

April 2016

Reforming the Judiciary in Morocco

A Compiled Report

* Younes al-Marzouki

Reforming the justice system in Morocco is an essential element in promoting the credibility of institutions, building a nation of justice and laws, and entrenching democracy. The question of judicial reform has been the focus of considerable debate among different political activists in Morocco in the post-independence period; however, it was not until 2011 that a qualitative transformation occurred, brought about in the process of constitutional amendment and the concrete changes that ensued.

Among the innovations in the Moroccan judicial reform process was the “parallel dialogues” process: while the current government devoted a national dialogue to the issue, civil society also embarked in parallel dialogue and public debate. As the new constitution went into effect, civil society stakeholders closely examined the condition of the judiciary and offered a set of recommendations for its reform, providing Morocco with a larger public debate around the issue of judicial reform.

What the Moroccan experience shows is the innate relationship between judicial reform and democratisation of the political system and the rule of law. Reform must be approached as a comprehensive process. Judicial reform requires a clearly defined, multi-dimensional, and long-term public policy. Such a reform project cannot take place without taking into account the status of other powers, their place in the constitution, and extent to which various political stakeholders support the process. Because of its diverse political party scene, experienced legal movement, active civil society, and effective media, Morocco has secured the ability to win the challenge of judicial reform.

Nonetheless, the judiciary in Morocco today occupies centre stage in the public political arena, given its prerogatives to inspect the constitutionality of laws, try members of the government and parliament, oversee the election process, disband political parties, unions, and societies, amongst others. In light of this situation, is the path Morocco is pursuing leading to a “government of judges?”

<u>INTRODUCTION</u>	4
<u>THE JUDICIARY IN THE PRE-2011 CONSTITUTIONS</u>	4
<u>JUDICIAL/LEGAL REFORM INITIATIVES PRIOR TO THE 2011 CONSTITUTION</u>	5
<u>Revising Laws as Response to Foreign Demands</u>	5
<u>Revising Laws Response to Local Activism and Society</u>	6
<u>Judicial Reform in the King’s Speech, 9 March 2011</u>	7
<u>The Consultative Commission Memoranda</u>	8
<u>REFORM OF THE JUDICIARY IN THE 2011 CONSTITUTION</u>	8
<u>Elevating the Judiciary</u>	9
<u>Independence of the Judicial Power</u>	9
<u>High Council of the Judicial Power</u>	10
<u>Litigants’ Rights and Rules of the Judicial Process</u>	11
<u>IMPLEMENTATION OF CONSTITUTIONAL REFORMS RELEVANT TO THE JUDICIAL POWER</u>	12
<u>National Dialogue for Reforming the Justice System</u>	13
<u>Parallel Civil Society Dialogue and Public Debate</u>	16
<u>Civil Society’s Calls Judicial Reform</u>	17
<u>Elements Inherent to the Reforms</u>	18
<u>Mechanisms Used</u>	20

<u>THE JUDICIARY AND POLITICS</u>	20
<u>Reform of the Judiciary, Democratisation, and the Rule of Law</u>	21
<u>Reform of the Public Prosecution and Judicial Police</u>	22
<u>Reforming the Judiciary through Comprehensive Political Reforms</u>	22
<u>Organising the Judiciary’s Relationship with the Media</u>	24
<u>Towards Politicisation of the Judiciary</u>	25
<u>Political Parties</u>	26
<u>The Elections</u>	28
<u>CONCLUSION</u>	31

Introduction

The judiciary occupies a prominent position in the Moroccan constitution. On the one hand, it is the main guarantor of equilibrium between the legislative and executive powers; on the other, the constitution serves as the main protector of the rights of individuals and groups. As such, reforming the justice system and, in turn, the judiciary is an essential element in promoting the credibility of institutions, building a nation of justice and laws, and entrenching democracy.

The question of judicial reform has been the focus of considerable debate among different political activists in Morocco, especially in the post-independence period. A sharp conflict between the authorities and the opposition arose, during which the judiciary was used to deter the latter. As a result, the subject of judicial reform remained central to the demands of party activists whenever the issue of constitutional reform arose prior to 2011. Indeed, various political party documents that preceded the constitutional revisions of 1992 and 1996 contain a host of demands and proposals in this domain.

Despite the country's many constitutional experiments prior to the comprehensive constitutional review of 2011, the judiciary has remained largely unchanged. It was not until 2011 that a qualitative transformation occurred, brought about by the many positive changes in the new constitution that made it possible for interested activists to continue making suggestions on its implementation.

The Judiciary in the Pre-2011 Constitutions

Within previous Moroccan constitutions,¹ the question of the judiciary was addressed in Chapter Six, divided it into sub-sections dealing with the independence of the judiciary from the legislative and executive powers; the issuing and implementing decisions in the name of the King; the appointment of judges by the King, based on recommendations by the High Council of the Judiciary; the composition of the High Council of the Judiciary; and the prerogatives of the High Council of the Judiciary.

¹ The Constitutions in question are those of 1962, 1970, 1972, 1992, and 1996.

Over the course of constitutional revisions from 1962-1996, the articles dedicated to the judiciary did not undergo any significant changes, unlike those dedicated to parliament and the government whose provisions changed for the better, especially in the 1992 revision. Judicial provisions were not reformed primarily because the general principles, composition, and prerogatives of the High Council of the Judiciary remained unchanged. Even in terms of form and quantity, the articles dedicated to the judiciary were meagre compared to those relevant to parliament and the government, as well as in comparison to foreign constitutions.²

Added to the weak status of the judiciary in the constitution are the difficulties resulting from the executive power's interferences in judicial matters, and the absence of guarantees ensuring the High Council of the Judiciary's independence. This is due, on the one hand, to the Ministry of Justice's control over the process of selection, employment, training, promotion and discipline of judges and, on the other, to the High Council of the Judiciary's lack of institutional, administrative, and financial independence.

Judicial/Legal Reform Initiatives Prior to the 2011 Constitution

The actual and constitutional condition of the Moroccan judiciary was the subject of a series of extensive debates that led to several partial reform initiatives. Indeed, as the condition of the judiciary worsened, reform demands became more comprehensive. The state was forced to respond to pressure, stemming first from foreign sources and second from the home front. Added to this was the regime's desire, in the last decade, to deepen the roots of legality and democracy in the country through a comprehensive constitutional review. In this process, the majority of political organisations, labour unions and associative organisations interacted.

Revising Laws as Response to Foreign Demands

Although Morocco's legislative policy had the habit of issuing and amending legislation to suit the government's needs in various fields, as of the mid-1990s,

² For example, the Spanish constitution consists of 11 articles dedicated to the judiciary, each comprising more than four paragraphs, and the Italian constitution has 13 articles related to the judiciary.

economic considerations imposed themselves on the requirements of legal modernisation, to help the country confront its economic stagnation. Chief among these are the mechanisms of economic openness and the attraction of foreign investments, the latter forming part of Morocco's Partnership Agreement with the European Union that comprised specific provisions for legal rapprochement with the state.

