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Algerian angst: can it agree on constitutional change?

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Algeria's forthcoming constitutional amendments, first introduced by President Bouteflika in May 2014, have recently disappeared from public discussion and among the political elite, following a period of intense official political discourse that began prior to the presidential elections in April 2014.

Discussion about the next constitution was a significant feature of the election campaigns of President Bouteflika and of his political opponents, who see his call for constitutional amendments as a manoeuvre to guarantee the sustainability of the current regime and its working procedures.

This current political climate has generated two contradictory political views the first is supported by the regime and is represented by the parties that move within its sphere: the second regards the regime as an obstruction to democratic transformation.

Amidst this political conflict, the subject of constitutional amendment has risen to the surface in discussions among civil society associations, political parties, academics and other experts.

Since Algeria won independence in 1962, its constitutions have played an important role in the different political eras. The early constitutions were ideologically charged to reflect a mixture of revolutionary spirit and socialist ideology. The violent riots in Algeria in October 1988 instigated a period of change in the one-party state and led to the first pluralistic constitution in 1989. This constitution recognised pluralism and the freedom to establish parties and associations. The 1996 constitution moved away from pluralism and resulted in political tension and the black era of the Algerian Civil War. This was followed by a constitutional amendment in 2008 that enabled the current president to run for a third term; it also offered a series of legal measures that empowered women, increased opportunities for representation and enhanced their freedoms.

The question that remains is what can the next constitution offer in terms of rights and freedoms. Can political decision makers break their repetitive political performance in a manner that allows room for political action? Will they create a constitution that contains the elements of democracy, governance, consensus and the rule of the law?

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Debate about a new constitution in Algeria has become fruitless and open to misinterpretation. The political opposition perceives this debate as a political manoeuvre to strengthen the authority of the president and transform the political system into autocratic presidential rule. Some perceive it to be a superficial change from the 2008 constitution, which underwent a cosmetic change that merely consolidated the political status quo. As observers of Algerian electoral and political affairs have become disinterested, supporters of the regime have interpreted this as a declaration of consent to the constitution, despite the absence of real consensus between the regime and the opposition parties.

The presidential elections of April 17, 2014 represented a landmark in the changing political landscape in Algeria. The electoral battle was preceded by an atmosphere of tension and an unequal campaign between those who led the campaign of President Bouteflika and the other five candidates. Electoral tensions peaked during the campaign, which was dominated by calls for stability and peace, for overcoming the Arab Spring, and for guarantees to include young people in administration and governance within a secure democracy. This emphasis on stability and inclusion was unsurprising in a country that had witnessed regional and international polarisation and a state of instability, especially following the fall of northern Mali into the hands of armed groups and the collapse of the Gaddafi regime which strengthened organised crime, was supported by arms and drugs dealers, and led to illegal immigration.

Political tremors following the presidential elections

Algeria has had several constitutions drafted during periods described as emergencies, which were created as a result of the political and economic circumstances of the day. The four constitutions of 1963, 1976, 1989 and 1996 were established under political conditions driven by specific ideological, political and economic groups. The 1963 and 1976 constitutions were linked to ideological beliefs and the interventionist role played by a state. They were engulfed in political symbols of that period and were the visions of the leaders at the time, Ahmed Ben Bella and Houari Boumédiène, respectively. The 1989 constitution was the result of the economic conditions and corruption in the political arena, trumpeted at the time under the slogan of one color, one party and one person. The riots that began on October 5, 1988, led to a dramatic separation between two systems and historical eras. Under the 1989 constitution, it became permissible to form parties, people enjoyed freedom to form associations and there was greater democracy.

The 1996 constitution, amended in 2008, opened the possibility for President Bouteflika to be nominated for an indefinite number of terms in office. His opponents, including former PM Sid Ahmed Ghazali, saw this as a return to political oligarchy and a reversal of the 1989 constitution, which former President Chadli Bendjedid launched as a new political approach.

The return of President Bouteflika for a fourth term following the 2014 presidential elections, despite the major role his illness played in the campaign, prompted a serious public dialogue and put pressure on those around the president to place the issue of constitutional amendment at the top of their agendas, especially considering how prominently it featured in the president's electoral campaign. The following comments are relevant for the current

constitutional discussion, which will see the development of a constitution that should create significant stability while overcoming the loopholes of the previous Algerian constitutions.

