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# The Algerian Constitution: Lip-service to Safeguards

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Algerians took a similar stance to that of the 2004 *Arab Human Development Report* when they considered the 2016 proposed constitutional amendments. One of the report's conclusions was that rights granted by constitutions in Arab countries are often confiscated by the law during the legislative process and rendered ineffective in practice, emptying the constitutions' safeguards of their meaning.<sup>1</sup> Does this actually hold true for Algeria, where the constitutional amendments that Bouteflika promised in the aftermath of the events of the Arab Spring have finally seen the light of day in 2016?

The constitutional amendments were proposed four years after a set of laws were passed, including on elections, political parties and associations. Back in 2012, the opposition and members of political parties close to the government demanded that these laws be passed *after* the constitutional amendments, not before. This did not happen in practice.

These new laws did not adequately meet the demands voiced in Algeria during the waves of the Arab Spring in Algeria. Rather, they sought to respond to popular calls with as little damage to the governing authorities as possible. Consequently, they were implemented within a timeframe that is most suitable for the authorities. Yet, what was the position of the political class and the average Algerian towards these laws?

For Algerians, the assessment of the Constitution depends on its implementation in practice, and not on the rights it says it upholds. Algeria's political opposition is of the same opinion. In their own words, the constitutional amendments were a "non-event" because their implementation in practice is more important. They considered that the real issue is not with

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<sup>1</sup> UNDP, *Arab Human Development Report 2004: Towards Freedom in the Arab World*, 2005, accessible at <http://www.arab-hdr.org/publications/other/ahdr/ahdr2004e.pdf>

the text of the Constitution (despite the flaws and deficiencies different Algerian constitutions contained) but with its lack of implementation. Most opposition parties and national figures affiliated with them<sup>2</sup> boycotted the consultations on the amendments called for by the president and overseen by officials close to him. This is no different to past scenarios since the country's first Constitution in 1963, where citizens have been repeatedly excluded from the drafting process. More often than not, citizens have been relegated to the status of unconcerned spectators who have simply to cast a "yes" or "no" vote on an already prepared constitution in referendums whose results have been determined in advance.

### **A history of constitutional amendments in Algeria**

In order to understand the critical stance of Algerian citizens and the political opposition towards the constitutional amendments that all Algeria's presidents have put forward, one must review briefly the Algerian experience with the different constitutions adopted by the country since it gained independence in 1962. It is also important to consider the political period in which constitutions were introduced and the conflicts they instigated rather than resolved.

For instance, Algeria's first Constitution was ratified in September 1963, immediately after independence, yet it lasted no more than a month. President Ahmed Ben Bella suspended it on 9 October 1963, under the pretext of the Sand War with Morocco, before it was completely halted when Houari Boumediene staged a coup on 19 June 1965.

In addition, the way Algeria's first Constitution was ratified caused a significant political rift. It was approved by the National Liberation Front political party in a "cinema hall," and then passed to the Constituent Assembly before it was submitted to Algerians for vote in a referendum. This led to a political crisis, prompting the resignation of the President of the Constituent Assembly, Ferhat Abbas,<sup>3</sup> who had historically represented the liberal current in Algeria. Abbas resigned in protest against the fact that party activists were given priority over the Constituent Assembly to discuss the Constitution – the Assembly being the mouthpiece of the will of all Algerians at a symbolic time when the country had just gained independence.

The Constitution of 1976 was announced by President Houari Boumediene, following the approval of the National Charter earlier that year. It reiterated the same socialist choices expressed in Ben Bella's Constitution and confirmed the one-party system and the state control of the economy. This Constitution was also adopted in the same fashion as the previous one, that is, through a popular referendum with an almost unanimous "yes" vote.

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<sup>2</sup> Individuals who boycotted these consultations included Prime Ministers Mouloud Hamrouche, Ali Benflis, Sid Ahmed Ghazali, and many others affiliated with the opposition.

<sup>3</sup> For further reference, see Ferhat Abbas, *L'indépendance confisquée*, Ed. Flammarion, Paris, 1984.

Such results were common for all elections and referendums during the Boumediene era, a closed one politically.

Algeria's third president, Chadli Bendjedid, waited until the final year of his presidency to announce a new constitution. In response to pressure from the 1988 October Riots,<sup>4</sup> the 1988 Constitution allowed political pluralism and amended the socialist economic policies that had been endorsed after independence. This "reformist" Constitution was adopted when the country's entire institutional structure was under threat as a result of the riots. While these riots gave voice to popular demands, they also, in part, represented a clash between opposing factions within state institutions that were unable to internally sort their differences, including on the Constitution. These factions decided, therefore, to take their disputes to the street by using social movements that were later used by extremist Islamist groups and infused with political objectives and values they had not possessed before.

