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OPEMAM Analysis

BRIEFING PAPER:

**MOROCCO/Constitutional Referendum
1 July 2011**

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This publication was made possible thanks to funding from the Spanish Agency for International Cooperation and Development (AECID).



Latest review: 24 November 2011

The Observatory on Politics and Elections in the Arab and Muslim World

Taller de Estudios Internacionales Mediterráneos
Universidad Autónoma de Madrid

www.election-watch.org

www.opemam.org

ISSN: being processed

www.observatorioelectoral.es

Background to the referendum

2011 will no doubt go down in history as the year when the Arab peoples rose up against the dictatorships and autocracies that had, post-independence, become the exclusive model of governance in this part of the world. The demands for freedom and democracy, denominated the Arab Spring, had a domino effect and soon called into question the myth of Moroccan exceptionality. The calls for democracy first expressed in Tunisia and Egypt, were rapidly internalized in Morocco and given voice to by young internet users who, though political aware, formed part of none of the country's political parties. Together they would become the 20th February Movement, a collective that would take up the old constitutional, political and moralizing demands of the historic opposition parties and champion the cause of a parliamentary monarchy.

Under the pretext of undertaking a new phase in the process of regionalisation announced in January 2010, in a speech on March 9th, King Mohammed VI defined the Moroccan regime's response to this new political context: a roadmap of reforms. In this speech, he announced among other things, a bold constitutional reform which would increase the powers of the prime minister who henceforth would be selected from the party with the most seats in parliament, would broaden individual and collective freedoms, would apply the recommendations of the Equity and Reconciliation Commission (IER), would enshrine the independence of the justice system and officially recognise minorities, especially the Amazigh minority.

To draw up this new text an ad hoc Consultative Commission for the Reform of the Constitution (CCRC) was established, made up of experts and civil society representatives appointed by the Palace, with deaf ears turned to renewed demands for a constituent assembly. The work of this commission was supervised by a political "mechanism" for monitoring, consultation and exchange of views regarding the proposed constitutional reform, composed of the leaders of political parties and trade unions and headed by the royal adviser, Mohammed Mouatassim.

According to several of its members the CCRC was able to freely decide how it operated. Its members had no restrictions on the subjects they could discuss or place on the agenda, and were able to reach a consensus on every issue - an important defence against the accusation that they were mere intermediaries, before a constitution that was in reality designed and imposed by the king. The commission's task was marked by a stipulation in the king's speech, that its methods be the most participative possible, including all stakeholders in Moroccan society: political parties, unions, civil society organisations, youth groups, etc. In its three months of activity, the CCRC heard the representatives of over 100 different groups and received over 200 memorandums, as well as proposals from individuals. It also took into account the constitutions that exist in different countries around the world. What the CCRC members did admit though, is that the short deadline given them became a major obstacle when it came to debating and developing the text.

The political parties and unions were not given much time to debate the final draft of the new constitution either. The members of Mouatassim's "political mechanism" were given an oral presentation of the project on 8th June and were not handed a written draft until 16th June, just one day before the speech in which the king announced that a referendum would be held to ratify the new magna carta.

Organisation of the elections

The principal innovation of the electoral roll for this referendum was that, besides the standard electorate of any other electoral process, several other groups of citizens were also allowed to vote. These included: the king, members of the Royal Armed Forces and members of the security forces - including the Royal Gendarmerie, the National Police and the Auxiliary Forces - as well as any other person allowed to carry a weapon while working. All of the above were given a voting card, despite their not being enrolled on the electoral lists. The total number of persons concerned was not published. In addition, Moroccans residing abroad (MRE) over the age of 18 and enrolled in their consulates were also allowed to vote. But given that they are not enrolled on the electoral lists and do not have voting cards, they were able to do so using documents not foreseen by the electoral law (their Moroccan ID card, passport, family record book or foreign ID card plus their consular registration number).

In total, 39,969 polling stations were set up around Morocco and 526 abroad (148 in France, 87 in Spain, 74 in Italy, 32 in Holland, 21 in Belgium and 164 elsewhere in the world). The distribution of these did not correspond with the constituency map drawn up for the last elections. On election day, July 1st, polling stations opened from 8am until 7pm, except for the polling stations abroad where voters had three days between July 1st and 3rd to exercise their suffrage.

Impact of the organisation

The king's announcement in his speech on June 17th that he intended to vote yes and his call on his subjects to do the same may have influenced how many Moroccans cast their vote, according to critics of the constitutional reform. According to these, this break with the neutrality that should be maintained by a head of state and supreme arbiter like Morocco's king, transformed the referendum in an act of Bay'a (submission).