When discussing the drafting of a constitution, there is no typical political model for newly established democracies. The presidential system in Brazil, the parliamentary monarchy in Spain, and the semi-presidential model in Portugal represent a wide range of models that meet the conditions of transformation. In the first phase of their constitutional process, Tunisia and Egypt, for example, chose a semi-presidential system, although experts believe that developing countries such as Egypt are more in need of a presidential system capable of finding radical solutions rather than reviving the old regime.¹

Experience to date has shown that the parliamentary system has failed drastically in Libya, which is being torn apart by tribal culture and narrow-minded self-interests. In fact, the parliamentary system has actually become a tool to dismantle the state after the destruction of the regime. Therefore, the regime in Algeria believes that a constitution is required that preserves the sustainability of the political regime and its actions along with some type of mobilization that meets the demands of key constituencies without further raising tensions that might lead to a total collapse of the existing political system and the political process. This idea has been adopted by the regime in Algeria since it believes that any changes in the political map must be implemented smoothly, must take into consideration the existing characteristics of the political system, and must not exclude any approach that advances the political process in the future.

The periods during which constitutions are drafted differ from those in which everyday policies are drafted. This is due, not to the motives of influential parties, but to the absence of stable rules and institutions. In many cases, constitutions are drafted when existing political institutions have collapsed. As a result, the process of drafting the constitution can itself be a challenge to the legitimacy of the remaining institutions. An absence of interaction between political institutions during normal times can make the periods of drafting constitutional terms particularly dangerous. Parties led by strong candidates may achieve a temporary advantage that allows them to rewrite the political system in a manner that is not beneficial to a competitive democracy.

The consultation process for constitutional amendments was led by the former PM, who is described by the opposition as a figure with non-consensual qualities, hampering the introduction of political ideas that would permit the drafting of a consensual constitution. Despite this, the Algerian President issued a statement in the national newspapers on July 10, 2014 praising comments aimed at expanding community participation between the Minister of State, Yahia Ahmad and various political players. The following are some of the partners who contributed to the drafting of the new constitution:

1- Political parties and independent parliamentary groups:

- Fifty political parties and two independent parliamentary groups took part, representing 80% of parliamentary members and 90% of those elected to the local councils.

¹ Alvaro Vasconcelos & Gerald Stang (eds). Constitutional Reform in Times of Transition. Arab Reform Initiative, 2014, p.11.

2- National figures:

- Eight officials and figures from November 1954 Revolution;
- Four government officials and former members of the High Council of State;
- One former member of the People's National Assembly;
- One former head of the Constitutional Council;
- Four former ministers;
- Two officials from advisory commissions;
- 15 jurists who occupied official positions in the judiciary, Bar Association and the Constitutional Council.

3- Associations and organizations

- Four organisations from the National Liberation Front,
- Twelve youth and student organisations;
- Eleven businessmen's associations;
- Two organisations representing laborers and farmers;
- Two trade unions representing journalists;
- Four associations representing the judiciary, attorneys and human rights groups;
- Three women's associations.

4- University academics:

- Sixteen university professors, including 11 professors specialised in constitutional and public law.

Once the meetings had been completed, the presidential office worked until the end of August to summarise and document the contributions from all participants on constitutional amendments. Despite this, the opposition believes that these consultations were an attempt to evade the real process of reform by taking token steps that would improve the image of the regime. Therefore, the opposition called for coordination sessions to be held and the formation of an opposition that included former heads of government and military and political figures. This coalition was later dubbed the Forces for Change; it views the political process, elections and the fourth term of presidency as a clear setback to the democratic process.

During the current discussions on constitutional amendments, sensitive issues were posed; these issues were linked to security concerns facing Algeria. The different branches of the army remained far from the core of real discussion despite the important role that the army plays in building the state and in political and military action in the Arab Maghreb region, particularly in Algeria. The discussions also adopted general themes linked to the basic rights, duties and principles of human rights in Algeria.²

Accusations between the regime and the opposition are ongoing. There are some indicators, in the form of a letter stating that the current parliament is not ready to amend the constitution,

² According to a study by the Rand Institute, Algeria faces a dangerous terrorist threat; see El-Khabar, June 8, 2014, p.24.

that constitutional amendments will be implemented via a referendum. Bouteflika may count on a popular referendum after Algerian voters granted him a *carte blanche* with 80% of the votes in the last election. The president may also choose to have amendments passed via the parliament in accordance with the law.

