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## Constitutional Reform in the Arab World

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Constitutional reform in the Arab world derives legitimacy from its importance in the process of modernization, reformulating the relationship between state and society, and effecting changes that reflect evolving ideological and intellectual systems, as well as regional and international political developments. While most Arab states have had a succession of different constitutions, there were a particularly high number of constitutional reforms over the last two decades. This study is particularly concerned with these amendments. It will try to answer essential questions, such as, what are the reasons behind these reforms, and are they due to internal or external factors? What has been the effect of discussions on constitutional reform between parties and civil society, and other political actors? What are the most important areas that have been affected by reform and has reform been sufficiently comprehensive? And what direction was taken by these constitutional reforms? Through an analysis of five cases (Morocco and Bahrain, monarchical regimes; Egypt, Algeria, and Mauritania, republican regimes) this study will explore different experiences of constitutional reform in the Arab world.

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## Overview of Constitutional Reform in the Arab World

The existence of such a large degree of constitutional reforms in the 1990s may be explained in part by the many economic and political changes that took place in the world after the fall of the Berlin Wall and their impact on the Arab world: increased political awareness within Arab societies, the authorization of multiple political parties, and the emergence of civil society. In addition, after the fall of the Soviet Union, and after numerous conferences on the subject of democracy, it was made clear by Western representatives that the granting of aid or loans to developing countries would be fundamentally concerned with “the democratic shift” and policies of economic reform and human rights.<sup>1</sup> These external factors weighed evenly on the Arab countries in terms of pressures or trends towards reform.

However, while the external factors may have been the same across the region, the internal factors leading to reform in each of the countries differed, as did the methods of demanding it. Reforms were either initiated by the ruling power (Egypt, Algeria, and Tunisia) or by opposition parties (Morocco). In certain cases, civil society actors and the media also played a role (Morocco, Egypt, Lebanon, and Mauritania),<sup>2</sup> whereas in other

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<sup>1</sup> The American Assistant Foreign Minister Hermann Cohen explained in 1990 that “in addition to a policy of economic reform and human rights, the democratic shift has become the third condition for receiving American aid.” At the same time, the British Assistant Minister for Foreign Affairs explained that British aid is granted to countries moving in the direction of pluralism and to those who respect the law and principles of the market.

<sup>2</sup> Examples include but are not limited to: the Constitutional Conference in Bahrain, the “Kefaya” movement in Egypt, and the

cases national treaties served as the entry point for amendments (Algeria and Bahrain).

Nevertheless, despite some differences in terms of process, the amendments enacted generally share similar features, namely an emphasis on rights and freedoms, and the reform of the relationship between institutions. More precisely, these include:

- **State support of human rights law.** International reports on the human rights situation in Arab countries found that rights and freedoms were not well safeguarded; as such, constitutional amendments were made in order to reinforce citizens’ status and liberties, albeit in different ways. While certain countries subscribed to universal human rights and stipulated this in their constitutions (Morocco and Mauritania), others made the status of rights and freedoms immune from constitutional review (Bahrain), or stipulated that they are “guaranteed” (Algeria).
- **Gender equality and women’s representation.** Equality between the sexes has been an important feature of recent constitutional changes. Algeria, Bahrain, Egypt, Mauritania, and Yemen have all passed amendments granting women the same rights to political participation as men, while other states have changed their electoral laws to include a required quota of women in representative institutions (Morocco and Algeria).
- **Reinforcement of constitutional law.** Constitutional amendments have also been passed in order to appoint special committees mandated to verify the constitutionality of laws. Members of these committees are generally chosen by the legislative and executive authorities.

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human rights and political associations in Morocco.

- **Multi-party system.** The transition from a single-party system to a multi-party one in certain Arab countries (Egypt, Tunisia, Algeria, and Mauritania) allowed the organization of competitive elections, at least in appearance. This proved more effective when combined with other changes to the electoral system (Egypt).
- **Financial regulation.** In certain cases, constitutional amendments named organizations responsible for financial inspection such as the High Council of Accounts in Morocco, and the Diwan for Financial Inspection in Bahrain.<sup>3</sup>

In addition to these domains, new laws or amended laws were enacted with regards to political parties and general freedoms (Morocco, Egypt, Algeria, and Mauritania), or were accompanied by the creation of new institutions (for example, the Consultative Council for Human Rights in Morocco). Yet while this wave of constitutional reform affected the vertical relationship between the central and local authorities by encouraging decentralization, the horizontal relationship between the authorities did not change. Indeed, most Arab countries preserved the presidential nature of their regimes by creating amendments reinforcing the power of the president or monarch. In certain cases, this was achieved by amending sections dealing with the length of the president's duration in office, either extending it or making it renewable (Algeria, Egypt, Tunisia, and Syria). In other cases, this reinforcement of power was achieved by making the government subordinate to the president or monarch

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<sup>3</sup> The third chapter of the National Action Charter of Bahrain entitled "Economic Fundamentals of the Society" stipulates that "public property is inviolable. It is incumbent upon every citizen to protect it while the public authorities are under a duty to take all necessary measures to maintain it." (Sixth principle)

(Algeria, Bahrain, Tunisia, Yemen, Egypt, and Morocco).

Conversely, to lessen the power of the executive authority - at least in theory - the Arab states changed their laws to strengthen the legislative and supervisory powers of their parliaments. Similarly, most of these countries restructured their legislative bodies by creating bicameral parliaments (Morocco (1996), Bahrain (2000), Algeria (1996), Mauritania (1991), Egypt (1980) and Tunisia (2002))<sup>4</sup>. However, three obstacles prevent these bicameral parliaments from rectifying the imbalance between the legislative and executive authorities. First, while the members of the first chamber were to be directly elected, those of the second are chosen either through indirect voting (Morocco) or through a combination of different kinds of voting and appointment. In certain cases, the head of state alone has the power to appoint a proportion of members of the second chamber (Bahrain, Algeria, Egypt, Jordan). Second, the Arab constitutions grant almost the same legislative and supervisory powers to the two chambers, despite the difference in how their members are chosen. This impedes a dynamic relationship from forming between them. Third, only the heads of state have the power to dissolve parliament.

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<sup>4</sup> Whilst a bicameral legislature was implemented after the experience of a unicameral legislature in Algeria (the constitutions of 1976 and 1989), Mauritania (the 1961 constitution), and Bahrain (the 1973 constitution), the first constitutional experience in Morocco was, in contrast to the above-mentioned countries, based upon a bicameral regime, in accordance with the constitution of 1962. After the experience of a unicameral legislature in accordance with the constitutions of 1970, 1972, and 1992, there was a return to a bicameral regime once again with the constitution of 1996.

These general features of constitutional reform in the Arab world, along with their nuances, will be shown in the following cases studies, organized in chronological order of reform: Morocco (1996), Bahrain (2002), Mauritania (2006), Egypt (2007), and Algeria (2008).

### **Morocco: The Quest for Balance between Powers**

Since its independence in 1956, Morocco has had five constitutions, issued in 1962, 1970, 1972, 1992, and 1996. The first two constitutions dealt with the establishment of the monarchy, while the following three concerned the parties of the national movement. While a clear imbalance between the legislative and executive institutions was established in the first three constitutions, the 1992 document partially changed this relationship, strengthening the position and powers of the government. The present constitution of 1996 created a bicameral parliament, with the Assembly of Representatives elected entirely by direct public vote, and granted to the indirectly elected Assembly of Councilors legislative and supervisory powers approximate to those of its counterpart. Nevertheless, while numerous changes have occurred as a result of the constitutional amendments, certain elements of the Moroccan political system remain constant. The country has had a multi-party system ever since the first constitution banned a single-party system<sup>5</sup>,

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<sup>5</sup> The third chapter of all iterations of the Moroccan constitution stipulates that “political parties, unions, district councils, and trade chambers shall participate in the organization and representation of the citizens. There shall be no one-party system.” It should also be pointed out that trade union organizations, local organizations, and professional departments have shared with political parties in organizing and representing them since the constitution of 1972.

and in accordance with Article 106, the monarchical system and prescriptions relating to Islam may not be subject to constitutional review.

