in article 19 is described more as a goal than an enforceable right.⁴⁹ Furthermore, the goal of equality also comes up against "constants", which are also mentioned in article 19 without being described in any greater detail. These constants can, for instance, include the "immutable national identity" mentioned in the preamble, which is to be respected irrespective of international conventions.

The implementation of the new equality principles is now conducted by a government led by Islamists for the first time. However, the implementation plan of family minister Bassima Hakkaoui (PJD), *the Plan gouvernemental pour l'égalité des genres 2012-2016*, "Ikram" for short, does not at first glance appear to be very different from the plan of the previous family minister Nouzha Skalli. The action plan that Hakkaoui presented in July 2013 addresses issues in the areas of education, health, equality of opportunity in the labour market and specifically equal access to public office, the strengthening of women's economic and social

47 | The wife's duty to obey her husband was abolished. Women have since been able to marry without their father's consent and file for divorce on their own account. The conditions of polygamy have been made considerably more onerous. The duty to be faithful in marriage was shared between both partners. The legal age for women to be married was raised from 15 to 18.

48 | Autorité chargée de la parité et la lutte contre toutes les formes de discrimination (articles 19 and 164).

49 | See Mchichi, n. 45.

independence and political participation among others and receives financial support from the European Union to the amount of 45 million euros.⁵⁰

The wording and comments used by the Islamist family minister, in particular, are causing distrust among secular feminists and intellectuals. In the opinion of some women's rights activists, the name of the action plan, *Ikram*, reduces the urgent issue of equality to "welfare and charity".⁵¹ Hakkaoui's comment that her programme should be implemented in harmony with Islam and Moroccan family values has imposed further limitations on the action plan, which are entirely open to interpretation. In 2012, Hakkaoui had already caused some protests in the local media when she described article 475 of the Penal Code, which provides for rapists to go unpunished if they subsequently marry the victim, as not necessarily detrimental to the victim. After the suicide of underage Amina Filali in March 2012, who also suffered violence in the marital home after marriage to her rapist, large parts of the population had demanded the amendment of article 475. In mid-January 2014, the controversial clause of article 475 was unanimously abolished by the Moroccan parliament. The law against sexual violence and harassment that Hakkaoui planned in 2013 has attracted further criticism from women's rights organisations. Hakkaoui was accused of a lack of transparency and insufficient involvement of civil society in the drafting of the law. The bill is also said to concentrate too much on the punishment and criminalisation of the perpetrators and not offer a flexible and comprehensive solution to deal with the social discrimination against women.⁵²

Despite an equality policy having been pursued by the state for many years with the support of the Moroccan elites and a way of life that appears modern in many respects,

50 | See also "Mme Hakkaoui présente le programme gouvernemental de parité 'Ikram'", Kingdom of Morocco, 5 Jul 2013, <http://maroc.ma/fr/actualites/mme-hakkaoui-presente-le-programme-gouvernemental-de-parite-ikram> (accessed 13 Jan 2014).

51 | See Jaouad Mdidech, "La parité? Les femmes veulent plus que cela, elles parlent d'égalité", *La Vie éco*, 20 Jul 2012, 41-42.

52 | See also Ayla Mrabet, "Législation. Hakkaoui fâche les féministes", *TelQuel*, 3 Dec 2013, <http://telquel-online.com/content/legislation-hakkaoui-fache-les-feministes> (accessed 29 Jan 2014).

a detailed report by Care International Maroc on the situation of women in Morocco after the unrest of the Arab Spring⁵³ reports continuing inequality in pay, in access to the labour market, in illiteracy, in appointments to high-ranking positions in public administration and in political participation. In the area of political participation, women's representation has gradually improved. In 1993, two women were voted into the national parliament for the first time. In 2002, a women's quota of 30 seats was set for the national parliament for the first time on the basis of a party consensus. This was increased to 60 seats (of 395) in 2011.⁵⁴ In spite of this, at 17 per cent in the national parliament and 12 per cent at local level, women still make up considerably less than the critical mass of 30 per cent that would be required to make an impact on parliamentary decisions.⁵⁵ Women first held ministerial positions in government in 1997. The government prior to 2011 already had five female ministers, while the Islamist-led government after 2011 only gave one ministerial post (Ministry for Solidarity, Women, Family and Social Development) to a woman. The new governing coalition since 2013, which is also led by the PJD, at least has several female "Minister Delegates". In 2012, Nabila Mounib became the first female Secretary General of the secular socialist PSU. In the world of private enterprise, Miriem Bensalah-Chaqroun was the first woman to be elected head of the influential business association CGEM in 2012.

