

Constitutional Reform in Morocco Five Years On

INTRODUCTION

On July 1, 2011, Moroccans voted to officially consolidate nearly two decades of reform with a new Constitution designed to establish a constitutional monarchy with separation of powers; to delegate enhanced responsibilities to local and regional governments; and to strongly reinforce the multicultural, multi-religious character of Moroccan society. The Constitution set the parameters for power-sharing among the Monarchy, the Head of Government, and the Parliament and reinforced the protection and promotion of civil liberties, human rights, and equality. It also called for the adoption of 19 laws to enact the Constitutional mandates on these issues and others ranging from political parties to the judiciary. Five years on, where do things stand on the major components of Constitutional reform?

LEGISLATION

To date, Morocco has passed fifteen of the 19 laws mandated by the 2011 Constitution, as well as additional ones defining more complex issues, such as advanced regionalization. The 15 include laws on the make-up and activities of political parties; the organization and function of both chambers of Parliament (Representatives and Councilors), as well as parliamentary commissions of inquiry; the organization and work of the government; the nomination to high office within public administration (governors, Ambassadors, etc.); finances; the Constitutional Court and the High Council of Judicial Power; the independence and autonomy of the judiciary; the Economic and Social Council; advanced regionalization; and the rights of citizens vis-à-vis the legislative process, including the right to present motions in legislative matters and to present petitions.

According to the Constitution, the government has until the end of the first legislative session, due October 7, to pass the remaining four laws: the implementation of Amazigh as an official language; the attributions, composition, and function of the National Council of Languages and of Moroccan Culture; the right to strike; and the regulation of the constitutional review process by the Constitutional Court. In June, the Council of Government announced that it expected to examine draft laws on these questions shortly. From there, they will be sent to the next Council of Ministers and to Parliament. Though the government has committed to achieving the timetable set in place by the Constitution, work remains to be done, and a special session of Parliament may be required to meet the October 7 deadline.

Legislatively then, the adoption of the laws has been largely a success, particularly given the enormity of the task. Questions remain, however, about the efficacy of some of the laws. To take one example, the two laws on the judiciary passed in February 2016 have been criticized by the “Club des magistrats” – a group representing judges. The group argues that “the texts do not guarantee real independence of judicial power and should be submitted and discussed by the Constitutional Court,” a statement echoed by the International Commission of Jurists. For another, some NGOs have rejected the organic laws on petitions and motions, questioning the threshold of 5,000 signatures for the former and 25,000 for the

latter and arguing that it should be lowered in order to strengthen participatory democracy in the country.

Evaluating the validity of these claims is not yet possible, as it will take years to fully implement the laws. That said, though they can't as yet be scientifically linked to the new laws, there have been broader identifiable political changes over the past five years related to the key Constitutional principles those laws address.

KEY PRINCIPLES

Separation of Powers

On the separation of powers, the Constitutional provision requiring the Head of Government to be appointed from the party that wins the most seats in Parliament was established with the November 2011 legislative elections, in which the Justice and Development Party (PJD) won the largest number of seats and its leader, Abdelilah Benkiran, became Prime Minister and formed a coalition government.

Though the PJD-led coalition experienced a number of shake-ups, it has navigated the larger political transition resulting from the 2011 Constitution in cooperation (and not in contestation) with King Mohammed VI and the Parliament, as well as with other political parties in Morocco. The balance of power among these groups shifts according to the issue, but for the most part they work together to advance reform. The King still plays a large and decisive role in politics, raising some questions about the significance of Constitutional changes vis-à-vis the separation of powers in the Kingdom. That said, it seems that his role as arbiter is still welcomed by both government and civil society, especially on matters of religious affairs, social and cultural transitions, and defense and security. Until political parties and Parliament improve their own capacity to govern, it seems that this will remain the case.

This October, Morocco will hold the second legislative elections under the new Constitution, marking yet another milestone in the country's democratic transition.

Devolution of Power

The process of devolution of power to the local and regional level is ongoing. Several laws relating to the Regional, Municipal, and Provincial and Prefectural Councils were adopted in preparation for communal elections held in September 2015, which jumpstarted the implementation of "advanced regionalization." During those historic elections, Moroccan voters directly elected representatives to their regional councils for the first time; and now both regional and local councils have greater independence in managing and budgeting their respective affairs. Voter turnout was high at just over 56%, demonstrating buy-in for both regionalization and the democratization and reform trajectory as a whole.

In the end, however, this is only one step. The 2015 elections were a precursor to a very real shift in authority that brought with it the very real burden of governance that is migrating from its normal center of operation. It remains to be seen how exactly these powers will be exercised at both the local and regional levels, and how citizens will respond. Cognizant of these challenges, the Council of Government recently adopted 22 decrees in an effort to operationalize the laws on regionalization. The decrees address everything from regional development plans to budgetary allocations, including the transfer of resources to accompany the transfer of responsibilities, and how national taxes will be shared between the state and the regions. It is likely that additional legal and regulatory measures will

need to be adopted to implement regionalization, but the decrees aim to allow the Councils to begin implementing projects in the meantime.

Human Rights and Civil Liberties

The Constitution's provisions establishing the National Human Rights Council (CNDH) as a fully autonomous body with increased investigative and monitoring powers have been fulfilled, and have helped promote a culture of human rights in the country. In cooperation with the government and civil society, CNDH has been active in monitoring human rights at the local, regional, and national levels and has played a key role in recent advances on human rights policies, including the development of a legal migration policy – the first in the Arab world; a ban on civilian trials in military courts that went into effect on July 1, 2015; a change in the penal code to allow abortion in cases of rape and incest; and a change in the law so that rapists can no longer be exonerated by marrying their victims.