The failure of structural adjustment programs in the 1980s resulted in economic and social crises, which led to political change. There was a change in the relationship between the royal institutions and the parties of the national movement and new developments in the field of human rights (a Ministry of Human Rights and a Consultative Council for Human Rights were founded, political prisoners were released, and exiles were permitted to return). However, the imbalance between the royal establishment and political parties led to demands from those of the national movement for constitutionally-granted power. These demands led to the amendments of 1992 and 1996, and to these parties joining the government in 1998, having been in the opposition camp for more than 40 years. Despite these amendments, further demands for reform were made upon Muhammad VI’s accession to the throne in 1999. In addition, the larger context within which donor support fell also contributed to push for reform. In the early 1990s, the poor state of the Moroccan economy became obvious. The international financial institutions, particularly after the fall of the Soviet Union, stipulated that for the granting of loans and aid, economic reforms should be incorporated into constitutional reforms. It is thus within this context that a variety of factions and actor sought to amend the constitution.

#### *Factions Seeking Constitutional Reform*

Although constitutional review is the responsibility of the king and parliament<sup>6</sup>,

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<sup>6</sup> According to the first Moroccan constitution, proposals to review the constitution could be made by the prime minister and by parliament. (Article 104 of the 1962 constitution).

and in spite of a series of demands for reform made by the parties of the national bloc since 1972, reviews were always carried out outside parliament. This has been the result of a legal required quota for a constitutional review by the parliament that is unattainable, due to the clause providing that:

*“A suggestion to amend the constitution presented by one or more members of the Assembly of Representatives or Assembly of Councilors may not be agreed upon except by the vote of two-thirds of the members of the assembly to which the suggestion has been made, then the suggestion is proposed to the other assembly and may not be agreed upon except by a majority of two-thirds of the members.”*

Nonetheless, the parties of the democratic bloc and national movement issued three demands for constitutional reform to the royal establishment between 1991-1996. As for the coalition parties that formed part of the government majority, their support was always behind the reforms proposed by the monarch accompanied by rejections of the suggestions made by the opposition parties or the parties of the national bloc.

Instead, civil society plays an important role in driving and enriching the debate on constitutional reform, including human rights groups, feminist associations, and other political organizations. With the announcement of every constitutional amendment, the country's human rights organizations have formulated a set of proposals, such as the proposal to stipulate the superiority of international human rights agreements over internal law, and the proposal to guarantee constitutionally the rights and freedoms of citizens.<sup>7</sup> For their

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<sup>7</sup> At the seventh conference of the Moroccan Association for Human Rights on April 1 and 10, 2004, the slogan of the conference was “For a constitution to benefit human rights.”

part, the feminist movements in the 1990s and at the beginning of this century have demanded equal economic, political, and social rights. Following reforms of family law, these movements demanded the establishment of a quota allowing their effective representation inside parliament and the other institutions. This resulted in an agreement between the government and the political parties, which allowed women to win 30 seats in the legislative elections of 2002, increasing their representation from 2% to 10%. In addition, before the local elections of 2009, the electoral law was changed again in order to increase women's representation in the local councils, which as a result was increased from 0.5% to at least 12%. Likewise, multicultural associations have focused on constitutional protection of multiple identities, the Berber people, plurality of languages, and multiculturalism.

At the beginning of this century, the Al Wafa Association for Democracy and the movement for constitutional reform made clear demands for reform. In a document ratified at a public gathering held in Rabat on January 27, 2002, the demand to define the functions of the royal and parliamentary institutions and give the most important powers to the government institution representative of the parliamentary majority was outlined. A parliamentary monarchy, according to this association, was the only model that would allow a compromise between the principles of an inherited monarchy and a democracy. There was also a demand for the king's special powers to be defined in the areas of security, religion, and external affairs as well as his veto right. All other powers would be derived from the government.

The media has also played an important role, especially the independent press in its coverage of the subject of constitutional reform, through debates and questions directed at researchers and academics on this subject. The maturing of civil society and the increased role of the media have, in the view of many, made the independent press

the new opposition, especially after the entry of the “traditional” opposition into the political game. However, the parties of the democratic bloc have continued to demand constitutional reform, for example the demand made by the Socialist Union for Popular Forces after the local elections of 2009.

### *Contents of the Constitutional Reforms*

The Moroccan people voted by a referendum on two constitutional laws in 1992<sup>8</sup> and 1996.<sup>9</sup> The amendments passed covered a wide range of domains, including human rights protection, the gradual progression to a parliamentary regime, financial regulation, and the process of decentralization.

In the field of human rights, the preamble to the 1992 constitution pledged the country to adhere to the principles, rights, and obligations outlined in the charters of international organizations and its determination to abide by universally defined human rights. Following the demands made by the parties of the democratic bloc in 1991, an independent constitutional judiciary body was created in Morocco, responsible for supervising the constitutionality of the law. The new body would consist of six members appointed by the king for a period of nine years, and another six appointed by the heads of the two parliamentary chambers (three each) for the same period, after consultation with the parliamentary groups. In addition, in 2004 the king approved the creation of a Justice and Reconciliation Commission with sixteen

members, half of whom were drawn from among the members of the Consultative Council for Human Rights.

Perhaps more significantly were the reforms changing the nature of the Moroccan political system. While the first three constitutions had given the regime the character of an imbalanced presidential monarchy, the constitutional reviews of the 1990s set the country on the trend of developing gradually a parliamentary monarchy by establishing more balance between the legislative and executive authorities. In comparison with the image of the previous constitution, the 1992 constitution, consolidated by the 1996 one, constitutes a new phase moving towards strengthening the representative institutions and the role and status of the prime minister.

The various gains enjoyed by the parliamentary institutions over the last two constitutions include an enlarged scope of parliament's supervision of the government. This is the most important of its responsibilities, since the government, after its appointment by the king, must attain the confidence of the majority of the Assembly of Representatives. Indeed, the accountability of the government to the king and the Assembly of Representatives, guaranteed in the 1992 constitution, was the most important reform in terms of transforming Morocco from an imbalanced presidential monarchic regime to a nascent parliamentary monarchy. The parliament was further strengthened by becoming a bicameral institution in 1996.

Financial regulation also comprises another domain of constitutional reform. The 1996 constitution worked to improve the transparency of financial matters. The High Council of Accounts, which was created according to royal decree in 1979, became a constitutional institution through amendment in 1996. This council supervises the implementation of financial

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<sup>8</sup> On September 4, 1992, there was a referendum on the proposed constitution which resulted in 99.96% of voters saying “yes” and 0.4% of voters saying “no.” The voter turnout was 97.29%.

<sup>9</sup> On September 13, 1996, the Moroccan people approved by a referendum the proposed constitution of 1996 with 99.53% of votes in favour.

law, and oversees financial dealings of institutions subject to supervision in accordance with the law. In addition, the council punishes, when necessary, any infringement of these rules and gives the king a statement of all its undertakings. Administrative district councils were also created, which supervise the accounts of local groups and how they organize their affairs.

### *Elections and Renewed Demands for Reform*

In addition to political and human rights associations, who make suggestions for constitutional reform a part of their slogans, demands for reform are issued when the electoral programs of the political parties, of both the majority and the opposition, are formulated. Shortly before the legislative elections of 2007, the political parties, as part of their electoral campaign, set about publishing their electoral programs in the press and on the internet. This allowed people to know their intentions and plans for the upcoming term in office, 2007-2012.

Under the heading "Morocco, the New Generation of Reforms to Safeguard the Democratic Future: Strengthening the Foundation of Good Governance" the reform program of the Socialist Union for Popular Forces party was made up of 492 points revolving around the strengthening of the powers of parliament in the fields of legislation and supervision, as well as consolidating the powers of the government and the prime minister. The Independence Party also included in its electoral program demands concerning constitutional reform, which focused on improving the position of the prime minister and governmental institutions, and on developing local and regional district governance. As for the Party for Progress and Socialism, it also indicated the need to strengthen the institution of the prime minister and the second chamber of parliament. Similar demands were emphasized in the program of the Union of the United Socialist Party, the

Democratic Socialist Vanguard Party, and the National Congress Party. Through the slogan "No to Corruption, Yes to Change" the alliance's general program stressed the need for constitutional reform for the sake of transition to a parliamentary monarchy, through withdrawing powers from the royal establishment and strengthening the role of the government. The same demand was mentioned in the Socialist Party's program, under the slogan "Together we are Building Morocco for the Future" and under the heading "Political, Constitutional, and Institutional Reforms: The Transition from an Executive Monarchy to a Democratic Parliamentary Monarchy."