There have been conflicting statements by politicians on how to ratify the next constitution pending the final decision by the president. Some politicians state that constitutional amendments will be enacted by the parliament; according to a statement by former presidential candidate Abdul Aziz Bal'eed, others say that they have received confirmation that the project will be passed following a popular referendum. What is the opinion of experts in constitutional law of the types of proposal made in the consultations?

Cherif Kais, Professor of Constitutional Law at Tizi Ouzou University, said a popular referendum is inevitable because the amendments will be substantial and not inconsequentially, based on the proposals made during consultations with the director of the President's office, Ahmed Ouyahia. Professor Kais, who participated in the consultations in his capacity as a prominent national figure, anticipates that the amendments would go straight to a referendum without passing through the parliament, just as they did in the 1989 and 1996 constitutions. Professor Kais says that the current constitution stipulates that "the people are the source of authority." This authorises the president to "resort to the people on an issue of national interest," and, of course, the constitution is of national importance.

Nasreddin Bousmaha, Professor of Constitutional Law at Oran University, comments: "The parliament in its current structure has no legitimacy to qualify it to vote on the project of constitutional amendment." He explains: "The authority has to present this project for a popular referendum. Although this option entails risks, it guarantees at least that the next constitution would be based on popular approval." The dilemma of building the Algerian constitution cannot be resolved without real consensus between the regime and the opposition, considering the vigorous accusations exchanged between the two sides.³

Discussions prior to the amendment – the final ramifications

The presidency presented its vision, prepared by a committee of experts who started work under the utmost secrecy in 2011, by publishing the draft proposals on the website of the president. They included a general review of the proposals for constitutional amendments, over seven pages, and proposals to amend articles of the constitution, over an additional sixteen pages. The two documents were discussed by the majority of associations and political parties. The two documents included the following themes:

- Expansion of the jurisdictions of the heads of the parliament and support for the advisory function of the State Council;
- Protection for judges from all forms of pressure, interference and maneuvers by ratifying the right to approach the High Judicial Council in such cases; exercising this constitutional right will support the independence of judges;

H. Suleiman. "The Ping Pong Game between the Authority and the Opposition", El-Khabar, June 14, 2014, p.2. See also Mohammed Sidomo, "The Parliament is not Qualified to Amend the Constitution," El-Khabar, July 10 2014, p.2.

- Support for representation of the judiciary in the Constitutional Council by increasing the number of judges in this body.
- The constitutional document concluded with a package of amendments to the new jurisdictions, which were awarded a supervisory function in the following manner:
 - To review the organization of the Constitutional Council, in particular its structure and increase the number of members to guarantee balanced representation of the three centres of power within it. Also, to introduce the post of a deputy head of the Constitutional Council to guarantee its stability and sustainability.
 - To support the legal status of the Constitutional Council's members by expanding the period of the term they can hold; to adopt international standards in this field and ratify qualifications of age, qualification, competence and experience for membership in the Council; and have the members of the Council be sworn in before the president.
 - To strengthen the Constitutional Council's administrative and financial independence.
 - To extend the right to question the constitutionality of the Constitutional Council's decisions to the parliamentary minority and to the prime minister.

Nacer Djabi, an expert in the political and social field, highlights several aspects of the constitution amendments meetings. The absence of representation by the majority of political groups had a negative impact on the political consultations and prompted many observers to say that the regime was “consulting itself” in these meetings. The discussions focused on basic points that did not explore beyond the proposed amendments. As a result, the proposals did not include the amendment to create the post of vice president, which was the main reason why the amendments were promoted in the first place, especially after the health of the president deteriorated. This move was defended by supporters of the president's election campaign.

The points are as follows:

- The writing of the constitution and the method of ratifying amendments is an issue that prompted some parties to demand that amendments be ratified by a referendum and not merely by parliamentary approval since many in the opposition accused the parliament of not being legitimate. Some parties have raised doubts about the method of consultations and have called for a “consensus constitution” based on the proposals of the Front for Change (Front du Changement) headed by Abdelmajid Menasra. He stated that some of the amendments presented by the presidency were the result of external pressures. There was also a demand to form a constituent assembly which would be assigned to write the constitution. Prominent groups who demanded this included the workers' party and before them, the Socialist Forces Front (Front des Forces Socialistes).
- The nature of the ruling system and the relationships between different centres of power attracted the attention of all the parties participating in the consultations. The majority of the proposals supported finding a balance between the authorities of the president and the prime minister in parliament. Some parties, especially those with chances to win a majority in the parliament, called for the prime minister to be

selected from the list that wins in the elections, according to a proposal by the National Liberation Front and others. Proposals that need to be accepted include granting greater powers to the prime minister and reducing the powers of the president, such as the appointment of governors.