Efforts are also underway to further promote freedom of association through a series of rulings authorizing previously unrecognized NGOs, including a known anti-regime group in the Sahara; freedom of the press through a new press code; and civil liberties through modifications to the penal code.

The draft press code was passed by the lower house of Parliament on June 21 and is currently under review in the upper house. Major reforms in the draft code include legal and judicial guarantees for the protection of freedom of the press; the decriminalization of libel; the creation of a National Press Council; regulations for electronic media; source confidentiality; the right of access to information; and reduced and alternative sentences for crimes such as defamation, including fines instead of custodial sentences. How press code will change under further review remains to be seen.

Reforms to the penal code, which are part of the larger process of judicial reform, aim to bring Moroccan law in line with the country's international commitments, as stipulated in the Constitution. by The Council of Government recently approved key changes, including the criminalization of forced disappearances, trafficking of migrants, genocide, crimes against humanity, and war crimes. In addition, the code increases the severity under the law of crimes such as torture and sexual abuse against minors.

These reforms, however, are not without their critics. Some observers have lamented that the changes to the penal code do not go far enough: rather than the real national dialogue on judicial reform and total revision promised two years ago, only select parts of the penal code have been modified. Social reforms – on sexual relations outside of marriage, homosexuality, and penalties for those not fasting during Ramadan – have been postponed. Human rights groups have also noted that restrictions remain on freedom of religion, freedom of the press, and other civil liberties.

And the press code has equally been criticized, both because of the delay in adopting it and because of some of its content. Though most observers agree that the code strengthens press freedom and access to information, concerns remain about continued restrictions on freedom of the press. Media professionals had hoped for the total abolition of prison sentences for press offenses, but the new code maintains such sentences when it comes to the issues of the monarchy, territorial integrity, and Islam. In addition, much of the reforms' impact will be up to the courts, which have the power to use both the penal code and the press code in evaluating sentences.

Though these human rights challenges remain, the country is taking proactive steps to address them with the help of CNDH and its partners in civil society.

Equality

The 2011 reform of the Constitution further enshrined women's equality under the law, the latest step in a long-term effort to bolster women's rights in the country, accelerated under the reign of King Mohammed VI and with the 2004 reform of the family code – one of the most progressive laws on women's and family rights in the Arab world.

The Constitution contains eighteen articles relating to women's rights, and Article 19 consecrates the principle of gender equality in the exercise of all fundamental rights – civil, political, cultural, economic, social, and environmental. The Constitution also contains a provision to harmonize national law with Morocco's existing commitments under international law. This is especially important regarding women's rights since Morocco is a signatory to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and in 2011 formally lifted its last reservations to it, followed in 2012 by the adoption of CEDAW's Optional Protocol.

Quotas to improve women's political participation have ensured that this issue remains on the legislative agenda. Thanks to quotas – strengthened with the Constitution – women currently make up 17% of the House of Representatives in Parliament. And new laws adopted since then have increased women's representation at the local and regional level – with a 27% requirement in Communal Councils and a 1/3 requirement in Regional Councils. However, the Authority for Gender Equity and the Fight against all forms of Discrimination mandated by the Constitution has yet to be established.

In addition, the [challenges](#) of gaps in existing legislation, implementation, and cultural conservatism remain. The latest debate is over the need for improved legislation on domestic violence. Women's groups and the National Council for Human Rights (CNDH) have advocated for sweeping changes in both the law and practice to address this issue. As a result, a law was adopted in March that increases penalties for existing criminal offenses and provides guidelines for protecting victims of violence. But many in the [advocacy community](#) believe that it doesn't go far enough in addressing the needs of Moroccan women as it does not criminalize [marital rape](#) or provide guidelines to police, judges, and lawyers in prosecuting offenders.

CONCLUSION AND OUTLOOK

The last five years have brought remarkable democratic progress in Morocco, particularly in light of post-Arab spring developments in the rest of the region. From the adoption of most of the laws mandated by the Constitution to a successful transition of power after the 2011 legislative elections, Morocco has consistently demonstrated its commitment to continue pushing towards reform and progress, albeit at its own particular pace.

The impact of regionalization on governance in the Kingdom and continued efforts at balance among the government, the Parliament, and the monarchy, as well as the citizens' response to these developments, will determine the pace of Morocco's advancement on the path to democracy. The 2016 legislative elections will mark another milestone, whether there is a successful transition of power or continued rule by the PJD.

It remains an interesting time for Morocco, the only country in the region that has even begun the experiment of giving more power to its citizens through decentralization. The success – or failure – of its regionalization initiative will be watched closely, as it seems this form of governance is the way of

the [future](#) in much of the Arab World, whether in Iraq, Tunisia, or Libya. While a great deal of uncertainty remains as to how this new distribution of power will look and function moving forward – nearly a year on there is still little clarity -- this process will offer ongoing lessons for both Morocco's neighbors and US policy in the region.

*For more information, visit <http://www.moroccoonthemove.com/> and follow on Twitter [@MorocOnTheMove](#)
This material is distributed by the Moroccan American Center for Policy on behalf of the Kingdom of Morocco.
Additional information is available at the Department of Justice.*