The government prior to 2011 already had five female ministers, while the Islamist-led government after 2011 only gave one ministerial post to a woman.

According to Houria Alami Mchichi from Care International, the now almost irrelevant Moroccan protest movement of the Arab Spring, the "20 February movement", has shown neither a clear commitment to equality nor had a positive impact on the position of women.⁵⁶ While the protest movement counted numerous Islamist women amongst its ranks, only two secular women's associations had joined. And although many members of the M20 movement had

53 | See Mchichi, n. 45.

54 | There is, however, no women's quota in public administration. But some ministries have committed themselves to give special consideration to women in their appointments.

55 | See Aicha Akalay, "Femmes. De plus en plus libres, malgré tout", *TelQuel*, 10 Dec 2013, <http://telquel-online.com/content/femmes-de-plus-en-plus-libres-malgre-tout> (accessed 29 Jan 2014).

56 | See Mchichi, n. 45, 14-18.

called for a boycott of the 2011 constitutional referendum, the constitutional reform received public support from many women's rights associations. Once again, it was the Palace that gave the strongest impulse for women's legal equality through its 'pre-emptive' constitutional reform. Where gender equality in front of the law is concerned, the interests of the Palace appear to be aligned more closely with those of secular rather than Islamist feminism. Support for the secular women's rights movement helps to promote the image of Morocco as a "showcase" of enlightened Islam. In addition, it counters the risk of other religious interpretations for social coexistence competing with the course taken by the King.



M20 activist face to face with Moroccan security forces: Members of the movement had called for a boycott of the 2011 constitutional referendum. | Source: © Abdelhak Senna, Agence France Press (AFP).

PRESS FREEDOM AND FREEDOM OF SPEECH

Articles 25, 27 and 28 of the constitution guarantee press freedom and freedom of speech, enshrine the right for information and preclude any form of advance censorship. The authority responsible for the media (Haute Autorité de la Communication Audiovisuelle) is charged with monitoring adherence to press freedom and freedom of speech and the right to access to information. The limits to press freedom and freedom of speech are defined in Moroccan press law (Code de la Presse of 2003). These cover matters such as incitement to criminal acts, violation of

personal rights, violation of morality and damage to the community and public interest. Article 41 of the Press Code sets the punishment for insulting the royal family as well as publishing material undermining religion, the monarchy or territorial integrity at three to five years in prison.

Over the last few years, critics and human rights organisations have noticed a deterioration with respect to the freedom of the media and of the press as well as increased self-censorship in Morocco.⁵⁷ On the *World*

Press Freedom Index 2013 compiled by Reporters without Borders,⁵⁸ Morocco is ranked 136th (of 179), clearly below Algeria and Libya but above Tunisia and Egypt. In practice, freedom of speech and the right to

information are occasionally balanced against the interests of internal security as well as the protection of personal rights. Legal proceedings against critical journalists and newspapers can make free and critical journalism more difficult and increase self-censorship.

In practice, freedom of speech and the right to information are occasionally balanced against the interests of internal security as well as the protection of personal rights.

A case that drew a great deal of attention and which international human rights and press freedom organisations saw as a blow to critical journalism and as a curtailment of freedom of speech and press freedom involved the arrest of journalist Ali Anouzla in September 2013. The editor-in-chief of the Arab-language issue of the online magazine *Lakome* was indicted on 25 September for providing material support to terrorism and for praising and inciting terrorist criminal acts. Anouzla had inserted a link to a video by Al-Qaida in the Islamic Maghreb (AQIM), which was published in the Spanish newspaper *El País*. To many observers, Anouzla's prosecution under the 2003 anti-terrorism law represented a pretext, as the (secular)

57 | See Aida Alami, "Morocco journalist accused of 'terrorism'", *Al Jazeera*, 25 Sep 2013, <http://aljazeera.com/indepth/features/2013/09/morocco-journalist-accused-terrorism-2013923103640898755.html> (accessed 13 Jan 2014).