In contrast, the issue of constitutional amendment did not feature in the electoral campaigns of the Popular Movement Party or the Constitutional Union Party. Nonetheless, all parties of both the majority and the opposition agree upon the need for constitutional reform responding to the requirements of an enlarged administrative district. In addition, after progression in the field of decentralization since the 1992 constitution, the current discussion on constitutional reform focuses on the possibility of self-rule for the Western Sahara, and how this type of administrative district could be included in the constitutional document.<sup>10</sup> The demands of these parties thus share certain basic features, and the debate on constitutional reform has come to affect them all, be they of the left, right, or center. The positions of the parties on this subject vary, with some considering the need for constitutional reform to be fundamental, and others seeing no need for reform, stating that the positive features that already exist in the constitution are not applied.<sup>11</sup>

<sup>10</sup> The royal address at the opening of the parliament's winter session on October 8, 2008 focused on the idea of such an administrative district.

<sup>11</sup> The powers of the prime minister, for example, are not applied, according to the

These are the most important elements of the constitutional amendments of the 1990s, and the most important features of the current debate on the subject of constitutional reform. Despite the lack of reforms affecting Morocco's constitutional arrangement, the prospects for the future are positive, especially with the maturing of the opposition parties' demands and the growing role of civil society.

### **Bahrain: The National Action Charter as a Basis for Constitutional Reform**

The experience of constitutional amendment in Bahrain has special importance considering the country's role as a pioneer among the Gulf states and the struggles that have taken place prior to the agreement on these amendments. After Bahrain gained independence from Britain in 1971, a constitution was established, composed of 108 articles guaranteeing the establishment of an elected legislative body composed of one chamber, the National Assembly. However the constitution was suspended from 1975 and was not reinstated until 2002, having undergone some essential changes. The constitutional amendment of 2002 followed a public referendum on the National Action Charter held in February 2001, in which 98.4% of participants voted in favor of the document.

Various internal and external factors created the backdrop for the constitutional amendment, which was discussed by different Bahraini organizations. External factors included the internationalization of human rights and increasing international pressure from governmental and non-governmental organizations that Arab countries, including Bahrain, should work to promote democracy and freedom. This was in addition to the effects of the first and second Gulf wars on the region.

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leader of the Popular Movement Party, Amhanad al-Ansur. (In a statement in the national newspaper on April 22, 2009).

### *Factions Seeking Constitutional Reform*

Different actors within Bahrain participated in the reform initiative. In comparison with other elements of Bahraini society the associative sector appears to be weak in its demands for reform at the present time. However, the activity of feminist movements has been significant in aiming to improve the constitutional rights of women. The Bahraini intellectual elite have also played an important role in demands connected with constitutional reform through their participation in the debate and attempt to apply the experiences of foreign countries.

In the absence of political parties, the political organizations, founded in accordance with the law, played a significant role in clarifying the importance of the demand for reforms and their constitutionality, including the National Democratic Action Organization, the Central Arab Islamic Organization, the National Islamic Platform, and the Al-Wefaq National Islamic society. Since the middle of the last century, the Bahraini opposition represented in the National Unity Bloc has proposed a political program in an effort to transcend the effect of sectarian and tribal divisions. However, despite Prince Hammad ibn Sulman al Khalifa's announcement in 1999, when he came to power after the death of his father, of a new plan for change, he did not clarify his position with regards to the "Constitutional Petition Committee" demanded by the opposition forces, which focused on restoring constitutional parliamentary rule. Nonetheless, the most important actor in the implementation of constitutional reform has indeed been the head of state, the prince of Bahrain, who paved the way for constitutional change with the National Action Charter, elements of which appear to have been borrowed from the Jordanian plan for reform. The Bahraini people agreed almost unanimously upon the document in February 2001. Various important measures

preceded the referendum on the National Action Charter: the State Security Law and the State Security Court were abolished, political prisoners were released and exiles allowed to return, and certain civil liberties - especially women's rights to candidacy and voting - were expanded.

The National Action Charter became an important guideline for constitutional reforms. However the Constitutional Petition Committee, formed at last in 1994, issued a statement signed by close to 25,000 citizens - men and women, Shi'is and Sunnis, different political and ideological groups - demanding the restoration of the 1973 constitution and parliamentary life.<sup>12</sup> Indeed, a large debate was launched regarding the very right to amend the constitution in the first place.

The Bahraini Constitution of 1973 stipulated the procedures to be followed in case of its amendment. Article 104 states: 1) That any amendment shall be passed by a majority vote of two-thirds of the members constituting the Assembly and ratified by the Amir; 2) If a proposed amendment to the Constitution is rejected, it shall not be put forward again before the lapse of one year from the time of its rejection; 3) Under no circumstances shall the principle of hereditary rule of Bahrain, the principle of liberty and equality set forth in this Constitution, as well as Article 2 thereof, be proposed for amendment; 4) The powers of the Amir, specified in this Constitution, may not be proposed for amendment when a Deputy Amir is acting for him. The debate concerning the legality of amending the constitution thus focused on Article 104 of the 1973 document. Those against the proposed reform held that as long as the

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<sup>12</sup> The Constitutional Petition Committee issued its statement after the assurances given by the minister of justice that the constitution is a higher authority than the Charter and the creation of an elected council which holds legislative authority.

constitution is not abolished, then the respect and execution of Article 104 is obligatory<sup>13</sup>, and as is consequently a hereditary basis for power.

Those in favor of the amendment and the overriding of Article 104 pointed out that that the 1973 constitution was suspended in 1975, and was followed by the dissolution of the National Assembly. Since Article 104 was enacted on August 26, 1975, in accordance with stipulations connected to the National Assembly, which was by that time functionally absent, Article 104 could not be effective. The National Assembly was dissolved less than two years after its creation following differences with the government over a law concerning the management of state security. This period of dissolution, they argued, exceeded a quarter of a century, during which time the country had no constitution. Moreover, the executive power held on to some of the functions of the legislative authority, popular participation was absent, and the practice of some freedoms was obstructed. Despite these arguments, those opposing constitutional amendment maintained that Article 104 was the only way that the reforms stipulated in the Charter could be authorized.

#### *The Power of the National Action Charter*

With regards to the power of the National Action Charter, there were two opposing

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<sup>13</sup> Among the personalities that tended towards the view that amendments to the constitution should only be made in accordance with the constitution were Ali Qasim Rabia (former representative), Hassan Rady (a lawyer), Isa Ibrahim and Abdullah Shumallawi (also lawyers). For more information on their views, see the book *Critical Observations on the Constitutional Amendments in Bahrain* (Dar al-Kounouz al-Adabiya 2002).

trains of thought. On one hand were those who stated that the Charter should be a guideline for constitutional law, since it expressed the will of the people. On the other hand were those who countered that the constitution alone was the most elevated document of the state and could not be subject to the document. The committee responsible for formulating the constitutional law came to the conclusion that the National Action Charter was of the same standing as the constitution or higher, since it was issued as the result of a referendum of the people and should thus be the basis for a constitutional amendment. The prince entrusted, in accordance with Decree 5 of 2001, the formulation of a law for constitutional amendments to an expert consultative committee. The head of the committee was to bring the proposed law on amendment to the prince accompanied by an explanatory report, as well as the various studies and different opinions on the subject. The committee sought help from constitution experts from a number of countries and debated the subject of the procedures that needed to be followed to amend the constitution, and amendments that needed to be made in conformity with the National Action Charter.