This process, and the seriousness with which it was broached, impacted for over two decades: the Investment Charter,³ the new Trade Law,⁴ the Law of Limited Shareholding Companies and other companies,⁵ the Free Pricing and Competition Law,⁶ the establishment of Commercial Courts,⁷ the Protection of Industrial Property,⁸ the establishment of the Moroccan Office of Industrial and Commercial Property,⁹ the Labour Law reforms,¹⁰ and the establishment of regional centres for investment and development of free and industrial zones.

Revising Laws Response to Local Activism and Society

If calls for judicial reform were part of the old-new demands on which many political and social forces had wagered, these did not happen as a result of events associated with the Arab Spring. Instead, over the past few years, Moroccan civil society and development stakeholders have held a strong record of applying pressure to bring about judicial reforms aimed at promoting the judiciary's capabilities and independence.

With the outbreak of the Arab Spring, justice related issues occupied considerable space in the slogans of the February 20 Movement in Morocco, including calls for

³ *Dahir* (decree) no. 1.95.213, issued on 8 November 1995 in implementation of the Framework Law no. 18.95 as an investment charter, published in the Official Gazette no. 4335, dated 29 November 1995, p. 3030.

⁴ Law no. 15.95 relevant to the Trade Law, published in the Official Gazette no. 4418, 3 October 1996, p. 2187.

⁵ Law no. 17.95 relevant to Investment companies, in implementation of the *Dahir* no. 1.96.124 issued on 30 August 1996, and published in the Official Gazette no. 4422, 17 October 1996, p. 2320. Also *Dahir* no. 1.97.49 issued on 13 February 1997, in implementation of Law no. 5.96 relevant to the Joint Liability Companies, Tawsiya Basita Companies, al-Tawsiya bil bil Ashom Companies, Limited Liability Companies, and Shareholding Companies, published in the Official Gazette no. 4478 on 1 May 1997, p. 1058.

⁶ *Dahir* no. 1.00.225 issued on 5 June 2000, in implementation of Law no. 06.99 relevant to the Freedom of Pricing and Competition, published in the Official Gazette no. 4810 on 6 June 2000, p. 1941.

⁷ Law no. 53.95 relevant to the establishment of Commercial Courts issued in implementation of the *Dahir* no. 1.97.65 issued on 12 February 1997, and published in the Official Gazette no. 4482 15 May 1997, p. 1141.

⁸ *Dahir* no. 1.00.19 issued on 15 February 2000, in implementation of Law no. 17.97 relevant to the Protection of Industrial Property, published in the Official Gazette no. 4776, on 9 March 2000, p. 366.

⁹ *Dahir* no. 1.00.71 issued on 15 February 2000, in implementation of Law no. 13.99 relevant to the establishment of a Moroccan Bureau for Industrial and Trade Property, published in the Official Gazette no. 4776 on 9 March 2000, p. 396.

¹⁰ *Dahir* no. 1.03.194 issued on 11 September 2003, in implementation of Law no. 65.99 relevant to the Labour Law, published in the Official Gazette no. 5167 on 9 December 2003, p. 3969.

fighting corruption, achieving social justice, and implementing genuine education, health, and judicial reforms. Amid this social activism, in his 9 March 2011 speech, the King called for a comprehensive review of the constitution¹¹ thus opening the door to its comprehensive review and laying the ground for the formation of a Consultative Commission for the Revision of the Constitution. The King appointed the members of the Commission and tasked them with holding wide-ranging consultations with all political parties, unions, and civil and non-governmental organisations through written memoranda, meetings aimed at exchanging views, and individual memoranda.

Judicial Reform in the King's Speech, 9 March 2011

The seven key elements of the King's 9 March 2011 speech became the basis of the comprehensive constitutional review. The main principles and objectives in the speech thus bear directly on the reform of the judicial/legal system. These include "upgrading and rehabilitating state institutions," "strengthening the gains acquired and rectifying the imbalances," introducing "deep-reaching reforms" and "consolidating the rule of law and institution-based state." The King's speech went further with reference to the

¹¹ In his speech, the King delineated seven basic pillars for a comprehensive review of the constitution, which were:
First: Enshrine in the Constitution the rich, variegated yet unified character of the Moroccan identity, including the Amazigh component as a core element and common asset belonging to all Moroccans;
Second: Consolidate the rule of law and the institution-based State; expand the scope of collective and individual freedoms and guarantee their practice; promote all types of human rights – political, economic, social, and cultural rights as well as those relating to development and the environment – especially by inscribing, in the Constitution, the Justice and Reconciliation Commission's well-founded recommendations as well as Morocco's international commitments in this domain;
Third: Elevate the judiciary to the status of an independent authority and reinforce the prerogatives of the Constitutional Council to enhance the primacy of the Constitution, of the rule of law and of equality before the law;
Fourth: Strengthen the principle of separation of powers, with the relevant checks and balances, and promote the democratisation, revamping and rationalisation of institutions through the following:
- A parliament that is the result of free, fair elections, and in which the House of Representatives plays the prominent role; expand the scope of legislative action and provide parliament with new powers that enable it to discharge its representative, legislative, and regulatory mission;
- An elected government which reflects the will of the people through the ballot box, and enjoys the confidence of the majority of the House of Representatives;
- Confirming the appointment of the Prime Minister from the political party which wins the most seats in parliamentary election, as attested by election results;
- Consolidating the status of the Prime Minister as the head of an effective executive branch, who is fully responsible for government, civil service, and the implementation of the government's agenda;
- Enshrining, in the Constitution, the Governing Council as an institution and specifying its prerogatives;
Fifth: Shore up constitutional mechanisms for providing guidance to citizens, by invigorating the role of political parties within the framework of an effective pluralistic system, and by bolstering the standing of parliamentary opposition as well as the role of civil society;
Sixth: Reinforce mechanisms for boosting moral integrity in public life, and establish a link between the exercise of power and the holding of public office with oversight and accountability;
Seventh: Enshrine in the Constitution the institutions concerned with good governance, human rights, and protection of liberties.

principle of separation of powers, and the relevant checks and balances, thus opening the door to discussing the three main branches of power.

The third key element relevant to the judiciary clearly states the need to “elevate the judiciary to the status of an independent power and strengthen the prerogatives of the Constitutional Council to promote the primacy of the Constitution, the rule of law and equality before the law.”

The Consultative Commission Memoranda

In general, despite their varied sources, the proposals gleaned from various memoranda have several points in common, including:

- Elevating the judiciary to the level of a third power and enshrining its independence from the legislative and executive powers in law;
- Entrusting the post of President of the High Council of the Judiciary to someone who is not a member of the governmental authority in charge of the justice system;
- Reviewing the composition of the High Council of the Judiciary, and ensuring that its membership is open to individuals with legal and judicial skills;
- Ensuring the independence of the High Council of the Judiciary and that its members devote full time to it;
- Defining the High Council of the Judiciary’s structure and responsibilities in an organic law;
- Guaranteeing the judges’ right to establish professional associations.