58 | The *World Press Freedom Index* is calculated on the basis of the criteria of plurality (of opinion), media independence, the media environment and self-censorship, the legal framework, transparency as well as infrastructure (for the production and generation of information). *World Press Freedom Index 2013*, Reporters without Borders, 30 Jan 2013, 18, http://fr.rsf.org/IMG/pdf/classement_2013_gb-bd.pdf (accessed 13 Jan 2014).

journalist had marked the video clearly as propaganda and other websites that had also disseminated the video had not been prosecuted.⁵⁹ According to the anti-terrorism law, Anouzla may be looking at five to 30 years in prison. He was released on bail in October.

In the media landscape, Anouzla is described as one of the few remaining critical journalists in Morocco, who has come under the scrutiny of the security forces repeatedly because of critical articles about corruption, the extent of the royal budget and the lack of accountability on the part of the King. He had uncovered the paedophile scandal centred on Daniel Galván in July 2013, thereby triggering an uncomfortable, albeit brief crisis in the rule of King Mohammed VI.⁶⁰ In the opinion of civil rights activists and media

In 2012, the editor of the *Al-Massae* newspaper was given a one year prison sentence because he had published a report on an alleged corruption scandal involving the head of the secret service.

representatives, critical journalists and regime critics in Morocco must expect smear campaigns involving accusations of drug use or rumours about their mental state⁶¹ as well as high fines.⁶² In April 2012, the editor of the *Al-Massae* newspaper, Rachid Nini, was given a one-year prison sentence on the basis of the Penal Code (*Code Pénal*) because he had published a report on an alleged corruption scandal involving the head of the secret service Adellatif Hammouchi and denounced the abuse of anti-terror legislation by the Moroccan authorities. He was accused of libel and contempt of court.

In a communiqué addressed to the public dated 23 September 2013, the Minister of Communications Mustapha El Khalfi (PJD)⁶³ justified Anouzla's prosecution by stating

59 | Maâti Monjib, "What's Become of Freedom of Expression?", *Sada*, 3 Oct 2013, <http://carnegieendowment.org/sada/2013/10/03/what-s-become-of-freedom-of-expression/goz9> (accessed 13 Jan 2014).

60 | The scandal was described as the "Danielgate" of Mohammed VI in the international media.

61 | See Monjib, n. 59.

62 | At the beginning of 2010, the first critical Moroccan weekly newspaper, *Le Journal Hebdomadaire*, had to close due to excessive fines. See Cerise Maréchaud, "Le Journal le plus indépendant du Maroc poussé à la fermeture", *Rue89*, 1 Feb 2010, <http://rue89.com/2010/02/01/le-journal-le-plus-independant-du-maroc-pousse-a-la-fermeture-136442> (accessed 13 Jan 2014).

63 | Accessible at: Kingdom of Morocco, "Press releases", <http://mincom.gov.ma/ar/communiqués.html> (accessed 13 Jan 2014).

that incitement to terrorism had to be excluded from freedom of speech and the right to information. With a view to drafting a new press code, El Khalfi announced his intention to delete all prison sentences from the press law. But potential prison sentences for journalists under the anti-terrorism legislation or the Penal Code will remain in place.

LINGUISTIC-CULTURAL RIGHTS: AMAZIGH AS A NEW OFFICIAL NATIONAL LANGUAGE

Morocco's linguistic-cultural identity has long been an integral component of the debate on social issues and has therefore also been reassessed in the current constitution. This acknowledges Morocco's ethnic-cultural heterogeneity and lists seven different ethnic-regional components as sources of national identity in its preamble. The preamble speaks of a convergence of Arabo-Islamic, Amazigh and Saharo-Hassani components as well as an enrichment by African, Andalusian, Hebraic and Mediterranean elements.

A particular new aspect is the upgrading of the Amazigh (Berber) language⁶⁴ to an official national language besides Arabic.⁶⁵ This fulfilled a longstanding demand of the Amazigh movement. In article 5, Arabic is mentioned as the official national language, which has to be protected and developed. Next, the Amazigh language is enshrined as an additional official national language, whose integration into the school system and public life is to be ensured through concrete implementation legislation.