#### *Contents of the Constitutional Reforms*

The constitutional amendments in Bahrain were characterized by a focus on the principle of democracy through the supporting of citizens' rights and freedoms (such as ensuring the right to equality between the sexes), focusing on decentralization and local development, founding a constitutional judiciary, and regulating financial affairs.<sup>14</sup> Two

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<sup>14</sup> The constitution of Bahrain is composed of 125 articles, which make up six chapters: chapter 1: The State; chapter 2: Basic Constituents of Society; chapter 3: Public Rights and Duties; chapter 4: Public Authorities' General Provisions; chapter 5:

fundamental points were covered in the constitutional review of 2002. The first point concerns the substitution of the term "Kingdom" for "Emirate" which led to the substitution of the title "King" for "Prince," and the replacing of the term "State of Bahrain" by "Kingdom of Bahrain" which led to a change in the first article of the constitution, in accordance with the sixth chapter of the National Action Charter (the first clause). The second point concerns the creation of a bicameral assembly and the founding of a second chamber in the Bahraini parliament.

The creation of a bicameral assembly was mentioned for the first time in the National Action Charter. The experience of disagreement between the government and the National Assembly in Bahrain's first parliamentary exercise, which led to its dissolution and suspension of the constitution in 1975, perhaps influenced ideas for a bicameral assembly. The debate which followed the creation of the bicameral parliament was concerned with the extent to which the amendments of the 2002 constitution respected the principles stipulated in the Charter. The Charter stated that the first chamber of the National Assembly should be elected by citizens in free elections, and should undertake legislative functions, alongside an appointed council consisting of experts and specialists to be consulted on the basis of their knowledge and experience (see the fifth chapter of the Charter)<sup>15</sup>. However, the

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Financial Affairs; chapter 6: General and Final Provisions.

<sup>15</sup> The National Action Charter, which was voted upon on February 14 and 15, 2001, is composed of seven chapters. The first is concerned with the basic principles of the society, the second with the government system, the third with the economic fundamentals of the society, the fourth with national security, the fifth with democratic

constitutional reform made the powers of the two chambers equal. Article 70 of the constitution stipulated that “no law should be issued unless both the Consultative Council and the Council of Representatives, or National Assembly according to the situation, agree upon it, and it is ratified by the king.” Thus legislative powers are exercised by both the Council of Representatives and the Consultative Council. Equally, Article 81 makes it obligatory that draft laws should be shown to both chambers, stipulating that the Consultative Council has the right to accept, modify, or refuse a draft law.

It was thus noticed that the constitutional amendment contradicted what was stipulated in the Charter: that legislative power should be exercised by the Council of Representatives alone, with help from the members of the Consultative Council. In addition, the new constitution gave preponderant influence to the Consultative Council in the case of disagreement between the two chambers by granting to the head of the Consultative Council the right to convey draft laws to the head of the Council of Ministers in order then to convey them to the king (Articles 83 and 86). As for the supervisory role of the government, both chambers have the right to question, while only the Council of Representatives has the right to undertake the political responsibility of government.

The elected chamber of the National Assembly, the Council of Representatives, does not constitute a numerical majority as both chambers consist of 40 members. Likewise, the length of duration in office, four years, is the same for both. The lack of an elected majority in the National Assembly means that the Bahraini regime is far from having a parliamentary character and is closer to a presidential regime, especially as the choice of ministers is not

made in accordance with the wish of the parliament but in accordance with the wish of the king only. Thus despite the efforts to transform Bahrain from a hereditary emirate to a constitutional monarchy, the 2002 constitution has left it a mixed regime.

Besides reform of the parliament, the reforms also include the expansion of a variety of rights and freedoms. The first article of the constitution called for equality between men and women in terms of political rights and participation in general affairs, while the second paragraph of the fifth article stipulates that the state must guarantee a conciliation between a woman's duties towards her family and her work in society, and her equality with men in the political, social, cultural, and economic spheres, without violating Islamic law.<sup>16</sup> It is worth pointing out that the principles of freedom and equality have come to have constitutional status similar to Islam, the royal regime, and the Arabic language as fundamental components of the Bahraini system and domains that may not be subject to constitutional review. The fifteen articles of the third paragraph of the constitution saw changes regarding freedom of opinion, academic research, the press, publishing, communication, as well as the freedom to form associations and trade unions, and the right to private and public gatherings and processions. This is apart from other fundamental rights such as the right to healthcare and obligatory free education, and the right to work in fair conditions.

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<sup>16</sup> In Bahrain, women constitute one-quarter of active inhabitants and the presence of women is notable in the trade unions. After women were granted the right to vote, the level of their participation in the municipal elections reached 51% despite the fact that none of the 31 female candidates won, as was also the case in the municipal elections of 2006. Bahrain is ranked 37th according to the 2003 Human Development Report.

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life, the sixth with Gulf relations, and the seventh with foreign relations.

One of the fundamental targets of constitutional amendment in Bahrain in 2002 was the creation of a constitutional judiciary specifically for the supervision of laws and bills. Equally, the new Bahraini constitution strove to guarantee good conduct within two fundamental practices: the right to transfer, and the necessity of court reports. With regards to the right to transfer, in addition to the king having the right to transfer draft bills before they are issued to decide the extent of their constitutionality, the amended article guarantees the right of the government, the Council of Representatives, and the Consultative Council, as well as others to make an appeal to the court over the constitutionality of laws and bills. The extension of the right to transfer to citizens, "notable individuals and others," means that Bahrain's supervision of the constitutionality of laws is comparable to advanced regimes, such as Germany and the United States. The second practice, also in the field of constitutional jurisdiction, concerns the necessity for court reports for all state authorities.

In addition, the new constitution of 2002 includes an amendment concerned with financial affairs through the addition of an article concerning the creation of a council for financial supervision. The council was created in order to establish transparency in the financial domain, as the new body presents to the legislative and executive authorities a report every year concerning the entirety of its actions and observations.

### *The Effect of the Constitutional Amendments*

The modernization of constitutional institutions through the reform of 2002 was achieved through the alteration of the nature of the presidential institution, the establishing of a bicameral parliament, and the modernizing of financial affairs, not to mention the expansion of rights and freedoms. The reforms can be characterized as a "state of institutions" taking the place of

the traditional state. The amendments had numerous effects, paving the way towards democracy and fostering development in different areas, as well as improving civil liberties and the position of women in society.

Since the new constitution, a number of civil society organizations have been formed. In the summer of 2001 the Bahraini Feminist Union and the Feminist Association of Bahrain were founded; by the end of 2003, three hundred NGOs were registered in Bahrain.<sup>17</sup> The voting on the new constitution in 2002 was also accompanied by the unification of the opposition forces, composed of four political associations (the most important being Al Wefaq Islamic Association, the Progressive Democratic Platform and the Democratic Action organization). While they boycotted the parliamentary elections of 2002, the first parliamentary elections to be held in the country since 1973, they participated in the second elections of October 2006, when the Shi'ite Al Wefaq Islamic Association won 17 mandates out of the total of 40 elected representatives. The Sunni Islamic organizations won the rest of the seats, while the leftist Democratic Action organization did not win any.

In addition, women's visibility in decision-making roles received an important boost. As a consequence of the constitutional guarantee of women's rights to vote and run as candidates, the king initially appointed six women to the Consultative Council, followed by ten female appointments in 2006. Meanwhile 34 out of 320 candidates for the local elections in 2002 were women and as were 8 out of 174 candidates for the legislative elections in the same year. In 2006, out of 206 candidates for membership

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<sup>17</sup>According to the Ministry of Labour and Social Affairs, 65 new civil organizations were founded during the year 2002, including 11 political associations and 13 associations for the free professions.

in the Council of Representatives, 19 were women, with one being successfully elected to the Council. In addition to the appointment of Bahraini women to ministerial posts and in legal and diplomatic areas, a Supreme Council for Women<sup>18</sup> was formed in 2005 as part of the national strategy to encourage women's complete participation in decision-making bodies in the both the public and private sectors and to end discrimination against them. Bahrain was among the countries that signed an agreement to end all forms of discrimination against women in 2002, and similarly a protocol was signed between the United Nations Development Program and the High Council for Women in April 2005 to strengthen mutual cooperation.

Although the constitutional amendments fulfilled some of the demands made by the voices calling for reform, they also to some extent preserved the existing system with regards to the system's principle actor. While the National Action Charter answered some of the demands of Bahraini society, especially concerning rights and civil liberties such as the freeing of prisoners and the return of exiles, today's demands focus more on the devolution of power and the guaranteeing of equal citizenship for all.