The Constitution of 1988 met the same fate as previous ones. It was quickly stripped of its pluralistic content and was not implemented because of the crisis that ensued from the first multi-party elections of 1990-1991. As a result of the political and security situation, the electoral process was halted and a wave of violence began that lasted for over a decade. During this period a state of emergency was declared. Many violations were recorded: elections were suspended, local councils in which the Islamic Salvation Front was elected were dissolved, and the Islamic Salvation Front itself as a political party was subsequently disbanded together with institutions close to it such as the Islamic Labor Union.

This Constitution, although partly suspended in practice, continued to be in force until 1996, when a new constitution proposed under President Liamine Zéroual was ratified. The 1996 Constitution did not offer anything new apart from setting presidential term limits and creating a second house of parliament. This upper house of parliament, the Council of the Nation, was an additional political guarantee meant to ensure the neutrality of the lower house. It was established in response to the results of the 1991 elections, which were cancelled after a "politically unacceptable opposition" won most of the seats, even though such results were theoretically possible under the Constitution itself. In 1997, elections were again held under an ostensibly multi-party system that was in reality closer to a one-party system favouring the ruling party. This continues to be the case with Algeria's elections which,

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<sup>4</sup> Before announcing the new constitution, President Bendjedid amended it in November 1988, immediately after the October riots. In response to pressure from Prime Minister Kasdi Merbah, who refused to work under the old single-party Constitution, Bendjedid partially expanded the powers of the prime minister and parliament, as well as their ability to monitor the government. For further reference, see: <http://www.el-mouradia.dz/arabe/symbole/textes/constitution88.htm>.

despite their frequency since independence, have failed to gain popular legitimacy for the regime.

Like his predecessors, President Bouteflika made amendments to the Constitution in 2002. These recognised Amazigh a “national language” due to pressure from relatively violent demonstrations<sup>5</sup> that had taken place in tribal areas over the course of the previous two years. In 2008 the Constitution was amended again. The presidential term limit previously imposed was removed, which allowed Bouteflika to run for another term. The amendments also included provisions for positive discrimination for women, which were put into practice for the first time in the 2012 elections. Finally, the amendments reduced the prime minister’s powers and expanded those of the president, who effectively became the primary actor on the political scene. The amendments were approved in parliament, as were those proposed in 2016, in which Amazigh was recognized as an official language and a presidential term limit was re-imposed. Thus, the situation returned to how it had been before the 2008 amendments, despite insistence from the political class on the need to hold a public referendum to approve the amendments.

### **President Bouteflika and the Constitution**

On numerous occasions since coming to power, President Bouteflika has expressed discontent with the Constitution he inherited from his predecessors. He claimed that he was unable to make substantial changes to it, or to propose a new constitution that would reflect the spirit of the time. He faulted the Constitution’s “hybrid” nature, saying it governed neither a clear parliamentary system, nor a pure presidential one.

This position is not compatible with the reality in Algeria. On a practical level, Bouteflika has taken over a great deal of powers as a president. Furthermore, the actual text of the Constitution itself states that it has an overtly presidential system, especially in light of the 2008 amendments. Under these amendments, the president of the republic (as head of state) has taken over many of the powers previously entrusted to the prime minister (as head of government). In fact, the prime minister has become a coordinator of the government’s agenda who reports not to the parliament, but to the president, who instructs him on implementing the government programme regardless of which party wins the legislative elections. As a result, the prime minister has usually been appointed from outside the party that won the elections. Nonetheless, he has repeatedly been able to secure the parliament’s approval of all the laws he has proposed in his capacity as an executive branch.

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<sup>5</sup> While the Amazigh movement has historically been a largely peaceful one, due to its pluralistic and partisan structure, the demonstrations in 2001-2002 were characterized by a degree of violence after a young man named Massinissa Guermah was killed by the Gendarmerie Nationale on 18 April 2001.

## **The 2016 constitutional amendments**

Despite having openly criticised the Constitution in numerous speeches since coming to power in 1999, Bouteflika delayed proposing any amendments. He was expected to initiate some amendments at the beginning of his second term in 2004 when conditions had stabilised after he obtained all the “presidential powers” he demanded, and was no longer “a quarter of a president” as he faulted presidents before him.

Bouteflika decided to announce the reforms he had begun prior to amending the Constitution by introducing new laws on elections, political parties, and associations during the first year of his fourth presidential terms and at a time when his health became critical. He announced these reforms in a speech in April 2012, which was the last speech he made to the nation while he was still able to move and speak.