Furthermore, the vote of the military - who normally turn out in force at elections - undoubtedly had an effect on the participation rate - especially in the provinces of Western Sahara, a sparsely populated territory with the greatest concentration of Moroccan armed forces. This was indeed reflected in the regional turnout figures provided by the Interior Ministry.

The vote of Moroccans abroad had no quantitative impact on these elections given that their participation was extremely low. But it did have symbolic value. Besides deliberate abstentions and boycotting of the referendum, this low turnout could be the result of a lack of information, disinterest, the lack of campaigning or perhaps the fact that although the national results were announced on referendum day in Morocco - July 1st - voters abroad could carry on doing so until July 3rd. The exact turnout cannot be calculated in any case due to the lack of an electoral roll featuring all the potential voters.

Results

Morocco's Constitutional Court published the official results on July 16th. According to these, the national turnout reached 73.46%, or 9,885,020 voters out of a total of 13,449,495 enrolled to do so. It should be mentioned here that

the Interior Ministry had previously announced a total of just 13,106,948 citizens on the electoral roll.

Nationally, there were just 88,749 spoiled ballots (as well as blank votes, which were counted together), or 0.88%. Out of the 9,796,271 valid votes, there were 9,650,237 "yes" votes or 98.49% and just 146,034 or 1.49% "no" votes.

Abroad, of the 269,646 votes counted, there were 2,494 spoiled or blank votes (0.92%), 259,116 "yes" votes (97.05%) and 8,033 "no" votes (3.03%).

All in all, the new constitutional text received the backing of 9,909,356 Moroccans (98.5%) versus the 154,067 who voted no, out of a total number of valid votes of 10,063,423.

Participation:

As it has done before previous elections, the Interior Ministry carried out a partial revision of the electoral roll between May 7th and 31st. The requirement that voters must be previously enrolled was again called into question. Many political parties demand that the current roll - which they view as deficient - be cancelled and a new one drawn up. Others demand that the system of pre-enrolment on the lists be abandoned altogether and that the electoral roll correspond automatically with the demographic census of Moroccans aged 18 and over, and that to vote, a national ID card be sufficient.

Symbolic of the authorities' determination to foment participation was a circular from the prime minister's office urging the heads of the public administration to allow civil servants to vote and even grant them the right to take the day off work to do so on July 1st if necessary. This was also the first time ever that MRE's had been allowed the chance to take part in a constitutional referendum. Polling stations were even set up for them at the ports of Algeciras and Almeria in Spain, as well as Sète in France, where large numbers of Moroccan emigrants were gathering during these dates to return to Morocco on holiday.

Even if the official turnout at 73.47% was double that of the 2007 legislative elections (37%), it was nonetheless, the lowest in the history of Moroccan referendums.¹ Part of the abstention can be put down to the no campaign, given that the political forces who opposed the new constitution called for a boycott of the referendum. Furthermore, as in previous elections, it must be remembered that the given percentage of turnout is calculated using the number of enrolled voters. But this number is estimated as being less than 70% of the total number of citizens really entitled to vote. If we take the hypothetical number of 20 million possible voters, the turnout would go down to just 48%.

Geographically speaking, as is customary in Moroccan elections, the turnout figures were highest in the provinces of the Western Sahara (the region of Oued Eddahab-Laguira had 92.109%) probably due to the number of soldiers stationed there. The lowest turnout was registered in Casablanca with 57.17% - this could be attributed to the number of protests the 20th February Movement has staged there over the past four months.

¹ The new constitution's critics, especially the PSU, CNI, PADS, VDS and AI-Adl Wa Al Ihsanne disputed the results of the referendum, especially the rate of participation which they deemed exaggerated. The most curious criticism came from the secretary general and other leaders of the PJD, Abdellah Benkirane, who publicly questioned the veracity of the turnout before backtracking.

Competition:

Competition between the yes and no camps was very unequal. Morocco's Electoral Code stipulated that only political parties that had passed the threshold of 5% of the vote in the 2009 municipal elections could receive public funding. Thus, the eight parties with the best results in those elections shared more than 70 million dirhams (6.2 million euros): the Istiqlal received over 8 million dirhams while the other seven parties (PAM, PJD, USFP, RNI, MP, UC y PPS) all received over 7 million. All of these parties opted to back the new constitution.

The Ministry of Islamic Affairs' conduct was also far from neutral. For Friday prayers on the Friday before the referendum, it distributed a sermon which called on people to vote for the constitutional reform.