### **Mauritania: Circulation of Power and Moving towards a Parliamentary Regime**

The evolution of constitutional texts in Mauritania shows the development of its political regime. While the first constitution of 1959 had the character of a parliamentary republic, a presidential regime was quickly established in which the head of state enjoyed wide ranging executive and legislative authorities, from 1961-1978.

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<sup>18</sup> In 2001, Prince Sheikh Hamad bin Isa Al Khalifa formed the Supreme Council for Women from fourteen experts in women's issues. At the head was the wife of the Prince, Sheikha Sabika bint Ibrahim Al Khalifa.

Likewise, despite the first multi-party elections taking place in 1959 immediately before Mauritania's independence in 1960, the transformation to a single-party system in June 1965 accorded to the People's Party powers overriding those of the state and administrative organizations.

After the People's Party's emergency conference in the first week of July 1971, or what was later called the "corrective" conference, the party attempted to define a new basis for the state. The reforms emanating from this event led the country to join the Arab League in 1973. However, the regime of Ould Daddah was soon exposed to strong left wing and national opposition, and despite the attempt to respond by nationalizing certain iron companies and reviewing military arrangements, developments in the Sahara region and a worsening of the security and economic situation led to a phase of military rule in Mauritania from 1978-1991. Over six years, from 1978-1984, power passed between four presidents, either by military coup (1978, 1984<sup>19</sup>), or by power struggle (1979, 1980). As such, there was no breakthrough in Mauritania until the 1991 constitution was issued.

The succession of serious economic crises in Mauritania, especially the withdrawal of external aid and the increased level of debt (which reached a billion dollars in 1986) were mirrored by internal problems resulting

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<sup>19</sup> Muhammad Ould Salek led a coup in 1978, which was swept away by another coup in 1979 led by Muhammad Mahmoud Ould Louly. Power was settled in the hands of the President Muhammad Khouna Ould Haidalla, who in the same year formed a civilian government and put in place a plan for a constitution to guarantee political plurality. However the plan was never realized since his regime was overturned by a military coup on December 12, 1984 led by General Mu'awiya Ould Taya.

from tribal divisions and student demonstrations protesting the lack of employment. All these factors contributed to the political order's inability to rule and to the near outbreak of civil war, which pushed the president to undertake constitutional reforms. Different political parties participated in the debate on this subject, as did some elements of civil society such as the Women's Alliance. At a general level, the political reforms that took place in Mauritania in 1991 and 2006 were similar to other reforms that took place in the Arab world.

### *Contents of the Constitutional Reforms*

The Mauritanian constitutional amendment of 1991 gave the regime a number of parliamentary characteristics, which were basically manifested through a dual governing apparatus and the strengthening of the legislative institution. This marked a gradual progression towards a parliamentary regime while still maintaining the president in premier position. The constitution placed at the president's side a prime minister in the role of the head of government; structurally, however, the independent body exercised only a small part of executive powers, the most important ones being left to the president. Article 42 of the constitution shows characteristics of a parliamentary order with its assurance that the prime minister defines the policy of the government under the supervision of the president, and that he divides the tasks among the ministers and directs and coordinates the activity of the government. The 1991 constitution also stipulates rules for members of the government in terms of activities exercised. It deems that members of government must not exercise any parliamentary mandate, any function of professional representation of a national character, or hold any other employment, whether public or private. This is one of the fundamental new points in the 1991 amendment. In addition, the constitutional reform of that year enforced the

government's responsibility before the National Assembly.

With regards to the parliament itself, apart from the supervisory powers that were pledged to the Assembly, the legislative jurisdictions of the institution were also strengthened by the constitutional amendment. The legal domain was expanded to include numerous subjects, among them the regional partitioning of the country and general rules for organizing national defense.

The powers of the Mauritanian government were also expanded in the field of diplomacy, since power to ratify international treaties and agreements belongs to the Mauritanian government. This power is not limited to matters concerning the finances of the state, as is the case in the other North African countries (Morocco, Algeria, Tunisia) but also includes peace and unity treaties, market treaties, and agreements concerned with international regulation, treaties replacing stipulations with a legislative character, and those connected with the borders of the state.

Similar to many of the Arab countries, Mauritania devoted itself at the beginning of the 1990s to the support of citizens' rights and freedoms, whether through defining certain guaranteed rights, granting treaties a higher status than laws, or granting the constitutional court the power to supervise the extent of the constitutionality of laws. The introduction to the Mauritanian constitution assured its commitment to democratic values as defined in the International Declaration of Human Rights (1948) and the African Covenant for Human Rights (1981). The constitutional amendment of 1991 defined a variety of rights which are guaranteed to the Mauritanian people, including the right to equality, freedoms and basic human rights, the right to property, political freedoms, freedoms for trade unions, economic and

social rights, and rights connected to the family, the basic unit of Islamic society (section three of the introduction to the 1991 constitution).

Apart from these, the state guarantees, in accordance with the tenth article of the constitution, public and individual rights to the citizens, such as the freedom to travel and settle in all parts of the state's territory, freedom of entry into and exit from the national territory, freedom of opinion and expression, freedom of assembly and association, freedom to belong to any political or labor organization of one's choice, the freedom of commerce and industry, and freedom of intellectual and artistic creativity.

The constitutional amendment of 1991 also created an independent judiciary assigned to the Constitutional Council whose six members supervise referendums and presidential elections, and also settle disputes concerning legislative elections. This body is also charged with determining the constitutionality of laws if asked to do so by the president of the republic, of the National Assembly, of the Senate, or by one third of the representatives of the National Assembly or one third of the members of the Senate. The amendment also ensures that the Council checks the constitutionality of international agreements. If it announces that there is an article which is contrary to the constitution, the treaty is not ratified or agreed upon unless the constitution is reviewed.

Despite the relative progress at the level of human rights brought about by the constitutional amendment of 1991, the atmosphere was quickly weakened following the exceptional circumstances that the country underwent from 2003-2005. This had a serious effect on human rights, the most prominent manifestations of which were the dissolution of a number of political parties, the arrest of nationalist and Islamist political leaders, the closing of research

centers, and two attempted coups d'état. On August 2, 2005, a successful coup took place, which had clear support from the people and equally enjoyed regional and international acceptance. In accordance with its pledge to bring power to civilians and to continue with the democratic transformation, the Military Council for Justice and Democracy pursued its efforts to restore constitutional order through a referendum on an amendment guaranteeing rotation of power after a period not exceeding two years. In addition, this group guaranteed that local and legislative elections would be held in November 2006, elections for the in Senate in January 2007, and presidential elections in March 2007. Mauritians showed great satisfaction with the constitutional amendment of 2006: the interior ministry disclosed that the referendum obtained the support of 97.97% of voters, a referendum carried out under the supervision of the Arab League, the African Union, and the European Union. The constitutional amendments and changes were implemented either through elections or legal orders in various domains.

After the ratifying of the new constitution, the Mauritanian political sphere saw a succession of elections at the local and national levels, and elections for the Senate. As promised, municipal elections took place in November 2006, in which 1,212 lists of political parties and independents competed, with a 73% rate of voter turnout. At the same time, parliamentary elections were held for the 95 seats in the National Assembly.<sup>20</sup> 17% of the deputies elected were women. Elections to the Senate were held in January and February 2007 for 56 seats, three of which represent Mauritians abroad in accordance with Article 47 of the

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<sup>20</sup> The elections resulted in notable progress for the parties of the coalition forces for democratic change, which gained 51 seats, in contrast to 38 seats for independents.

constitution.<sup>21</sup> As for the presidential elections, which represented the final stage in the transfer of power to the citizens, they were held in March 2007 under international supervision, with 19 candidates for the position of president. Sidi Ould Cheikh Abdallahi and Ahmad Ould Daddah received the most votes, with Sidi Ould al Cheikh Abdallahi winning in the second round. The new president began a process of returning refugees and exiles who had been persecuted during the rule of Ould al Taya. And unlike constitutional amendments in many Arab countries that aimed to keep the president in power (Tunisia, Algeria, Egypt, and Syria), the constitutional amendment in Mauritania guarantees a limited duration in office: although the 1991 constitution already limited the president's mandate to six years, this was reduced in the 2006 constitution to five years, renewable once only, meaning that the president cannot stay in office longer than ten years. It equally stated that candidates for the presidency may not be older than 75, a clause not subject to constitutional review.