Reform of the Judiciary in the 2011 Constitution

The constitution granted the judiciary a prominent position among other public authorities; as a result, the judiciary today occupies the status it deserves in any system that aspires to a genuine democracy. The new developments in the constitution, embodied by the wide-ranging response to the aspirations of all the organisations that submitted proposals to the Consultative Commission for the Revision of the Constitution, came in response to four major demands and a host of minor details. These included:

- Elevating the status of the judiciary;

- Guaranteeing its independence;
- Revising the High Council of the Judiciary's composition and prerogatives;
- Ensuring that the principles relevant to the right of litigation and rules of the judicial process are enshrined in the constitution.

Elevating the Judiciary

The judiciary has been elevated to the level of the legislative and executive powers by replacing the word "Judiciary" with the term "Judicial Power" in the title of Chapter Seven of the revised constitution. The title now is made up of three subtitles comprising 22 different articles.

Independence of the Judicial Power

Chapter 7 of the revised constitution, titled "Independence of the Judiciary," comprises six different articles (107 to 112) listing the following:

- Independence of the judicial power from the legislative and executive powers, and the King is the guarantor of the judicial power's independence (Article 107);
- Presiding judges cannot be dismissed or transferred except in accordance with the provisions of the law (Article 8);
- Judges should not be subject to influence or interference in their work from any outside source; a judge may not receive any injunctions or instructions regarding his judicial responsibilities; he should report any threat to his independence to the High Council of the Judicial Power, and any failure to do so constitutes a grave professional error, without any prejudice to eventual judicial procedures. The law sanctions any person who attempts to unlawfully influence the judge (Article 109);
- Presiding judges should only be committed to applying the law, and judgements should be based on an impartial application of the law. Prosecuting judges should implement the law and adhere to the written instructions of their hierarchical superiors (Article 110);
- Judges have the right to freedom of expression in a manner compatible with the need for discretion and judicial ethics. They may join associations or establish professional unions while respecting their duty towards the impartiality and

independence of the judiciary, according to the provisions of the law. They may not join political parties or unions (Article 111);

- The basic statute of judges will be defined by an organic law (Article 112).

High Council of the Judicial Power

The High Council of the Judicial Power replaced the High Council of the Judiciary and was given a separate title comprising four articles that define its composition and prerogatives:

- The High Council of the Judicial Power ensures the application of guarantees accorded to the judges, in particular those relevant to their independence, appointment, promotion, retirement, and discipline. On its initiative, the Council drafts reports on the condition of the judiciary and the justice system, and issues the relevant recommendations. At the request of the King, the government or Parliament, it issues its detailed opinion on any issue related to justice, while mindful of the principle of separation of powers (Article 113);
- Decisions by the High Council of the Judicial Power regarding individual status could be challenged on an abuse of power basis, before the highest judicial administrative authority in the Kingdom (Article 114);
- The King presides over the High Council of the Judicial Power, whose membership includes the First President delegate of the Court of Cassation, prosecutor-general of the Court of Cassation, president of the First Chamber of the Court of Cassation, four representatives of the judges of the Courts of Appeal elected by their colleagues, and six representatives of the Courts of First Instance judges elected by their colleagues. Women judges are guaranteed representation among the ten elected members, in proportion to their numbers in the judicial body. Among the members is also an ombudsman; the President of the National Human Rights Council, five individuals nominated by the King known for their competence, impartiality, integrity, and distinguished contribution to the judiciary's independence and the rule of law. One of them is

nominated by the Secretary General of the High Council of Muslim Scholars. (Article 115).¹²

- The High Council of the Judicial Power convenes at least twice a year; it enjoys administrative and financial autonomy and the assistance of experienced inspector judges in disciplinary matters. Making all matters related to the election, organization and functioning of the Council; the criteria relevant to the professional status of judges, and the rules of disciplinary procedures subject to an organic law. In all matters relevant to the prosecuting judges, the High Council abides by the evaluation reports of their hierarchical superiors (Article 116).

Litigants' Rights and Rules of the Judicial Process

A third separate title, "Litigants' Rights and Rules of the Judicial Process," was added, with a total 12 articles as follows:

- The judge protects the rights, freedoms, and judicial security of individuals and groups; he oversees the application of the law (Article 117);
- Everyone has the right of litigation in defence of rights and interests protected by the law; all administrative decisions, whether organic or individual, could be challenged before the competent judicial administrative authority (Article 118);
- All suspects or persons accused of a crime are considered innocent until proven guilty by a *res judicata* decision (Article 119);
- Everyone has the right to a fair trial and to a sentence rendered within a reasonable period of time; the right of defence before all courts is guaranteed (Article 120);
- Individuals who cannot afford a defence will be provided with one free of charge, in types of cases delineated by the law (Article 121);
- Any party injured by a judicial error has the right to be compensated at the state's expense (Article 122);
- All hearings are public, except when the law provides otherwise (Article 123);

¹² It is a Council headed by the King and established according to Article 41 of the Constitution; the Council is considered the only party equipped to issue *fatwas* that are officially adopted on issues referred to it, based on the tolerant principles, precepts and designs of True Islam.

- All judgments are pronounced and executed in the name of the King and in accordance with the law (Article 124);
- All judgments are substantiated and pronounced in a public hearing according to the provisions of the law (Article 125);
- Final judgements are binding on everyone; the public authorities are required to lend the necessary assistance during the trial, and in the execution of judgments (Article 126);
- Ordinary and specialised courts can only be established according to the law; extraordinary courts may not be established at all (Article 127);
- The judicial police's responsibilities are under the public prosecutor's and investigating judges' jurisdiction in all matters relevant to the investigation of crimes, arrest of their perpetrators and establishment of the truth (Article 128).

Judges are no longer appointed by royal decree based on the recommendation of the High Council of the Judiciary, but based on the King's approval by *Dahir* (decree) of appointments made by the High Council of the Judicial Power (Article 57). It also elevates the status of the judiciary law from a "law" to an "organic law," in the case of both the Basic Statute of judges and High Council of the Judicial Power.

Implementation of Constitutional Reforms Relevant to the Judicial Power

Within the framework of major activities coinciding with the accession of King Mohammed VI to the throne, known today as the "New Era," a series of comprehensive reforms were undertaken in various domains under the banner known as the "new concept of authority." In the social sector, the primary example is the family book;¹³ in the legal sector it is the Justice and Reconciliation Commission;¹⁴ in

¹³ *Dahir* no. 1.04.22 issued on 3 February 2004, in implementation of Law no. 70.03 as a family book, published in the Official Gazette no. 5184, on 5 February 2004), p. 418. In addition to other related texts: *Dahir* Sharif no. 1.02.239 issued on 3 October 2002, in implementation of Law no. 39.99 relevant to the civil status, published in the Official Gazette no. 5054, on 7 November 2002, p. 3150; and *Dahir* Sharif no. 1.02.172 issued on 13 June 2002, in implementation of Law no. 15.01 relevant to the care of abandoned children, published in the Official Gazette no. 5031, on 19 August 2002, p. 2362.