Many political actors remain unconvinced by the constitutional amendments and the organic laws issued before. For example, Mouloud Hamrouche, former prime minister, was one of those who thought the proposed amendments do not live up to the 1989 Constitution. Domestic and international human rights organisations also considered them a setback to the existing Constitution and laws.<sup>6</sup>

These amendments were made at the backdrop of new events in the region and internationally, which is an important element in understanding the reason the organic laws were initiated before the Constitution was amended. The Algerian regime tried to use these laws to absorb the shocks caused by the Arab Spring and to stall for time while conditions deteriorate in Arab Spring countries. Bouteflika’s regime had no desire to compete with Tunisia’s success story but instead waited for conditions to worsen in Syria and Libya and use their failures as a warning card against Algerian citizens and the political opposition when they demanded change. The regime aimed to present the political sclerosis in Algeria as an example of stability amid a region in turmoil.

In addition to this regional dimension, Bouteflika chose to time the constitutional amendments with a political conflict within the regime itself, between the president and the military-security apparatus. President Bouteflika had managed to restructure the military-security apparatus and change its leadership a few months prior to the amendments.<sup>7</sup> He did this at a time when his health was deteriorating and threatening to end his last presidential term at any moment. This move portrayed the constitutional amendments as a dispute over the control of the post-Bouteflika period.

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<sup>6</sup> See, for instance, the Euro-Mediterranean Human Rights Network, “The Algerian Constitution: A Step Backwards,” al-Khabar Newspaper in 7 February 2016. Accessible at: <http://www.elkhabar.com/press/article/100023/#sthash.1b7lwHQx.dpbs>.

<sup>7</sup> Men in power announced the ouster of intelligence chief Toufik Mediène on 16 September 2015.

## **Constitutional amendments and the post-Bouteflika period**

As is usual in the Algerian political system, change is determined by small groups of actors at the top levels of power, in complete secrecy and outside official state institutions. This has given rise to much talk about the various scenarios of a post-Bouteflika period. Some form of family or regional succession has been put forward as the most likely scenario because this would be the only way to guarantee the financial and political interests of the in-groups that formed under President Bouteflika's rule and expanded due to the rentier nature of the regime. A family or regional succession is also most in line with a historical reading of the political culture of the group currently in power. Despite his illness, President Bouteflika is still the primary actor within this circle, especially in light of the security apparatus' setbacks during the period of the 2016 constitutional amendments.

A decade of appointments for leadership positions in big, important civil and military institutions have also paved the way for a family or regional succession scenario. These appointment decisions may also lend insight as to who the successor might be when the appropriate time comes, despite resistance from other political in-groups.

Amendments to Article 87 of the Constitution state that a presidential candidate's parents and wife must all originally be Algerian citizens and that a presidential candidate is required to have consistently lived in Algeria for at least ten years. This would categorically disqualify a section of the political elite from running for president in the future. The amendments also forbid dual nationals from running for important political positions, which has angered many politicians, including Amar Saadani, Secretary General of the parliament majority party, the National Liberation Front, because he and a significant part of his family were born in Tunisia.

One must wait for the next presidential elections in 2019 to find out who will be affected by these newly amended articles of the Constitution. These articles were introduced in a society accustomed to lack of transparency among the political elite even on simple matters such as their place of birth, social background or their level of education. People in Algeria know that a significant number of immigrants have participated in presidential and legislative elections since independence, and that migration has played a crucial political role in the country. For instance, Algerians who had emigrated to France formed the first political party to demand independence from France and played a role in the revolution itself.

The exclusionary nature of these amendments have been introduced in a society that has long known significant levels of emigration. Trends in emigration have become more varied over recent decades with Algerians moving to Canada, the United Kingdom, and the Gulf states, countries that were not historical destinations for Algerian migration. The new waves

of emigrants now include people who are highly qualified. According to several opinion polls conducted in recent years more than a quarter of Algerians hope to move abroad.<sup>8</sup>

## **Popular and political views of the most significant 2016 constitutional amendments**

What was said above does not mean that there are no positive aspects to the 2016 constitutional amendments, at least in theory. New positive developments include:<sup>9</sup>