The constitutional reforms were also accompanied by amendments to electoral laws. A national bloc was founded, composed of 14 deputies, and women were granted a quota of 20% of seats in the local councils and the National Assembly. Another legal change made with the goal of enhancing the parliamentary regime was the proposal to choose a leader among political groups to represent the opposition. Other changes concerning human rights law widened the margin of rights and freedoms. The National Council for Human Rights and a group of associations and NGOs

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<sup>21</sup> In the elections for the Senate, 170 electoral lists competed, of which 118 were independent candidates, 37 were party lists, and 15 were lists presented by political alliances. The final results were a victory for the independents with 34 seats and 14 seats for the opposition.

concerned with the rights of women and children were founded. The position of women was improved through their increased participation in public affairs, improved representation in parliament and local councils, and membership and leadership in political parties. A decree was also issued by the ruling military council assuring the independence of the judiciary.

Despite the effort to democratize the Mauritanian political order through constitutional amendments, increased concern for rights and freedoms, and devolution of power, the efforts to encourage democracy have not been very successful. This is due to the unsuitability of the Mauritanian political environment, economic and social stagnation, a lack of awareness on the part of the majority of Mauritanian citizens, weak performance by the political parties, divided loyalty of citizens between party and tribe, and the lack of a principled agreement between the majority and opposition on the rules of the political game. These factors have led to the strangling of every attempt to promote democracy, as shown by the coup of Mohamed Ould Abdel Aziz over Muhammad Ould Cheikh Abdallahi, who was the first civilian to take office in nineteen years. The presidential elections of 2009 were won by Ould Abdel Aziz, raising questions over the coming constitutional amendments.

### **Egypt: Political Diversification in the Light of "Pluralism"**

Egypt is among the Arab countries with the most extensive constitutional experience, with each version of its constitution reflecting different political and social circumstances. Looking at the document's evolution, it appears that some features are constantly changing, with the amendments sometimes characterized by progress and sometimes by regression. While the constitution of 1882 had the characteristics of a parliamentary regime, and that of 1923 emphasized rights and freedoms, the 1930

constitution took a step back by returning absolute power to the king and by restricting rights and freedoms. The document of 1956 established a mixed order (with the prime minister as head of state) and stipulated the socialist nature of Egypt, to be followed by the 1964 constitution which went in the direction of establishing a "parliamentary" order while maintaining a socialist outlook. After Egypt's defeat in the 1967 war and the death of Abd el Nasser in 1970, and during the struggle that took place between Sadat and the opponents of the regime in May 1971, a new constitution was drafted by a committee of the National Council consisting of legal, religious, and political experts and academics. This led to the adoption of a new constitution in 1971 following a public referendum, to be amended again in 1980 by Sadat following another public referendum.

In the late 1970s, when Egypt's political system and economy became more open as a result of the Camp David Accords, President Sadat tried to conform to external demands for political reform, in particular with the United States. The constitutional amendment of 1980 incorporated these reforms in addition to strengthening the institution of the head of state, establishing political plurality, and creating a bicameral parliament. The fifth article of the constitution was amended to stipulate that the country's political system is a multi-party one, with political parties regulated by law.

Another fundamental amendment in 1980 was Article 77. The new article stipulated that "the term of the Presidency is six Georgian years starting from the date of the announcement of the result of the plebiscite. The President of the Republic may be elected for other successive terms." The amendment of Article 77 is considered a regression from the gains made in the 1964 constitution and was the reason for strong opposition from members of the opposition, especially the Muslim Brotherhood and the Nasserite movement. Apart from

lengthening the president's term in office, the 1980 amendment further strengthened the institution of the presidency by assuring that one third of the People's Assembly (the lower house of parliament) would be appointed by the president, while the constitution of 1964 stipulates that not more than ten deputies may be appointed by him. The constitutional amendment of 1980 also decreed the creation of second chamber of parliament, the Shura Council, with two-thirds of its members to be elected by direct public vote and the remaining third to be nominated by the president. Among its responsibilities, the Shura Council is to be consulted on proposals to amend articles of the constitution.<sup>22</sup> However the two chambers do not have the same powers in the legislative and supervisory domains: only the Shura Council has the right to give its opinion on draft bills, public plans for development, and treaties; responsibility for the government remains with the Peoples' Assembly.<sup>23</sup>

Despite these sweeping changes to the political system, further amendments were made in 2005 and 2007.

#### *Factions Seeking Constitutional Reform*

A large cross-section of Egyptian political and civil society has always been behind the demand for reform. Almost all Egyptian political forces were unanimous about the need to amend the 1971 constitution. Likewise, a statement was issued in 1991,

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<sup>22</sup> There were 80 principles which were considered the general rules for formulating the new constitution along with its texts and articles. The present Egyptian constitution of 1971 contains 193 articles.

<sup>23</sup> Article 201 of the new seventh chapter created by the amendment of May 22, 1980 stipulates that "the Prime Minister and his deputies and ministers and other members of the government are not responsible before the Shura Council."

entitled "The Constitution We Are Demanding," signed by the heads of the opposition parties in the presence of the head of the Muslim Brotherhood. The national forces and movements also attempted to mobilize the street behind them to effect change on the political scene. In 2004, the movement for change, "Kifaya," appeared. Made up of different figures from the Egyptian elite, the movement was able to convey the demands of citizens that sought political change with their slogan "No to Extension, No to Heredity."

Meanwhile, internal pressures that had begun at the start of the 1990s resulted in an important change that saw the supervision of elections transferred to the judiciary according to a law issued by the High Court in 2000. Following the parliamentary elections of 2005, the judicial supervision of the election led to the discovery of some fraudulent results, and thus important gains for the opposition.<sup>24</sup> There were also frequent demands by intellectuals and academics for constitutional reform, such as the demand put forward by Ibrahim Shehata, deputy-president of the International Bank and writer of papers such as "My Will for my Country" and "Towards a New Constitution." Another example is the effort of Muhammad Usfur who proposed a new constitution. The faults of the Egyptian constitution were also summarized in a document formulated by the parties of the opposition.<sup>25</sup>

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<sup>24</sup> From around 415 seats in the People's Assembly, the opposition gained 102 seats in the 2005 elections, of which the Muslim Brotherhood gained the lion's share with 88 seats. The parliamentary opposition was formed of the Muslim Brotherhood (as independents), the Wafd party, the Progressive National Unionist Party, and the Party for Arab Pride.

<sup>25</sup> The arrest of the opposition representative Ayman Nour, president of the Tomorrow Party, at the beginning of 2005 and the arrest of Saad Eddin Ibrahim

### *Contents of the Constitutional Reforms*

The demands for change to the Egyptian constitution in 2005 made by actors of civil society and parties of the opposition centered on improving human rights and freedoms and extending eligibility to the presidency to more than one candidate. The demands can be summarized as follows:

- The establishment of human rights in Egypt in accordance with Islamic law and international agreements.
- Regulations to limit the declaration of a state of emergency in the country.
- Freedom to form political parties without the requirement of agreements.
- Procedures to ensure good execution of public elections and referendums including judicial supervision.
- The creation of a government of which the majority is chosen by free vote.
- The granting to the People's Assembly the right to amend the budget, and granting of legislative powers to the Shura Council.
- Election of the president by a direct public election between more than one candidate.

Facing mounting demands for reform in Egypt, President Mubarak took the Egyptian people by surprise with his directive to the People's Assembly to undertake constitutional reform, especially with regards to Articles 76 and 179 (concerned respectively with the circumstances for candidacy to the presidency and the socialist public prosecutor). Nonetheless, the constitutional amendments of 2005 were considered by the opposition forces to be phantom amendments given that their

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following his statements on the Egyptian regime and the need for political reform are among the internal reasons that played a role in the push for reforms to the constitution.

reproduction of an authoritarian regime had made a mockery of the demands for reform. For example, the Muslim Brotherhood saw the proposed constitutional amendment as a political farce since the revised Article 76 stipulated the election of the president through a direct secret ballot, but placed severe restrictions on candidates, particularly independents. As such, the opposition forces continued to demand true constitutional reform. These demands took the form of demonstrations and protests. In an atmosphere of heightened tension, leading representatives of the opposition took the initiative and proposed constitutional changes. However, this was overridden by Mubarak's proposal to amend Article 34. Debates on the President's proposed constitutional reforms in the People's Assembly were boycotted by the opposition parties: the New Wafd Party, the Progressive National Unionist Party, the Arab Democratic Nasserist Party, and the Muslim Brotherhood.