¹⁴ The Justice and Reconciliation Commission is a national committee for truth, justice, and reconciliation established based on a royal decision approving the recommendation of the Consultative Council for Human Rights and the *Dahir* comprising the body's basic law, issued on 12 April 2004; its responsibilities are non-judicial and deal with the settlement of past severe violations of human rights. Among its responsibilities is to search, investigate, evaluate, arbitrate, and make proposals. Its responsibilities fall within the time frame defined as just after the country's independence in 1956 to the date on which the King approved the establishment of the Independent Arbitration Commission for Reparation, in 1999.

the trade union sector it is the establishment of the Royal Institute of the Amazigh Culture,¹⁵ and in the territorial governance sector it is the Expanded Regional Project.¹⁶ The latter projects were implemented through a participatory approach involving the appointment of committees whose membership comprises people of different origins. It was then that the judiciary, one of the King's main interests since his accession to the throne, found its way into the majority of the royal speeches through various analyses of the judiciary's condition, and requirements and features of its reform. The terms of this reform were finally delineated in the 2008 Throne Day speech and, in more detail, in the 20 August 2009 speech in which the King defined six key domains needing reform (providing guarantees that promote the judiciary's independence, modernising its organisational framework, comprehensive reform of its structure and employees, building its capacity, applying the rules relative to the fight against bribery and the abuse of power, and deciding on the best implementation of these reforms). The latter speech became the basis of several reform initiatives begun under the two former Ministers of Justice, and reactivated by the current government according to the new provisions of the constitution. While the current government devoted a national dialogue to the issue, society allocated it a parallel civil dialogue and public debate.

National Dialogue for Reforming the Justice System

Based on a government programme that gave reforming the justice system a prominent position, the government launched, in the context of implementing the constitution, a national dialogue under the supervision of a committee and a commission that delineated its topics and operating mechanisms in view of drafting a National Charter for Reforming the Justice System.

On 08 May 2012, the King of Morocco appointed a 40-member High Committee, headed by the Minister of Justice and Freedoms. The committee is advisory in nature and its responsibilities are limited to drafting a national charter for reforming the justice system through a national dialogue under its supervision, ahead of submitting it to the King for review. Among the Committee's members are representatives of

¹⁵ *Dahir* no. 1.01.299 issued on 17 October 2001, relevant to the establishment of the Royal Institute of the Amazigh Culture, published in the Official Gazette no. 4948, on 01 November 2001.

¹⁶ Royal speech of 03 January 2010 regarding the advanced regionalisation, delivered on the occasion of the inauguration of the Advisory Committee on Regionalisation.

constitutional institutions and professionals from the legal and judicial sectors, including practitioners, researchers, professors, interested parties, as well as legal, political, and civic officials. A larger Commission of the National Dialogue was also formed comprising 160 members.

In the spirit of openness, a website was launched in Arabic, French, and Spanish to receive the suggestions and remarks of various interested parties, inform the citizens about the dialogue's progress, and invite them to participate in its activities. These two bodies and their composition reflected once again the desire to adopt a wider participatory approach by inviting representatives of various judicial bodies to take part, including judges, clerks, and representatives of justice-related professions, such as lawyers, experts, notary publics, translators, legal societies, civil society organisations, and national and governmental institutions. The participatory approach was also evident in the Committee and Commission's willingness to listen and be receptive to the proposals and memoranda submitted by the wide array of political parties, trade unions, and other groups, and learn from local and foreign experts on the justice system and its components.

An office for the National Dialogue, made up of judges and cadres from the Ministry of Labour and Freedoms, was also established and tasked with managerial responsibilities such as handling correspondence, filing documents, writing reports on regional seminars, and collecting various proposals submitted through the website or by those invited to take part in the dialogue.

With regards to operating mechanisms, the High Commission held its first meeting on 08 May 2012 during which these were defined and embodied in the adoption of ten different dialogue mechanisms. These include the internal dialogue at the High Commission level, expert working groups on different topics, regional dialogue seminars, calling on the assistance of foreign experts, reconnaissance visits, monitoring seminars at the courts level, on-site visits to judicial departments, study days with judicial officials and clerks, written suggestions addressed to various relevant bodies, and the website.

The regional seminars were the primary management mechanism of the National Dialogue, during which offers were submitted and discussed in view of defining a list of specific recommendations in preparation for drafting the National Charter for Reform of the Justice System. Both the High Commission and expanded Dialogue Committee held internal dialogue meetings to allow various specialised committees to work alongside and frame the dialogues. Eleven regional seminars were held, accompanied by a number of field visits to assess the condition of various courts, and through working and listening sessions with the courts' judges, lawyers, and employees. The High Commission also held 41 internal meetings, received written proposals from 111 parties and trade and professional unions, and held 104 seminars with the participation of 200 civil society organisations. Following this process, the various proposals, remarks, and suggestions were collected in preparation for the drafting of the National Charter.

As the High Commission began preparing the draft of the National Charter, it established eight specialised working groups to collect and arrange by subject all the proposals received, and write the relevant reports and summaries ahead of their discussion. The outcome was a draft National Charter that the Prime Ministry submitted to the King for review. In the Throne Day Speech of 31 July 2013, the King bestowed on members of the High Commission of the National Dialogue the National Order of Merit/Grand Officer Level, and expressed his satisfaction at the completion of the Charter.

The Charter consists of two parts: the first defines the justice system and highlights its weaknesses, problems, and the difficulties facing it, based on the proposals, discussions, and memoranda received. Once the diagnosis was made, the general vision, broad-lines, and guidelines of a solution were crystallised, in the second part of the Charter. These guidelines were embodied by six objectives, namely: enshrining the judicial power's independence in the law, increasing the ethicalness of the justice system, promoting the judiciary's defence of rights and freedoms, building the capacity of the judges and the judiciary, upgrading the institutional capabilities of the justice system, and modernising the judicial administration and improving its governance system. In addition, 36 secondary objectives were drawn out of the above main

objectives, as well as 200 implementation mechanisms and 353 executive procedures, as part of the procedural plan attached to the Charter.

Parallel Civil Society Dialogue and Public Debate

In parallel with the National Dialogue, several organisations announced their participation, expressing reservations about the methodology pursued and composition of the High Committee. Not only did this elicit a strong reaction, the fact that civil society and non-governmental organisations continued to express their views and voice their demands provided Morocco with larger public debate.

A number of reactions and reservations were voiced at the margins of the National Dialogue, in particular about its methodology, supervision by the Ministry of Labour and Freedoms, nature of the High Committee's representation, and the topics proposed. A number of professional associations announced their withdrawal from the Dialogue and rejection of its outcome, including the Moroccan Lawyers' Club, National Union of Lawyers, and Association of Moroccan Lawyers and Clerks Societies. Thanks to their positions, statements, seminars, and interest in reforming the justice system, civil society organisations became a significant advocacy force that provided the country with an important public debate platform.