- One of the major points raised and agreed upon in the consultations was the demand to grant greater power to the parliament. Some, like the Algerian National Front headed by Moussa Touati, even called for a full parliamentary system. There were also calls for a means of monitoring the government, such as allowing votes of no-confidence against the government, or holding the prime minister and ministers accountable in the context of a semi-presidential system.⁴
- Issues related to the independence of the judiciary, the powers of the Constitutional Council and the demand for a constitutional court were presented more than once by parties such as the People's National Assembly and a group of national figures, in addition to parties led by law school graduates (lawyers and former judges). Others called for the number of members of the Constitutional Council to be increased and demanded elections to vote them in rather than on appointment, as is currently the case. There were also calls related to the independence of the Accountability Council and other supervisory bodies, to form an independent commission to organise elections, especially as the presidential elections were still fresh in their memory.
- The issue of national reconciliation was raised via a proposal to amend the preamble of the constitution. Many parties and associations expressed reservations about this demand, such as the Sons of Martyrs Organisation and the National Mujahedeen Organisation, which feared that reconciliation might include the Harki (those who joined the French army during the revolution and who oppressed the mujahedeen). Other parties said the law is sufficient in this respect and expressed reservations about including national reconciliation in the preamble of the constitution.
- The issue of women's rights and sexual equality was raised by a few parties, mainly the Front for Change headed by Abdelmajid Menasra, a dissident from the Movement for the Society of Peace (formerly Hamas). He stated that this proposal should be rejected because of ambiguities in legal texts, and the effects on the spirit and identity of Algerian Muslim society because it could open the door to attacks against the constants and provisions of Shariah law and threaten the stability of the country. This position is close to that of the Movement for the Society of Peace, which boycotted the consultations on the grounds that this might lead to reservations about religious texts dealing with the Islamic inheritance law.⁵

Conclusions

It seems that the constitutional proposals may be framed by the regime as a type of “gift of the emir”, a benevolent offer from on high, since the regime believes that it possesses the right to

⁴ Nacer Djabi, “The Constitutional Amendment and the Question on Participation,” Al Jazeera, August 14, 2014. <http://studies.aljazeera.net/reports/2014/08/201481410221240268.htm>

Ibid.⁵

initiate reform and develop the legal, political and constitutional system. This conflicts with the principles of a system in which consensus is needed for creating a constitution and for establishing good governance. Commitment to engagement, and listening to a number of influential parties from civil society, would be seen as evidence of the regime's efforts to ensure broad consensus on the future constitution.

What is happening instead is a surgical operation conducted with a high degree of professionalism to prepare for a political system that will endure for a long time. The presidential institution embarked on a 'political tsunami' that touched both judicial and security structures. A large number of officers, judges and administrative employees were given retirement in preparation for the future. The next constitution will undoubtedly grant greater powers to the office of the president, even if better working conditions are granted to legislative, judicial and media institutions. This is due to the nature of the political system, which has become accustomed to a draconian presidential authority in which the presidency plays a key role in the political system and an important part in understanding and undertaking any future political change.

Therefore, it can be stated with confidence that the next constitution cannot assume its appropriate societal, legal and political status unless the following principles are taken into consideration:

- Allow influential parties to participate in drafting the constitution. Influential parties in this context means civil society activists, experts in constitutional law, real opposition groups and trade union activists, including unions of the security services and retired military institutions.
- Thoroughly examine how permanent constitutions are written, including those in France, America, Latin America and some countries in Eastern Europe. These countries lived through the drafting of constitutions on the basis of transitional justice and in response to periodic governing challenges or the vision of the regime alone.
- In light of the debate about the rise in corruption, and the failed performance of public organisations and institutions, some important legal matters need to be institutionalised. Accountability and transparency are vital issues. Economic freedom needs to be established to allow for a strong competitive market and discussion about inevitable and necessary economic openness.
- Take positive discrimination measures into consideration for gender and regional issues in a manner that guarantees participation of all, while assuming responsibilities on the basis of competence and merit.
- Emphasize the concepts that form a democratic constitution. These concepts and principles include the definition of the presidential term and of the physical, health and academic qualifications required. These issues prompted the most debate and controversy within elite circles and the political street in Algeria. A consensual democratic constitution needs to define presidential term limits to avoid giving support to specific candidates for the post of president.

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