As stipulated in Article 189 of the Egyptian constitution, the president of the republic or the People's Assembly may request the amendment of one or more articles of the constitution, stating the reasons for the desired amendment. After Mubarak outlined the reasons for his proposed amendments in a letter to the People's Assembly, the parliament discussed the proposed amendments, with the People's Assembly then approving the amendments in January 2007 with a clear majority of 316 votes. A public referendum was then held in March, in which 27.1% of registered voters participated, according to official figures. The constitutional amendments, including the amendment to Article 34, were confirmed with a majority of 75.9%.<sup>26</sup>

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<sup>26</sup> The opposition parties criticised the official figure for the rate of participation in the referendum, stating that the rate of participation did not exceed 5% of the total of those registered. According to these parties, this explains the lack of popular satisfaction with the reform measures.

In his letter to the People's Assembly, President Mubarak gave the following reasons for his proposal:

- To ensure conformity between the articles of the constitution and the economic, social, and political changes.
- To forbid political activity within a religious frame of reference.
- To consolidate the role of the parties and strengthen women's representation in the People's Assembly and the Shura Council.
- To achieve a balance between the legislative and executive authorities.
- To strengthen the powers of the Council of Ministers.
- To remove the State of Emergency and issue a permanent law to fight terrorism.
- To further decentralization and support the independence of the judiciary.

Thirty four sections of the constitution were amended in 2007. Apart from changes affecting the economic system and the role of the state, the constitutional amendments were also concerned with the relationship between the authorities, and the field of rights and freedoms.

Nine articles were amended to establish a new economic system. All references to "socialism" and "alliance of the working forces of the people" were removed, and the first article which stated that Egypt was a "socialist state based on the alliance of the working forces of the people" was replaced with a new definition of Egypt as "a democratic system based on citizenship." The definition of the Egyptian economy as a "socialist system" was removed and replaced with a description based on the development of economic activity and social justice.

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Representatives of the opposition make up 20% of the members of Parliament.

The amendment of 2007 also saw changes to the legislative institution, how its members are elected, and some of its powers. The change to the electoral policy shows progress, in a transition from a single system to a mixed system. However, despite the fact that the new electoral system opens the door to independent candidates, Article 62 does not define the proportion of individual seats, which is an obstacle to independents gaining many spots. The intention was perhaps to prevent independent candidates from the Muslim Brotherhood from winning a large number of seats in parliament. Nonetheless, the change to Article 62 is positive as it establishes a quota for women in the two parliamentary chambers.

However, the constitutional amendment also saw some reduction in the powers of the parliament. The Shura Council lost its basic right to give its opinion on proposed amendments to the constitution. The amendment to Article 88 was also a step backwards as it lessened the judicial supervision of elections.<sup>27</sup> The amendment gave more power to the parliament with regards to the budget, with the People's Assembly now able to amend expenses except those used to repay a specific debt on behalf of the state. The powers of parliament were also strengthened in the supervisory domain, with the amendment to Article 127 giving the parliament the right to

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<sup>27</sup> In 2001 the Supreme Constitutional Court abolished an election law because it did not satisfy the right of the judiciary to supervise the ballot centres in accordance with Article 88 of the constitution (before the amendment): "the necessary conditions stipulated in the members of the People's Assembly shall be defined by law. The rules of election and referendum shall be determined by law, while the ballot shall be conducted under the supervision of a judiciary organ."

decide the responsibility of the prime minister.<sup>28</sup>

Despite the demands of the opposition parties and the Muslim Brotherhood for a democratic parliamentary regime, with the government formed from a parliamentary majority and with equal powers for the government and People's Assembly while maintaining symbolic powers for the president<sup>29</sup>, the constitutional amendment of 2007 was more orientated towards consolidating the presidential regime, despite the special status it gave to the prime minister. The office of prime minister was strengthened through legislative and

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<sup>28</sup> Article 127 of the Egyptian constitution stipulates in accordance with its amendment in 2007 that "the People's Assembly shall determine the responsibility of the Prime Minister, on a proposal by one-tenth of its members. Such a decision should be taken by the majority of the members of the Assembly. It may not be taken except after an interpellation addressed to the government, and after at least three days from the date of its presentation. In the event that such responsibility is determined, the Assembly shall submit a report to the President of the Republic including the elements of the subject, the conclusions reached on the matter, and the reasons behind it. It is to the President of the Republic to accept the government's resignation or to return such a report to the Assembly within ten days. If the Assembly ratifies it again with a majority of one-third of its members, the President of the Republic shall accept the government's resignation".

<sup>29</sup> This refers to the undertaking for political and constitutional reform in the programmes of the Wafd party, the initiative of the Supreme Leader of the Muslim Brotherhood towards general principles for reform in Egypt (March 2004), the undertaking of the Progressive National Unionist Party for political and constitutional change in Egypt and its proposal for an amendment to the 1971 constitution, and the Tomorrow Party's undertaking of programmes for political and legislative reform.

executive power-sharing with the president, and by virtue of the president's obligation to consult the prime minister when issuing decrees with the force of the law, appointing and dismissing ministers, declaring a state of emergency, and signing peace treaties and trade agreements. The amendment also granted the prime minister political deputyship, giving him the right to represent the president should a temporary impediment occur.

However, despite the strengthening of the second element of the executive apparatus, these constitutional amendments did not result in the establishment of features of a parliamentary regime since they also preserved the superior standing of the president, either by reinforcing his various powers, or by making obstacles to multi-candidate presidential elections. The amendment of Article 136 perhaps most significantly strengthened the president's power, allowing him to dissolve parliament "in case of necessity" without a referendum. In this case, new elections must be held no more than sixty days after dissolution, and the new parliament may not be dissolved for the same reason.

The Muslim Brotherhood, effectively prohibited from presenting a candidate to the presidency by the amendment to Article 76 in 2005, was not granted increased access following the amendment of 2007 as the right to candidacy was restricted to licensed parties only. And while the candidacy of independents was permitted, this would require the endorsement of 230 elected officials from the People's Assembly, the Shura Council, and the local councils – a requirement that also effectively barred the Muslim Brothers since they were not represented at all in the local councils or in the Shura Council, and their representation in the People's Assembly did not exceed 88 seats. Despite the fact that the amendment to Article 76 grants parties of the opposition the right to presidential candidacy, it set such a stringent standard for eligibility that

the ruling party would be left without competitors in the presidential elections, even though the basic aim of the amendment was to allow the first multi-candidate presidential elections in Egypt.

The constitutional amendments of 2007 also saw restrictions placed on rights and freedoms, with the amendment of Articles 5 and 179. The third paragraph added on to Article 5 placed a restriction on the freedom to found political parties as it prohibited "the pursuit of any political activity or founding of any political parties within any religious frame of reference, or on any religious basis or on the basis of gender or origin." While the founding of any party with a religious basis was already prohibited, the new paragraph was more comprehensive and extended this prohibition. The revised Article 5 prevents all possible ways for the Muslim Brotherhood to create a political party and shows that the state is not ready for the integration of Islamists into the political order. This amendment faced demands from the opposition for the freedom to form any kind of party who saw in it the continuation of the previous situation of despotic rule.