Although it continued to contribute to the public debate, the Moroccan Lawyers' Club gave its reasons for withdrawing from the National Dialogue, including its reservations that the Dialogue, supposedly an independent body, was under the supervision of the Ministry of Labour and Freedoms, itself part of the executive power. It also expressed reservations about the membership of the High Committee for the Dialogue, which they believed was not a balanced or specialised enough representation of the judicial sector. The group was further concerned about the topics of some regional seminars, and the Ministry of Labour and Freedom's role in the process of drafting the recommendations and proposals. In their view, this methodology contradicted the country's new constitutional orientation that granted the judiciary independent status.

In the same context, the Association of Moroccan Lawyers' Societies expressed its objection to the National Dialogue's outcome and the ensuing Charter, as they failed to meet the lawyers' expectations with regards to the justice system in general, and the law profession in particular. Other societies endorsed the above groups' positions and

activities, including the Judges' Hasaniya Association, the Association of Judicial Employees, the Democratic Syndicates for Justice, the National Association of Notaries, the National Association of Judicial Delegates, and the National Association for Justice. The latter groups formed together the National *Multaqa* for the Justice System that held its founding meeting in Casablanca, on 24 May 2014, to keep pace with the judicial reform process and launch joint ventures aimed at overcoming the Dialogue's shortcomings.

Civil Society's Calls Judicial Reform

As soon as the Constitution went into effect, civil society stakeholders began closely examining the condition of the judiciary in Morocco, to diagnose it more accurately and come up with a set of recommendations on reforming the justice system in general, and the judiciary in particular, based on the gains acquired through the constitution. They took note of the negative condition embodied by the long delay in securing the Judicial Power's independence, and in issuing the organic laws relevant to the High Council of the Judicial Power and Basic Statute of Judges. They highlighted certain aspects of the judicial map that needed to be more thought out, the slow pace with which cases are dealt with, slow execution of sentences difficulty of implementing them on public departments and insurance companies, the difficulties and problems facing the notification process, and criminal policies involving poor preventive detention methods and absence of alternative preventive detention mechanisms. They also highlighted the need to review and develop the legal arsenal, reorganise various administrative structures, bridge the shortage in human resources, and reconsider their inappropriate distribution. Over and above that, they noted the shortage in the number of judges and their inappropriate distribution, the shortcomings in the budget allocated to justice sector, the inadequate infrastructures of several courts and difficulties in accessing the law and justice, amongst other issues.

Confronted with such a situation, a number of legal and civil groups raised the banner of reform based on several points of reference, including the historical roots of the political, civil, and legal groups' call for reforming the justice system; recommendations of the Justice and Reconciliation Commission; various international conventions and reports of international organisations; Morocco's international

commitments; the Royal speech of 20 August 2009 and the 2011 constitution - all pillars of various calls for reforming the justice system.

To elaborate further on civil society's contribution, we distinguish between elements inherent to the desired judicial reforms and mechanisms used to activate the public debate.

Elements Inherent to the Reforms

Calls by civil society organisations for reforming the justice system focused on several topics, namely:

- Judicial organisation and effectiveness, and easier access to the law and justice: expanding and redistributing the judicial map; judicial assistance; adopting local justice; reviewing the current judicial organisation; adopting a dual judicial system; judicial specialisation in all domains; use of alternative conflict resolution methods and creating new arbitration and negotiation mechanisms. It also involves blocking all avenues of escape from punishment; criminalising all acts of discrimination; decriminalising all acts that fall within the context of rights and freedoms and do not harm the public order; ensuring the right to a fair trial; abolishing the death penalty; reducing the incidents of conciliation-based justice, and reducing the rehabilitation period (*rad al-I'tibar*). Over and above that, it includes organising the review of cases with focus on speeding up the delivery of services; putting an end to conventional practices; establishing a centre for legal and judicial documentation specialised in collecting, addressing, publishing and upgrading legal text and independent judicial opinion, upgrading the statistical system, amongst others;
- Upgrading the legal arsenal: creating, activating, developing, and revising the legal arsenal in matters related to judicial attachés and the judicial police relevant to documentation and other judicial professions, as well as judicial assistants including the judicial police, experts, lawyers, sworn translators and notary publics. Revising all elements relevant to discipline and organic laws relevant to various judicial professions; reviewing the laws relevant to incarceration facilities; reviewing the organic laws relevant to the High Council, some articles in the Criminal/Penal Code and the family book, and revising all

texts relevant to women and deleting those that demean them. It includes the need to amalgamate repressive texts into the heart of the penal code, reconsider the definition of a terrorist crime as determined by the Moroccan legislator and ensure that there are legal guarantees to prevent the torture of suspects. It also includes the need to adapt criminal regulations to the constitution, ensure that the principle of equality and the independence of members of the judiciary are enshrined in the law and review the law that ensures the protection of victims and witnesses. There is also need to state in the law that the philosophy and preamble of the penal code are based on respecting the individual's basic freedoms and human rights, revise the penal code's chapters in a manner that prioritises individual freedoms and human right and upgrade criminal justice;

- Rehabilitating the judicial professions and reviewing the conditions relevant to entering the judicial profession;
- Rehabilitating human resources: rehabilitating and providing the appropriate human resources in various domains and training women to assume different responsibilities, revising current training programmes and focusing on continuous training through the establishment of a training academy and a national school to train clerks and secretaries. It also includes training cadres in the human rights domain, adopting a new training system and ensuring that it involves a psychology component, and ensuring that new technologies are a basic element in the training programmes;
- Rendering the justice system more ethical by enshrining the principle of transparency, and providing the necessary mechanisms to ensure transparency and fight corruption; more openness to international experiences; ratifying and removing reservations about international conventions, and making national legislations compatible with international conventions;
- Upgrading the criminal justice system by: promoting guarantees to a fair trial, respecting and strengthening the presumption of innocence through legal guarantees, promoting and ensuring the right to a defence, protecting victims from judicial procedures, issuing objective rules that do justice to and compensates the victims of judicial errors with the establishment of a national

compensation fund, respecting general trial procedures, devoting a special chapter to the fight against gender-based violence, reducing the period of preventive detention and period of protective custody, establishing mechanisms to supervise preventive detentions, resorting to alternative penalties and ensuring the correct application of the law;

- Ensuring the independence of the Judicial Power and enshrining the independence of members of the judiciary and public prosecution into the law;
- Governance: establishing a council of experts and allowing the publication of the High Council of the Judicial Power's reports; adopting the principle of equal share when entering the judicial profession, and adopting the principle of equality;
- Modernising the judicial administration and infrastructure of the courts: upgrading reception centres and facilities, facilitating the access to information, putting advanced information technologies at the disposal of both litigants and justice sector employees, developing the means of communication and services;
- Rehabilitating the family laws: revising the family book and all texts and provisions relevant to women, and removing those that demean them; reviewing all provisions related to the family.