The Kingdom of Morocco already had a long journey of searching for its linguistic-cultural identity behind it, going back all the way to the end of the era of the French protectorate. As far as the Amazigh issue and the recognition

64 | The Amazigh language is some 3,000 years old and regarded as one of the oldest languages in Africa. The homeland of the Amazigh-speaking groups (called Tamazgha) stretches from the Egyptian-Libyan Border to Burkina Faso and comprises some five million square kilometres. An estimated 30 million people speak a Berber language.

65 | In the 1992 constitution, French was still the second official national language. In the 1996 constitution, only Arabic was mentioned as an official language. Furthermore, Morocco was described as part of the Arab Maghreb.

of the Berber identity⁶⁶ are concerned, the Moroccan state has chosen to proceed by way of a gradual integration of the Amazigh language. As far back as 1994, Hassan II had announced in a royal speech that Amazigh would be taught in Moroccan primary schools and that TV magazine shows in the three Amazigh dialects of Tamazight, Tachelhit and Tarifit would be introduced. These promises were not realised until 2003 with the gradual introduction of the Amazigh language in Moroccan primary schools. In 2001, King Mohammed VI sent further positive signals to the Amazigh movement. The establishment of the Institut Royal de la Culture Amazighe (IRCAM) in 2001 was a first major step, as the recognition of Amazigh as an official language is mentioned in the decree about the founding of the IRCAM. In his royal speech of 9 March 2011, Mohammed VI described the Amazigh identity as a component of Moroccan society. Today, official inscriptions at ministries, authorities and state institutes are in Arabic, Amazigh and French.

Contrary to other, partly violent responses to the various Amazigh movements in the region, the Moroccan state has decided to take the route of progressive integration and recognition of linguistic pluralism. However, the language issue in Morocco is somewhat more complex than an Arabic-Amazigh dualism.⁶⁷ The debate on

The country's francophone elite is retaining its close links with the French language. French is still considered the language of the elite, and its mastery is essential for social and professional advancement.

languages has produced various social and political dividing lines.⁶⁸ On the one hand, mastering and using a particular language demonstrates a person's social origin, but it can also be seen as a political statement.

The country's francophone elite is retaining its close links with the French language. French is still considered the language of the elite, and its mastery is essential for social and professional advancement. Advocates of the Moroccan

66 | There is no reliable information on the proportion of Berber people among the Moroccan population. But according to estimates, half of all Moroccans are at least partly of Berber descent.

67 | Younes Abouyoub, for instance, argues that the Amazigh and Arab identities are not mutually exclusive. Large numbers of Moroccans thus speak Arabic, but are of Berber descent. See Abouyoub, n. 22.

68 | On the language issue and the different debates see Fouad Bouali, *The Language Debate and the Constitution Amendment in Morocco*, 21 Feb 2012, Arab Center for Research and Policy Studies, Doha.

Arabic dialect (Darija), on the other hand, promote the use of the dialect in the state media in order to reach poorly educated sections of society as well. Darija devotees thereby also set themselves apart from the defenders of Classic Arabic and emphasise their genuine Moroccan identity in distinction from that of Arabs from the Levant. The conflict about the Arabic language is the context in which the Amazigh movement is most prominent. However, the Moroccan intellectual and historian Hassan Aourid emphasises that the Amazigh character does not only refer to a language, but also represents a view of history.⁶⁹ The demands of the Amazigh movement include the “correction” of Moroccan history in textbooks, development of the poorer regions with a high proportion of Berber inhabitants, more airtime for Amazigh programmes on the state media and the recognition of Amazigh first names.⁷⁰

Despite the official recognition of Amazigh, the language still does not have a major presence in schools and public media. The reasons include not only a lack of political will⁷¹ but also practical problems such as poorly trained teachers, a dearth of textbooks and differences between Amazigh dialects, which hinder standardised teaching. In addition, national-conservative and Islamist forces have obstructed the recognition of the Amazigh language in everyday life.