The amendment to Article 179 removed the institution of the socialist prosecutor as responsible for procedures guaranteeing human rights and replaced it with procedures undertaken by the state to fight terrorism. Although the amendment ended the state of emergency that Egypt had been in since 1981,<sup>30</sup> the revised article establishes the right, for the purposes of fighting the dangers of terrorism, to suspend sections of the constitution concerning "freedoms, rights and public duties." While the socialist public prosecutor was the authority to whom citizens could appeal

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<sup>30</sup> The emergency law gives the state wide ranging powers to detain suspects without trial for long periods, gives it the right to try citizens in a military court, and forbids popular associations.

against the transgressions of the state, the amended article grants to the president the right to refer any accusation of terrorism to any court of his choice, which allows him to have civilians tried in military courts despite the fact that this is in violation of Article 68. The opposition parties and civil society movements considered the amendment of Article 179 to have given the regime the characteristics of a police state, while Amnesty International said in a statement that the amendments served to guarantee the continuation of the encroachments arising from the powers granted by the state of emergency and to provide an apparent legitimacy for the misuse of these powers.<sup>31</sup>

#### *Did the Constitutional Reforms Respond to Demands?*

Those calling for reform of the 1971 constitution criticized it for concentrating too much power in the hands of the president and demanded the transfer of powers to the government, the strengthening of freedoms, and complete independence for the judiciary. A response was given to the demand of the opposition with the amendment of 2005 which established multi-candidate presidential elections. Equally the constitutional amendments of 2007 were considered a positive point credited to the Mubarak regime as a response to the reform program so desired by the Egyptian people. Although the opposition parties welcomed the reform, they considered it to be insufficient and merely a fraudulent gesture in response to pressure. As proof of this, the opposition pointed out that the amendment did not

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<sup>31</sup> The assistant manager for the Middle East and North Africa programme in the organization explained in a statement: "Instead of asking the Egyptian deputies to vote on an end to the arrests, acts of torture and unfair trials, they are asked to vote on withdrawing the constitutional guarantee against these violations of human rights."

touch other articles standing in the way of reform, such as Article 77 which places no limit on the president's duration in office. In a joint statement, the Muslim Brotherhood, the bloc of independent deputies in the People's Assembly, and the Wafd party announced their rejection of the proposed constitutional reforms.

#### **Algeria: Extension of the Presidency and the Single Executive Body**

Since its independence, Algeria has had four constitutions. The first constitution of 1963 was abolished two years later following Houari Boumédiène's military coup in 1965. Algeria was ruled for ten years after that without a constitution, and then a national covenant was put in place, which was reformed in 1989 and 1996. The succession of constitutions reflects the difficulty in finding one that fits well with the developments, transformations, and crises that have befallen Algeria's political scene. As in the other Arab regimes, the institution of the head of state is the pivotal body in the political order. According to the different Algerian constitutions, the president exercises wide ranging powers both in normal circumstances and exceptional circumstances, giving him a status above other institutions. However, unlike some of the North African regimes, such as Mauritania, the last Algerian constitutional reform of 2008 took a step backwards with regards to the reforms of the 1989 review and especially the amendment of 1996.

#### *Contents of the Constitutional Reforms*

Algeria's political path since independence clearly shows the strong presence of the military institution as the backbone of the country's political order. Equally, the determination of political leaders and the succession of certain events have contributed to making the military play a vital role. While the constitution of 1976 stipulated that the function of the army was

not only to defend the security of the country but also extended to participating in its development the strengthening of socialism, the constitutional amendments of 1989 were considered to be a phase of reconsideration of the military's hegemony. The 1989 constitution established the beginning of the army's withdrawal from politics and the limitation of its role to the task of national defense. The amendments also included the dividing of state from party, and the establishing of political plurality and individual and collective rights. The amendment tried to end the single-party system, despite the fact that the National Liberation Front remained the absolute power ruling the people.

Soon, 30 parties appeared on the political scene; however, in the municipal elections of 1990 the Islamic Salvation Front gained 45% of the vote, ahead of the National Liberation Front that received only 28%. This led to the declaration of a state of emergency in 1991, allowing the army to play a political role once again. The cancelling of the election results led to the resignation of the president and the formation of a High Council of State.

A proposal for a constitutional reform was put forward by interim head of state, General Zeroual. This met with opposition since it did not comply with the terms for constitutional review. However, those in favor of the amendment said that in the absence of an elected parliament, the president's direct consultation of the people through a public referendum did not constitute a violation of the constitution. General Zeroual therefore commissioned a committee to prepare the 1996 constitution, and held consultative meetings with politicians. The proposed amendments resulted in the founding of a group of constitutional institutions, among them the People's Council, the High Court, the State Council, and the Constitutional Council. The presidential mandate was limited to five years, renewable only once. In addition, a

second chamber was added to the parliament which, according to some in the opposition, was aimed at excluding the Islamists from the majority of the seats in the People's Council.

The constitutional reforms in Algeria of 1989 and 1996 created a governmental institution alongside the institution of the head of state. The head of the government chooses members of the government who are then appointed by the president. In the case of the National Assembly's failure to approve the government's program, the head of government presents the collective resignation to the president. The head of government also distributes the functions, signs executive decrees, and presides over the Council of Government, in accordance with Article 85 of the constitution.

The 1996 constitution also gave Algeria a bicameral parliament consisting of the People's National Assembly and the Council of the Nation, the first chamber elected by direct public vote and the second by indirect public vote. In Algeria, as in most countries of the eastern Arab world, a third of the members of the Council of the Nation are chosen by the president, while the other two-thirds are elected.

Article 122 gives 30 areas in which the parliament may legislate, and Article 23 stipulates a further five areas in which the parliament legislates through organic laws. In the area of diplomacy, the agreement of the government is required for the signing of various kinds of treaties. The parliament may also discuss foreign policy if asked to so by the president or the head of one of the councils.

In 2008, Algeria witnessed another wave of constitutional amendment. Although Abdelaziz Bouteflika assumed the presidency in 1999, his demand for constitutional reform was delayed by nearly ten years. The main factors behind the amendment of 2008 were the international

situation, and the unsuitability of the 1996 constitution for country's current circumstances.

According to the latest set of amendments, the president of Algeria must undertake constitutional reform in accordance with Article 176 of the constitution:

*“When the Constitutional Council considers that the draft constitutional revision does not infringe, at all, upon the general principles governing Algerian society, the human and citizen's rights and liberties, or does not affect, in any way, the fundamental balance of powers and of institutions, the President of the Republic may promulgate, directly, the law pertaining to constitutional revision without submitting it to People's referendum if it obtains the voices of three quarters of the members of the two chambers of the Parliament.”<sup>32</sup>*

Since the Constitutional Council gave its approval of the proposed amendment in 2008, the president then submitted it to a vote in parliament. More than 400 of the Algerian parliament's 533 members voted in favor of the constitutional amendment. While the majority of political organizations expressed their support for the amendment, the Rally for Culture and Democracy party and the movement for reform rejected it.

The amendment of 2008 created a presidential regime through its extension of the president's term in office, and its bypassing of the executive duality and concentration of power in the hands of the president. Although the presidential mandate remained limited to five years, it could be renewed more than once, allowing the current head of state to remain in office for an unlimited period of time. In addition, the powers of the president were strengthened, creating a single executive apparatus. The constitutional amendment

substituted the term “prime minister” for “head of government” to define more precisely the powers of and relationship between the mechanisms of the executive authority. More significantly, the prime minister was stripped of his executive powers, which now belong exclusively to the president.

In contrast to the above mentioned amendments, the constitutional amendment of 2008 had a positive aspect: it sought to increase women's political participation by adding a new article stipulating increased political rights for women, and increased representation of women in the elected councils. However, the amendment of 2008 overall was a step backwards in Algeria's path to a democratic future.

## Conclusion

Any analysis of constitutional reform in the Arab world must take into account the interplay between political and economic reforms, and the social and cultural environment. This study has shown that despite the fact that these reforms have not profoundly altered the political and constitutional arrangements in these countries, they have permitted a change in the relationship between the powers, and an increased role for political parties, as well as civil society, which has been empowered to undertake effective role in future constitutional amendments. The effect of international pressure on the Arab states has also been clearly shown in the field of human rights; however, the negative impact on this area caused by laws to fight terrorism has also been made clear.

A comparison with the experiences of countries that have certain problems and characteristics in common with the Arab states, for example the states of Latin America, shows that generally speaking, constitutional reforms provide a gateway to democracy, or to a transitional phase of democracy, and at the very least can be the

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<sup>32</sup> Unlike Algeria and Mauritania, a referendum is necessary in Morocco for all kinds of constitutional review.

way out of a crisis.