Mechanisms Used

As part of their participation in the public debate, the above societies used a variety of mechanisms to publicise their demands on reforming the justice system. These mechanisms ranged from submitting memoranda to the National Committee on Reform of the Justice System, to organising media seminars and/or study session on the subject in various cities, before, during and after the Committee began its work. It is worth noting that while some of civil society's demands were adopted as part of the National Dialogue's work, others were adopted through different channels.

The Judiciary and Politics

A comprehensive reconsideration of the issue of reforming the justice system, in general, and the judiciary in particular, necessarily requires bringing-up a variety of

political issues; and since the judiciary is not a closed domain, it remains open to all forms of social interactions, especially those with a political dimension.

The issue requires that we examine the relationship between judicial reform and democratisation of the political system and the rule of law, and that we start a discussion on the status of the public prosecution and judicial police within the reform process. It also requires that we entrench a clear separation of powers and regulate the relationship between the judicial power and other constitutional institutions, especially governmental institutions in charge of justice. This means that we need to approach reform as part of a comprehensive reform process, regulate the relationship between the judiciary and the media, and examine major trends that promote judiciary's politicisation.

Reform of the Judiciary, Democratisation, and the Rule of Law

The revision of laws as a tool for reforming the judiciary is also a means of democratising the regime. Progress in the area of reform, however, is contingent upon the regime's ability to implement the law; otherwise, laws will not have the desired impact on the judicial system and its manner of operation.

Some hold the belief that the path to democracy relies on respecting the basic political rights of citizens. Such rights include: the adult citizen's right to vote; the right to be candidates for senior positions; the right to freedom of expression including criticising people in power; the right to access varied and alternative sources of information; and the rights to form societies and peaceful assembly. A healthy democracy requires that all the activities of institutions and officials conform to the standards of legitimacy, and that citizens be able to question the legality of any government decision and seek redress, if necessary. In turn, the rule of law is essential for political regimes in transition, as institutionalising the rule of law helps the democratising state achieve two important objectives, namely: make a clean break with the past, and develop a constitutional culture in which those in power do not exceed the regime's legal limits in the pursuit of gains that have no bearing on the public interest.

Given this, reforming the judiciary via legal reform will remain limited if it does not take place within the context of a comprehensive reform process that impacts the logic behind the regime's *modus operandi*, including its three main powers (legislative,

executive, and judicial) and public institutions, especially the process of enshrining the rule of law. If the rule of law is not implemented on the ground, the application of new laws will remain limited, and the guarantees given to the judiciary and judges will be devoid of content for lack of implementation.

In the case of Morocco, it seems that the country is achieving a certain degree of progress in achieving rule of law. The country appears roughly in the middle of international assessment lists, especially within the realm of governance indicators. Nonetheless, Morocco has not yet made a radical transition towards a state of laws and institutions.

Reform of the Public Prosecution and Judicial Police

Although the constitution states that the judiciary is an independent power, the public prosecution is still in the hands of the executive power. Some observers believe that the new constitution has consolidated the public prosecution's dependence on the Minister of Justice, making its reform an urgent priority. Proposals for reform include:

- Transferring the Minister of Justice's prerogatives regarding the implementation of the penal code to the public prosecutor;
- Entrusting the prerogative of notifying criminal policies and supervising their implementation to the general prosecutor;
- Entrusting the general prosecutors and prosecutors with all the prerogatives relevant to public lawsuits and the relationship with the judicial police, while abiding by the written instructions of the public prosecutor, according to the law;
- Requiring the public prosecutor to submit an annual report on the implementation of the penal code to the High Council of the Judicial Power, with copies sent to the Prime Minister and Presidents of the two chambers of parliament.

Reforming the Judiciary through Comprehensive Political Reforms

An examination of the structure of judicial reforms in Morocco indicates that the ideal solution lies beyond the technical and material vision of judicial reform. Rehabilitation

and modernisation - a technical and reductionist approach – is insufficient compared to comprehensive and deep reforms, as stated in the royal speech of 2009. This latter notion seems to be the direction that the committee heading the reform of the judicial system is following. Regardless, the success of any judicial reform process requires that the political dimension be taken into account and the adoption of an integrated approach compatible with relevant international guidelines.

In this respect, reforming the judiciary in Morocco will be devoid of meaning unless it begins by redefining the relationship between justice and politics within the Moroccan political system. Any such reform remains contingent on a comprehensive institutional reform project based on a more democratic redistribution of power within the institutional structure of Morocco's political system. This requires that the judiciary's independence be used as a tool to promote a state based on laws. Yet, since the High Council of the Judicial Power is the authority embodying judicial power constitutionally, its fortification requires laws that clearly define its areas of expertise. Such laws should also define the relationship between institutions and their judicial and administrative components, as well as the basic principles that frame conditions and prerogatives, including:

- Transferring the Minister of Justice's prerogatives relative to the judiciary to the High Council of the Judicial Power;
- Organising the Judicial Power's responsibilities with the judicial administration under the supervision of the Ministry of Justice, to avoid overlap;
- Separating administrative inspections from judicial inspections and attaching the latter to the High Council of the Judicial Power;
- Organising the conditions relative to the cooperation between the High Council of the Judicial Power and other constitutional institutions, especially in the domain of exchanging information, documentation, and consultations;
- Ensuring the High Council of the Judicial Power's right to express its opinion on all judiciary-related legislative and organic texts.

The following conditions are necessary for the efficient management of these relationships:

- Deeming the membership of both elected and appointed members of the Council as being incompatible with any other professional activity;
- Delineating in the Council's organic law the conditions required to become a candidate to the High Council of the Judicial Power, especially those relative to integrity and competence;
- Defining the period of membership in the Council for both the elected members and those appointed by the King, as well as the conditions relevant to serving additional terms.

Organising the Judiciary's Relationship with the Media

The relationship between the judiciary and the media is one of the key junctions at which justice and politics coincide. Currently, the state and members of the media hold divided opinions on how to manage effectively this relationship in the context of the judicial reform process. On the one hand, the state believes that each side continuing to perform its responsibilities as is could cause a shift from complementarity to conflict between the two parties. They reason that the media's coverage of judicial matters could possibly entail patterns of behaviour that can impede the legal handling of information and harm the process of justice, presumption of innocence, or private lives of individuals. On the other hand, members of the media believe that the problem between the judiciary and the media is political in nature, and that the tension between them is due to the fact that the judiciary has long been used by the state as a tool to repress the media. A comprehensive strategy in the media domain is necessary, given these tensions. The maintenance of communication between all parties can be achieved by:

- Establishing media and reception offices in the courts;
- Establishing cells specialised in contacts between the media, the courts, and the High Council of the Judicial Power to enshrine the principle of transparency in the judicial process, strengthen the role of the media in spreading the culture of human rights, and disseminate legal and judicial information;
- Creating a national legal and judicial documentation centre specialised in collecting, addressing, and publishing legal texts and jurisprudence;

- Establishing a legal and judicial data base with a list of the services provided, and facilitating the means of benefitting from them;
- Improving the statistical system in a manner that allows data to become a basic avenue of studies and research on justice;
- Developing a media that is specialised in judicial matters and operates within legal parameters away from sensationalism and infringements on private lives;
- Appointing a judge in each court whose job is to maintain contacts with the media;
- Training judges in the publishing and media fields, and training journalists in the judicial field.