69 | According to Hassan Aourid speaking at a political debate organised by the Konrad-Adenauer-Stiftung on 20 Jun 2013 in Casablanca. Aourid made reference to Moroccan history preceding the arrival of the Arabs and recalled the female Amazigh freedom fighter Kahina, who is celebrated by the Berbers as a heroine, among others.

70 | The recognition of Amazigh first names still frequently fails to be applied due to ignorance on the part of authorities and officials. According to the law, first names may not be “foreign to the Moroccan ear”. See Sanaa Eddaïf, “Comment les prénoms amazighs retrouvent un traitement... presque normal”, *L’Economiste*, 31 May 2013, 32 et seq.

71 | The activist and intellectual Ahmed Assid accuses the Minister of National Education of ignoring the Amazigh issue and focusing exclusively on retaining foreign languages. In addition, Assid demands implementation of the statutory quota of 30 per cent of airtime to be reserved for the Amazigh language in the public TV channels. Quoted according to Brahim El Guabli, “La Langue Amazighe: Par-cours et Entraves de Son Enseignement au Maroc”, *Jadaliyya*, 18 Feb 2013, <http://jadaliyya.com/pages/index/10256> (accessed 22 Jan 2014); as well as Mohammed Boudarham, “Identité. En avant l’Amazigh!”, *TelQuel*, 16 May 2012, <http://telquel-online.com/Actualites/Maroc/Identite-En-avant-l-Amazigh/522> (accessed 29 Jan 2014).

They emphasise the Arab identity of Moroccan society as well as the (classic) Arabic language as the language of religion and unity.⁷² However, the PJD-led Ministry in Charge of Relations with Parliament and Civil Society declared in April 2013 that NGOs could in future submit queries to the ministry in Amazigh as well.⁷³

For now, the current constitution has helped to establish a balance in the language issue and thus counteracted a potential culture struggle.⁷⁴ Furthermore, the constitutional reform embodies the assertion of a separate Moroccan identity as well as a more complex understanding of national identity. The emphasis on linguistic-cultural pluralism in the constitution and its future recognition in practice may help to prevent potential social conflicts. The fact is that the language issue reflects above all social conflict potential resulting from the polarisation between an elite that speaks French or (classic) Arabic on the one hand and marginalised, poorly educated sections of the population on the other.

ACHIEVEMENTS TO DATE AND OUTLOOK: REACTIONARY TREND AND A MONARCHY "WITH TWO FACES"

The purpose of the Moroccan constitutional reform was to renew the monarchy-based political system so as to enhance its capacity for survival and for managing the future while not making itself redundant.

The Moroccan constitutional reform and its implementation are caught in a constant conflict between the preservation of the traditional monarchical system and its democratic renewal. The purpose of the reform was to renew the monarchy-based political system so as to enhance its capacity for survival and for managing the future while not making itself redundant. According to civil rights advocate and activist Ahmed Assid, the Kingdom of

72 | The political parties supporting Morocco's Arab identity include the Istiqlal Party, the PJD as well as the SU. The parties advocating a more widespread use of Amazigh on the other hand are the PAM, MP, RNI, USFP and PPS.

73 | Furthermore, ministry officials have been allowed to submit sick notes in Amazigh as well since May 2013. See Boudarham, n. 71.

74 | Fouad Bouali, on the other hand, fears that through its recognition of the Amazigh language the current constitution may open up new socio-cultural fronts and form a basis for further conflicts of identity. According to Bouali, the recognition of seven different components of national identity was meant to satisfy all sides and ultimately served specific interests. See Bouali, n. 68, 32, 34 and 37.

Morocco continues to appear as a state “with two faces”: a traditional religious monarchy on the one hand and a modern monarchy on the other, which maintains close links to foreign partners and advocates modern concepts and human rights.⁷⁵



Solidarity march for Palestine in Rabat, 2012: Demonstrations on foreign policy issues bring many more people to the streets than processions on domestic or constitutional issues. | Source: © Ellinor Zeino-Mahmalat.