Hours before the referendum campaign ended, the Moroccan Centre for Democracy - an independent organisation - published a provisional report in which it highlighted several anomalies which it considered prevented the referendum from running correctly: the continued detention of protesters from the 20th February Movement, the use of places of worship by the yes-campaign, the king's declaration in favour of the yes-vote, and incidents where the Administration had shown passive neutrality towards aggressions committed against no-campaigners.²

The online opposition collective Mamfakinch also released a communiqué in which it denounced: the undemocratic process of writing the new constitutional text, the lack of time given to debate the text, the king's interference in favour of the yes-vote, infractions of the electoral law, the instrumentalisation of religion, acts of aggression and abuse against proponents of the no-campaign, unequal distribution of time in the news media, no freedom of expression in the news media for boycotters, and funding going exclusively to parties in favour of the yes-vote.³

Transparency:

Apart from the anomalies mentioned above, the referendum itself went off smoothly and no important incidents were reported. However, unlike previous legislative and municipal elections, the referendum was not monitored by party representatives present at polling stations, nor by a significant number of national or international observers.

The new National Council of Human Rights (CNDH), the successor of the body that carried out observations in 2007 and 2009, this time sent 48 observers to carry out this task at 142 voting stations in 9 prefectures. In its subsequent report, it confirmed the transparency of the referendum.

Political party involvement and debate during the campaign:

The participation of the political parties in the debate over the draft of the new constitutional text within the framework of Mouatassim's "political mechanism", was limited by the lack of time allowed them. The mechanism was only handed a written copy of the draft on June 16th, one day before the king announced the referendum. Prior to that, its members were only given an oral presentation of the content of the new text one week before.

Campaigning began at 00:00 on Tuesday June 21st and ended at midnight

² The Centre's report can be found online at:

http://www.observatoireelectionsmaroc.org/index.php?option=com_content&view=article&id=13&Itemid=35

³ See report published on the collective's website on 28 June, <http://www.mamfakinch.com>

on June 30th. As per the Electoral code, only legally registered political parties and trade unions were allowed to participate in the campaign. This automatically excluded the greater part of the components that make up the 20th February Movement, which are not legally registered organisations.

Meanwhile, on June 17th the Audiovisual Communication Authority (HACA) ordered that all the public and private television and radio channels organize and broadcast debate programs during the referendum period - both before and during the campaign itself - open to all political and ideological tendencies, parties, unions, as well as economic, academic, cultural and social stakeholders. The ostensible objective of this was to guarantee a balance between the distinct points of view. This was notably, the first time in Moroccan history that legal political parties and unions contrary to a constitutional reform were allowed to express themselves freely via public media outlets. That said however, some radio channels, especially LUXE and Radio 2M, rigidly applied an article of the 1997 electoral law in order to veto any talk of a boycott of the referendum.⁴

During the course of the campaign, city streets were filled with demonstrations in favour and against the constitution - some of which turned into violent confrontations. This extraordinary degree of popular involvement and mobilisation was one of the factors that distinguished this electoral campaign from all previous constitutional referenda. According to the Interior Ministry, the political parties and unions organised a total of 4,392 electoral events including rallies and marches, involving all in all some 3,386,000 participants. For their part, the groups that called for a boycott of the referendum managed to organise 168 events and bring together 16,000 participants - figures highly disputed by independent news media.

Openness

It must be recalled that in no event was approval of the constitutional reform by a wide majority of citizens called into question. Even those who were most critical of the referendum restricted themselves to disputing the turnout rate.

Worth mentioning also is the fact that Article 17 of the new constitution accords MRE's the right to take part - both as voters and as candidates - in all Moroccan electoral processes, be they national, regional or local. The MRE's comprise a mass of over two million potential voters, given that their total number varies between three and five million people according to different statistics. In these elections 526 polling places were readily made available at embassies and consulates around the world. However, the improvisation in the organisation of this operation reduced the initiative to a mere "trial" in readiness for future elections.

Relevance:

The new constitutional text features many innovations, especially related to the redistribution of power between the country's constitutional institutions: the monarchy, executive, legislative and judiciary branches. It also enshrines the principle of decentralisation in the constitution, and claims to lay down an advanced rule of law.

⁴ Article 90 of Law 9-90 (Electoral Code) dictates: "Any person who uses false information, false rumours or similar to misdirect voters or dissuade one or more voters from voting will be sentenced to three months imprisonment and a fine between 1,200 and 5,000 dirhams or one of the two penalties. The news channels thus prevented groups advocating a boycott of the referendum from participating.