Towards Politicisation of the Judiciary

Efforts aimed at reforming the justice system in Morocco cannot take place in isolation of major internationally recognised guidelines, which have varying degrees of impact on national experiences. The Moroccan experience was considerably affected by the politicisation of the judiciary, a phenomenon evident in the early years of the country's independence (disbanding the Communist Party¹⁷ and the Mas press group,¹⁸ trials of a political nature, etc...). The situation gradually developed, however, thanks to the adoption of mechanisms that allowed the constitutional oversight of laws, and the establishment of administrative courts dealing with issues such as allowing or forbidding the establishment of certain political parties and civil society organisations.

Thanks to the lofty status that the Judicial Power enjoys in the 2011 constitution, there was an increase in the judiciary's politicisation accompanied by a parallel increase in the number of political activities falling under the judiciary's authority. These two phenomena resulted from the consolidation of several factors. First was the choice in terminology. The term "judicial power" was preferred by most participants in the public debate over the term "judicial authority," the latter not necessarily denoting real or actual power. However, although parliament is the legislative power, everyone

¹⁷ On the premise that Marxism-Leninism is incompatible with sharia law.

¹⁸ Concerning issues with high levels of public interest. According to the Public Freedoms Law, foreigners were able to publish newspapers based on a decree by the Prime Minister, though allowed al-Me'na to publish its newspaper via a simple letter only. Given the atmosphere that prevailed in the period immediately following independence, political parties and the national union of journalism opposed the project, causing a protracted legal debate discussed in the very first parliament.

agrees that the government is the actual legislator, and although the government embodies the executive power, the real decision-making centre lies elsewhere.

Signs of the judiciary's politicisation were also reflected in its ability to deal directly with people and subjects that are political par excellence. Not only are members of the government now tried in ordinary courts (instead of the Supreme Court, which was annulled: Article 94), parliamentary immunity was also drastically reduced (Article 64). The judiciary is today the only party with the authority to suspend the activities or disband political parties, unions (Article 9). Civil society and non-governmental organisations (Article 12) now take part in drafting reports and projects alongside elected institutions and public authorities, and help execute and evaluate them (Article 13).

As far as executive responsibilities are concerned, every administrative decision, whether organic or individual, can be challenged before the relevant administrative judicial authority (Article 118) - a step likely to reactivate the debate on whether administrative royal decisions can be challenged. Moreover, as the defender of the rights and freedoms of individuals and groups, judges are the chief arbiters in cases where public authorities are accused of excesses and violations. In the legislative power's case, suffice it to refer to the role that the Constitutional Court will play, on the one hand, in overseeing the constitutionality of laws and, on the other, in deciding on cases in which the constitutionality of laws used by litigants to defend their rights and freedoms is in question (Article 133). Moreover, the High Council of Accounts, which is akin to a financial court, can take decisions that are politically advantageous (Chapter 10). Due to the judiciary's close links to all aspects of the election process, starting with heading the administrative committees and ending with deciding on electoral challenges, there are also calls for the judiciary to lead an independent national committee to supervise elections.

Political Parties

The Organic Law on Political Parties¹⁹ bestowed on the judiciary an important role in several domains, roles that can be divided into three levels: the foundation level, the punitive level, and financial level.

At the foundation level, the public prosecutor at the Court of First Instance in Rabat receives a copy of the foundation documents from the governmental authority responsible for internal affairs (Article 6). The Administrative Court in Rabat decides on whether to reject the licensing of a given party upon a request from the governmental authority in charge of internal affairs (Article 7), and decides on whether to disband a given political party. The court's president can order a temporary halt to the party's activities until the matter has been decided upon, and his decision is carried out as ordered, upon a request from the governmental authority in charge of internal affairs (Article 13). The Administrative Court in Rabat also decides on whether to reject a change in a party's name, its basic law or programme (even if it has been approved by the party's national conference) upon a request from the governmental authority in charge of internal affairs (Article 14);

The relevant Court of First Instance, for its part, decides on all controversial or disputed changes and licensing issues at the governmental authority in charge of internal affairs, on behalf of those who have interest in the matter (Article 18). This concerns in particular: any change to a party's name, basic law or programme (Article 14); any change to a party's symbol, procedural apparatus, internal system, or headquarters (Article 15); the establishment of new regional or local party branches and any other changes to their systems (Article 16).

At the level of detentions, solutions, and punitive measures, whether involving prison terms or monetary fines, Chapter Six of the Moroccan Political Parties Law that comprises a total of 11 articles addresses a wide variety of punitive measures. Over and above the suspension of a party's activities and the temporary closure of its headquarters for a period of no less than one month and no longer than four months, or request that the party be disbanded (Articles 60-64), Chapter Six involves a wide array

¹⁹ Organic law no. 29.11 relevant to political parties, issued in implementation of *Dahir* no. 1.11.166, dated 24 Thi al-Qi'da 1432, (October 22, 2011).

of penalties that correspond to the nature of the act committed. These range from prison terms of between one to ten years to fines of between 20,000 to 100,000 dirhams (Article 65-70). They also involve the closure of the party's headquarters, forbidding its members to meet, and deciding on how its financial assets should be liquidated in cases where the party's basic law does not address the issue, or there is no decision on it by the national conference.

At the financial procedures level, according to Article 44, the High Council of Accounts is responsible for auditing the annual accounts of political parties that have already been approved by an expert accountant whose name appears on the Commission of Expert Accountants' list, referred to in Article 42. It also examines the party's expenses based on the annual financial support given to political parties to help them cover their management expenses, as defined in Article 32. Penalties in this regard could go as far as the party losing its annual financial support delineated in Article 32, for the following year, without neglecting any of the other procedures and steps defined in various laws in effect. According to Article 45, the High Council of Accounts examines all evidentiary documents relevant to spending the sums political parties receive from the state as a contribution to their election campaigns. The relevant penalties could go as far as a party losing its annual financial support until its financial affairs are back in order, without neglecting any of the other procedures and steps defined in various laws in effect.

The Elections

Elections can be considered the exclusive domain of the judicial power, given the central role that both the judiciary and judges play in the process. Elections concerned include:

- Election of members of the House of Representatives and House of Counsellors;²⁰
- Election of members of the three *turabiya* territorial councils ²¹ (regions, prefectures, and groups);

²⁰ Organic law no. 27.11 relevant to the House of Representatives, issued in implementation to *Dahir* no. 1.11.165 dated 16 Thi al-Qi'da 1432, (October 14, 2011), and Organic law no. 28.11 relevant to the House of Counsellors, issued in implementation of *Dahir* no. 1.11.172, dated 24 Thi al-Hijjah 1432 (November 21, 2011).