- Granting more powers to members of both houses of parliament; 20 representatives now have the right to introduce draft legislation.
- Giving members of the Council of the Nation the right to initiate legislation on certain subjects, and the ability to notify the Constitutional Council, a right they did not have under previous constitutions.
- Recognizing Amazigh as an official language (it was made a national language in the 2002 amendments). This will help make Algeria's cultural and political national fabric more stable and cohesive. To a certain degree, it will also help the country escape from the cycle of violent conflict over identity, especially among the elites.
- Ensuring freedom of the press in response to demands by journalists' unions during the consultation period, putting an end to prison sentences for journalists in media-related cases. This, however, did prevent the imprisonment of the director of Al-Khabar News Television station or the closure of El-Watan TV. To justify the attacks against the two channels, the cases against them were framed under commercial and financial charges, despite concerns from national and international rights organisations.<sup>10</sup>
- Ensuring effective equality between men and women in the labor market, and encouraging women's political participation in elected councils and during appointments. It is worth noting that the amendment President Bouteflika made in 2008 enabled the emergence of strong women in parliament, as opposed to local councils, knowing that most Algerian political parties are currently still predominantly male.

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<sup>8</sup> Arab Center for Research and Policy Studies, *The 2015 Arab Opinion Index*, accessible at <http://www.dohainstitute.org/release/7a3ec170-23c7-430b-9c7d-306ad03b4a15>.

<sup>9</sup> Official Journal of the Republic of Algeria, No. 14, 7 March 2016. Accessible at: <http://www.joradp.dz/FTP/jo-arabe/2016/A2016014.pdf>

<sup>10</sup> Al-Atlas TV was shut down in March 2014 because of its political views and closeness to the opposition. El-Watan TV was shut down in October 2015, after hosting Islamist leader Madani Mezrag, who spoke about President Bouteflika in an unacceptable manner. The head of the TV station was subsequently imprisoned under the pretext of administrative matters which, on the surface, have no relation to the closure of the station.

However, these amendments remain superficially in favour of the legislative branch of government and do not reach the level required to create a real balance of power between the legislative branch and the all-powerful executive. This is contrary to what political groups, including those close to the government, called for during the consultations on the constitutional amendments. Some urged for greater powers to be given to the parliament and limits to be imposed on the prerogatives of the executive branch. Others went as far as to demand a parliamentary system with full powers and more independence for the judiciary. Indeed, the Supreme Judicial Council is still headed by the President of the Republic, which is contrary to any move to ensure more independence of the judiciary.

The amendments also cover the preamble to the Constitution and other details leading some experts to describe this Constitution as a “windbag”<sup>11</sup> because the length and number of its articles. Experts point to the fact that since independence, Algeria has tended to excessively legislate as an expression of a top-down political will for change that has invariably characterised the Algerian regime and the political elites.

In general, it is not believed that these constitutional amendments will lead to fundamental changes in the functioning of the institutions of the Algerian regime and their internal power structure. They will not, for example, affect the balance of power between the legislative and judicial branches, and the all-powerful executive. Nor will they change the nature of the regime’s relationship with the Algerian citizens. Algerians have grown increasingly dissatisfied with the current situation, especially with the deterioration of economic conditions as a result of the fall in the prices of oil, the primary source of revenue for the state budget and its investments. This discontent can be seen in the lackluster popular and political reaction that followed the ratification of the Constitution. Even pro-government political parties only held modest<sup>12</sup> political gatherings to explain the amended articles of the Constitution. In addition, according to a poll on the latest amendment,<sup>13</sup> most citizens believe that they do not herald a new era in Algeria.

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<sup>11</sup> Such is the view of Fatiha Ben Abbou, Professor of Human Rights at the University of Algeria, and an expert in constitutional law, as she expressed in comments on national media: <http://dzayer24.com/>.

<sup>12</sup> The National Rally for Democracy organised a few gatherings in a few governorates. In contrast, the National Liberation Front, whose secretary general continued to criticize Article 51, which bans immigrants from holding high positions in the organization, even after the amendments were ratified.

<sup>13</sup> Informative here are the results of a poll that *El-Khabar* newspaper conducted on the views of its readers on the constitutional amendments, and whether they consider them to be the start of a new era. Out of the 14,146 participants polled, 84.8 percent believe that ratifying the constitutional amendments does not herald a new era in Algeria, while 10.5 percent believe the opposite, and 4.7 percent did not have an opinion on the matter. See: <http://www.elkhabar.com/poll/>.



The fears of citizens and a section of the political class quickly became reality when laws related to elections were passed in June 2016. These are the first of many laws that will ultimately align the organic laws approved in 2012 with the new constitutional amendments.

The superficial legal outcomes of the constitutional amendments, their boycott by the opposition, and the exclusionary nature of a number of the new articles of the Constitution, all suffice to remind Algerians of the conclusion of the Arab Human Development Report: what the Constitution grants, the laws take away and practice invalidates.

#### ABOUT THE AUTHOR

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