Consequences and Impact on the political system

In one way or another, the new constitution distances Morocco from what it has been until now, namely an "executive monarchy", and brings it somewhat closer to being a "parliamentary monarchy". In exchange for the reductions of the king's prerogatives, the prime minister - who will come from the party that wins the legislative elections - will have more prerogatives, more institutional weight and especially more room to manoeuvre when it comes to applying his or her electoral programme. The parliamentary opposition meanwhile, via the new powers it obtains in the constitutional text, will be able to carry out an important function of checking the government's actions, and will alongside the parties that make up the majority in the parliament, have greater legislative powers. This will undoubtedly help to reactivate a political sphere that has become feeble and discredited in the eyes of the citizens.

These advances as well as other measures such as the ban on turncoat operations - probably the political phenomenon that most harms Moroccan politics - will surely have a major impact on the internal dynamics of the political parties, which should after all be playing a critical role in channelling the demands and hopes of Moroccan society in this era of the Arab Spring. In addition, the elevation of the region to the rank of "most important territorial unit in the country" and the remodelling of its administration - submitting its ruling institutions to universal suffrage and reinforcing the prerogatives of its council as opposed to the regional *walis* and provincial governors - constitutes a further step in the democratisation and decentralisation of the political system.

International political reaction

The accelerated drafting of the new Moroccan constitution was accompanied by an ambitious diplomatic campaign designed to sell its results to the country's main international partners. Coordinated by the Ministry of Foreign Affairs & Cooperation, delegations made up of various ministers and representatives of the main political parties visited Washington, Paris, London, Madrid, the U.N. secretary general in New York and the European Parliament in Strasbourg. They were warmly welcomed from the outset, although rather more enthusiastically in countries such as France or Spain than in the U.S.

The E.U. for its part hailed the draft of the constitution as a "a significant step" that "signals a clear commitment to democracy and respect for human rights" and is "in line with the ambitions of the Advanced Status in the relations between Morocco and the EU." On July 21st, four days after the announcement of the referendum, the Parliamentary Assembly of the Council of Europe awarded the Moroccan parliament 'Partner for Democracy' status, making Morocco the first country outside Europe to obtain that recognition.

After the referendum accolades flowed in from the Foreign Affairs ministries of the EU, France, Germany and Spain commending the "peaceful and democratic spirit" of the referendum. Amid such generalised optimism, French President Nicolas Sarkozy went so far as to propose incorporating Morocco into the Deauville Association, set up by the G8 in May and aimed at providing financial support for those countries "committed to a democratic transition" such as Tunisia or Egypt.

Conclusion

The referendum went ahead in the regular, orderly way that has characterized every election in the era of Mohammed VI. Apart from the neutrality - sometimes passive - of the Administration during the campaign, not many incidents were registered.

The extent to which the old constitution was revised and the innovative vision and democratic air of the new text, invite us to consider it as not a mere reform but as a whole new constitution.

Now that the new constitution has been approved, the important thing is the political agenda that accompanies it. Negative precedents abound in this sense. The constitution of 1992 gave the prime minister the right to propose his cabinet lineup to the king. In the event however, this right has not been applied. Ministers have formed part of successive governments without prime ministers' consent and often without their even being forewarned. Nor should be forgotten the so-called 'sovereignty ministers' - that is the three or four most important portfolios in the government, which are named directly by the king. On top of that, many political party leaders have been surprised to learn the makeup of new governments inasmuch as they find ministers purportedly belonging to their parties who have in fact never even formed part of them! This is the case of the current Finance Minister Salaheddine Mezouar, the Tourism Minister Yassir Zenagui, or the Agriculture Minister Aziz Akhannouch.

For this reason many voices, both within and without political parties, are calling for the good intentions expressed in the new constitution to be transformed into concrete steps in Morocco's halting process of democratisation. These steps consist fundamentally of improvements to the quality of the country's elections, a keystone of any democracy. Thus, the most widespread demand is for an end to the Interior Ministry's control of the electoral process, with its powers transferred to the parliament (which would henceforth decide the dates of the elections and control the electoral district boundaries), to the judiciary (which would organise the elections) and civil society (which would supervise the vote). Nonetheless, on the eve of the upcoming early legislative elections - brought forward to November 25th - the Interior Ministry has only allowed political parties present in parliament to participate in negotiations about their organisation - a decision that hints at the lack of real conviction for bringing about a genuine democratisation.