An assessment of the impact of the 2011 constitutional reform must be differentiated and can only draw preliminary conclusions in view of the delayed implementation. The constitution claims to lay the foundations for a constitutional democracy. A comprehensive catalogue of basic rights and the integration of stronger institutional counterbalances in the constitution have produced a first legal basis for a parliamentary monarchy and for a civil state. Success and credibility of the constitutional reform now depend on the consistent implementation and application of the constitutional principles. There are still deficiencies in the adoption of concrete laws, the reforming and adaptation of existing laws (for instance of criminal and press legislation) and the strengthening of structures of the rule of law (particularly the justice system). In some instances, the persistence of tensions and legal ambivalences in

75 | Interview with Ahmed Assid, *TelQuel*, 22 Aug 2012, <http://telquel-online.com/Actualite/Maroc/Entretien-La-monarchie-le-makhzen-les-islamistes/533> (accessed 29 Jan 2014).

sensitive areas, including internal security, faith issues and ideas on social values, are having a negative impact on personal liberties. The constitutional “constants” of an “immutable national identity” can be used as an explanation for many disagreements or conflicts of interest or as a buffer to prevent rapid changes. The inclusion of these constants and the requirement for concrete implementation laws have effectively put the brakes on the reform process.

Furthermore, the behaviour of various actors in political practice has also strengthened continuity instead of introducing new approaches in governance. The government’s course characterised by loyalty to the King, which many observers have described, has set a precedent of continuity and subordination for the government’s future positioning with respect to the King. There is no hope for a stronger emancipation of the government and of the Head of Government from the power apparatus around the King under the new coalition either. The inability of the parties to promote a consistent political direction and manage crises has strengthened the King as national mediator and symbol of national stability. It is the informal power centres of the elites close to the King and the security services that continue to determine the strategic developments in the country, illustrating how powerless the government is against the *makhzan* in practice.⁷⁶ The separation of powers described in the constitution consequently does not always correspond to political reality or constitutional practice.

The “top down” constitutional reform aims at creating stability through reform, defusing social and political conflict potential and retaining the status quo, albeit with numerous courageous innovations. As Abdellatif Laâbi comments, the monarchy has shaped the political system to suit its own requirements ever since independence.⁷⁷ The Palace has provided crucial impulses for democratic renewal, for instance where women’s equality is concerned or in the area of linguistic-cultural pluralism.

76 | Thierry Desrues sees the consequences of this powerlessness in the increasing level of populism among the political parties (e.g. the PJD and Istiqlal). See Desrues, n. 14, 172.

77 | Quoted according to Stauffer, n. 12.

How democratic the stability is depends partly on the perceived risks to the monarchy as well as the reactions by and interaction between the actors in the socio-political arena. The traditional power centre around the Palace, the Ministry of the Interior and the security forces can restrict the newly gained civil liberties again at any time to control its opponents. Examples of such action have been observed on several occasions when critics, journalists and activists were subjected to harsh treatment. According to some observers, the composition of the new governing coalition, which now includes a number of technocrats close to the Palace in its cabinet, indicates a renewed authoritarian and reactionary trend and a strengthening of the old regime.⁷⁸

Compared to many crisis-ridden countries of the region, the Moroccan monarchy has shown clever and above all quick thinking and acting with its preventive constitutional reform of 2011. With its strong orientation towards Europe, the monarchy has also demonstrated modern thinking and followed promising strategies in the assimilation of laws and in the area of renewable energies.

Bearing in mind the failure of the democratic revolution in Egypt so far, the polarised society in Tunisia as well as the continuing civil war in Syria, stability under a monarchy appears more attractive to many Moroccans than a radical political renewal with unpredictable political, social and economic consequences. This may well also be a reason why there has not been a revival of the Moroccan "20 February" protest movement. However, Morocco's political and economic elite must overcome its reliance on unearned income, privileges and favouritism, create equality of opportunity and prospects in the job market, strengthen structures of the rule of law and follow principles of good governance, including above all the accountability of people in positions of responsibility. Otherwise, the much-praised Moroccan stability might in retrospect prove to be a "precarious stability".⁷⁹

78 | Also according to Samia Errazzouki, "Out with the Old and In with the Old: Morocco's New Cabinet", *Jadaliyya*, 16 Oct 2013, http://jadaliyya.com/pages/index/14616/out-with-the-old-and-in-with-the-old_morocco (accessed 13 Jan 2014).

79 | Mohammed Madani, quoted by Stauffer, n. 12.