- Election of members of the professional chambers²² (peasants; trade, industry and services; traditional crafts, and maritime fishing).

As an illustrative example, the role of the judiciary in the election of members of the House of Representatives can be understood through examination of the organic law relevant to the House of Representatives and some provisions of the Election Law.

1. The organic law of the House of Representatives devoted Chapter Six to violations committed during the elections and the relevant punitive measures (Articles 38 to 69, a total of 32 articles). The judiciary enjoys wide-ranging punitive prerogatives, including fines of between 10,000 to 100,000 dirhams and jail terms of one month to 20 years, provided the Penal Code does not provide for more stringent penalties. It should be noticed that that the word “and” has been used here to signify a penalty involving both a fee and a prison term, in extreme cases, rather than a choice between the two, based on the judges discretionary powers.

In addition to the above penalties, the judge has the right to double the penalty in case of re-offending, and could go as far as depriving the offending party of the right to vote for two years, or becoming a candidate for a period of up to two consecutive parliamentary terms. These penalties are handed down during the election campaigns and throughout the electoral process.

2. The Court of First Instance submits to a *Dahir* of the central office’s report and voter lists, as well as copies of reports by various voting centres, files containing annulled controversial papers and others containing illegal papers from different voting centres (Article 82).
3. The President of the Court of First Instance or a judge representing him is part of the Vote Counting Committee in all precincts and regions (Article 83).
4. The Court of First Instance submits to all prefectures under its jurisdiction a *Dahir* of the vote-counting process, its outcome, and announcement of the results at both the local and national levels, with a copy of the local election

²¹ Organic law no. 59.11 relevant to the election of members of the turabya councils, issued in implementation to *Dahir* no. 1.11.173, dated 24 Thi al-Hijjah 1432,(November 21, 2011).

²² See the sections relevant to various professional chambers in Law no. 9.97 relevant to the Election Law, issued in implementation of *Dahir* no. 1.97.83 on 23 Thi al-Qi’da 1417 (April 2, 1997), as it was changed and developed.

results submitted to the Constitutional Court. The National Vote-Counting Committee is headed by the President of the Court of Cassation and its membership comprises an advisor from the administrative chamber of the Court of Cassation, both of whom are appointed by the First President of the Court of Cassation. The latter court drafts a report on the election results nationally, and sends it to the Court of First Instance in Rabat, and another to the Constitutional Court (Article 85).

5. Chapter Seven, which is devoted to electoral disagreements, is in two parts. Part one is relevant to disagreements involving the rejection of a person's candidacy, an issue that is addressed by the Court of First Instance in the relevant jurisdiction. The Court of First Instance in Rabat examines all candidacies rejected by the secretariat of the National Vote-Counting Committee. It is worth noting that the Court of First Instance is obliged to give a definitive answer within a 24 hour of lodging the complaint (Article 87). Part two is relevant to the election process whereby the Constitutional Court examines the decisions of various voting centres, central offices, vote-counting committees in various precincts, districts, and regions, and by the National Vote-Counting Committee (Article 88), based on the general guidelines of Article 89 according to which elections can be declared entirely or partially null and void.
6. Finally, the judiciary also has oversight of all election expenditures based on the provisions of the Election Law. Article 291 requires all candidates in the legislative elections to submit to the Vote-Counting Committee, within one month after the announcement of election results, a report on all election related expenses, with the relevant attachments referred to in Article 290.

a)

Article 292 provided for the establishment of a committee to examine all expenses and documents relative to the candidates' expenses during the legislative elections. Its membership is made up of a judge from the High Council of Accounts, as president; a judge from the High Council appointed by the Minister of Justice; a representative of the Minister of the Interior; and a financial inspector appointed by the Minister of Finance.

According to Article 293, if the said committee notices that an accounting report was not submitted within the specified time limit, or that its contents violate the limits defined by the said law, it refers the matter to the concerned judicial authority. The same applies to the collective elected candidates, whereby the judge reviewing a case that involves a challenge to a collective election result could compel the concerned candidate to submit an inventory of all expenses and their evidentiary documents, within a period that he himself specifies.

The judiciary, as a comprehensive notion, occupies today centre stage in the public political arena, given its prerogative to inspect the constitutionality of laws; examine the legality of administrative decisions; review charges of unconstitutionality; try members of the government and parliament; oversee the election process; try civilians for military-related issues; disband political parties, unions and societies; try members of the media; and protect the rights and freedoms of individuals and groups. In light of this situation, is the path Morocco is pursuing leading to a “government of judges?”

Conclusion

Given their comprehensiveness and depth, judicial reforms require a clearly defined, multi-dimensional, and long-term public policy approved by all parties. Such a reform project cannot take place without taking into account the status of other powers, their place in the constitution, and extent to which various political stakeholders want this reform process to succeed.

In this respect, the 2011 constitution is a solid basis on which to build a successful judicial reform process. At the current stage, the texts of various laws are being developed (Organic Law of the High Council of the Judicial Power and Organic Law of the Basic Judges System), in implementation of the provisions of the constitution. The entire legal setup, or at least the provisions directly relevant to the judiciary, are also under revision, in particular the texts related to judicial organisation. This could take the debate back in the case of a return to the system of judicial unity that would reinstate the administrative courts for which Morocco has been known since the 1990s. The country has also embarked on a legal debate regarding the texts of procedural laws (civil and criminal procedures).

The increasing importance of the judiciary's and judges' role makes it necessary to agree on the general principles underlying the state based on justice and laws, chief among which is the principle that no one is above the law. This, however, will only happen if all social mechanisms work actively in unison. Because of its diverse political party scene, experienced legal movement, active civil society, and effective media, Morocco has secured the ability to win the challenge of judicial reform if agreement is reached on the minimum required to get the reform process going. Nonetheless, unless the public authorities interact with these elements, a unilateral reform process is doomed to fail.

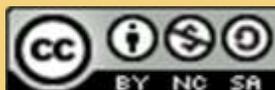
About the author

This report represents a compilation of the research carried out for the project. The report was produced by a working groups of researchers composed of Amina Messaoudin Mohamed Benhlal, Mohamed Elhachmi, Hamid Bihkak, Khadija Bentaleb, and was compiled by Younes Merzougui

About ARI

The Arab Reform Initiative is the leading Arab Think Tank founded on the principles of impartiality, social justice and diversity. Our mission is to promote an agenda for democratic change through policy analysis and research, while providing a platform for inspirational voices.

- We partner with institutes on original research, analysis and outreach-across the Arab countries as well as globally.
- We empower individuals and institutions to develop their own concept of policy solutions.
- We mobilise stakeholders to build coalitions for change .
- Our goal is to see vibrant democratic societies emerge in the Arab countries.



©Arab Reform Initiative 2016

© 2016 by the Arab Reform Initiative. This publication is available under the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-sa/4.0/>. Permissions beyond the scope of this license are administered by the Arab Reform Initiative.

contact@arab-reform.net