

**Research Notes**

**Constitutional Reforms in MENA Countries in the  
Aftermath of the Arab Spring**

*Amor Boubakri*

**Abstract**

The Arab Spring has subsided, leaving only Tunisia's democracy in place. Yet, the wave of democratization has been a learning experience in many regards. In addition to participating in electoral and parliamentary processes, the people in the Middle East and North Africa (MENA) region have observed constitutional frameworks and debated about them. Constitutional changes have taken different forms largely due to distinct historical legacies, regime dynamics, and deliberative processes.

**Keywords:** Arab Spring, constitution, constitutional change, regime dynamics.

---

The Arab Spring triggered a new regional wave of constitutionalism that shows a real change in the Arab region as a result of the protest movements against the authoritarian regimes, which demanded genuine political reform.

As a consequence of the protests, constitutional reform processes were launched in Algeria, Egypt, Jordan, Libya, Morocco, Tunisia, and Yemen, and, so far, have led to the adoption of new constitutions in Egypt (2012 and 2013) and Tunisia (2014), and to constitutional amendments in Algeria (2016), Jordan (2011), and Morocco (2011).

However, the transition process was not successful in Libya and Yemen due to the ongoing conflicts in both countries. Yet, the Libyan Constitutional Drafting Assembly finalized a draft constitution in September 2017, although the new constitution must be approved by a referendum, which is not easy to hold given the difficult situation in the country. In Yemen, the process of moving toward constitutionalism is still on hold and has little chance to reach its final stage, despite the initiation of a national dialogue in 2013 that aimed to pave the way for a constitutional referendum in February 2014 as part of a

---

**Amor Boubakri** is an Associate Professor in Public Law at the University of Sousse, Tunisia.  
<Amor.Boubakri@fdseps.rnu.tn>

regional peace plan to stabilize the country after the popular uprising in 2011.<sup>1</sup>

In sum, the new constitutional reform processes in Arab countries have taken different paths that have led to mixed outcomes.

## **Paths to Reform**

Constitutional reforms prompted by the Arab Spring were made within the framework of differently designed processes, depending on the specific context of each Arab nation. In some cases, these reforms required deep changes and a complete break from the past, which led to the creation of constitutional assemblies. In other cases, the reforms were conducted within the existing constitutional framework.

### ***Creation of Constitutional Assemblies***

In constitutional theory, a constitutional assembly is established when a country chooses to adopt a constitution for the first time or wants to adopt a new constitution to replace an old one as a result of a substantial change in the political regime in the aftermath of a revolution or a coup d'état. The importance of the political events that led to the prompt and unexpected falls of the authoritarian regimes in Tunisia, Egypt, and Libya in 2011 explain the decisions in favor of constitutional assemblies in these Arab countries to proceed toward reform.

However, the constitution-making process was designed differently in the three countries, despite apparent similarities among them. In Tunisia and Libya, the constitutional assemblies were directly elected by people in democratic elections that took place, respectively, on October 23, 2011 (National Constituent Assembly, or NCA) and February 20, 2014 (Constitution Drafting Assembly, or CDA). Being elected bodies and benefiting from strong democratic legitimacy, both the Tunisian NCA and the Libyan CDA were able to engage in genuine and important discussions and negotiations about the reforms to be introduced. Also, the drafting process was open and participative, allowing civil society and other actors to contribute to the content of the new constitution.

The Tunisian NCA was granted broad powers that included the drafting and adoption of the constitution, while the Libyan CDA's power was limited to constitution drafting; a referendum is required to adopt the constitution. Furthermore, the Tunisian NCA had double functions—constitution-making and legislative power, including the implementation of ordinary laws and control of the government—while the Libyan CDA's mission was limited to constitution-drafting. This allowed more focus of the CDA on its core

---

<sup>1</sup> Helen Lackner, *Yemen's "Peaceful" Transition from Autocracy: Could It Have Succeeded?* (Stockholm: International IDEA, 2016).

mission and the constitution, while avoiding any diversion from them. In contrast, the Tunisian NCA struggled to complete its constitutional mission because of its expanded powers. Many difficulties related to the transitional phase complicated the NCA's work, such as the votes on three consecutive interim governments and the votes on some sensitive new laws, including the electoral law and the law on transitional justice. The NCA was diverted, therefore, from its constitutional mission and faced a significant threat at some moments, mainly when the opposition called for the dissolution of the NCA in the summer of 2013.<sup>2</sup> The constitution at last was finalized and ratified by vote on January 24, 2014.

The Libyan CDA was not able to finalize the draft constitution within 120 days as the law required because of very difficult political and security circumstances after the split of the country between two governments. The draft constitution was finalized more than three years later in August 2017, but until now no date has been established for a constitutional referendum because of the political situation in the country.

The constitutional reform process in Egypt was complicated because of reluctance and the absence of a clear strategy from the beginning. Thus, a special constitutional committee was created by the Military Council soon after the collapse of Mubarak's regime and the suspension of the 1971 constitution. A limited constitutional amendment was approved by referendum on March 19, 2011, that paved the way for parliamentary elections in November 2011 and January 2012. However, a constitutional assembly was elected by the Parliament in 2012 to draft a new constitution. The draft was finalized on November 30, 2012, and adopted by referendum December 15–22, 2012. After the military coup in 2013, the 2012 constitution was suspended and a new constitution was drafted by two committees of experts on July 13, 2013, which was approved by referendum January 14–15, 2014.<sup>3</sup>

Unlike Tunisia and Libya, the constitutional process in Egypt was hasty and did not provide time for consultation among different actors. Civil society did

---

<sup>2</sup> Tunisia faced a large political crisis after the assassination of NCA member, Mohamed Brahimi, on July 25, 2013. The constitutional process had been placed on hold until an agreement was reached between the opposition and the majority, thanks to the mediation of the Tunisian National Dialogue Quartet, which was granted the Nobel Peace Prize afterward in 2015. Cf. The Carter Center, *The Constitution-Making Process in Tunisia: Final Report 2011–2014*, [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/democracy/tunisia-constitution-making-process.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/tunisia-constitution-making-process.pdf). Also, on the role of political parties in reaching an historic consensus on constitutional reform, see Duncan Pickard, "Al-Nahda: Moderation and Compromise in Tunisia's Constitutional Bargain," in *Political and Constitutional Transitions in North Africa: Actors and Factors*, ed. Justin O. Frosini and Francesco Biagi (London: Routledge, 2014), 4-32.

<sup>3</sup> Amr Al-Shobaki, "The Egyptian Constitution: Procedural Problems and a Crisis of Content," in *Constitutional Reform in Time of Transition*, ed. Alvaro Vasconcelos and Gerald Stong (Paris: Arab Reform Initiative, 2014), 86-100, and Jörg Fedtke, *Comparative Analysis between the Constitutional Processes in Egypt and Tunisia: Lessons Learnt* (Brussels: Publication of the European Parliament, April 2014).

not have the chance, therefore, to participate in the drafting of the constitution. The process was, to a large extent, controlled by the military, which has had the upper hand over the entire transitional process and was obsessed with the return to normalcy following the 2011 revolution.<sup>4</sup>

### ***Reform within the Existing Constitutional Framework***

In Algeria, Jordan, and Morocco, the regimes were aware of the risks after the collapse of the authoritarian regimes in Egypt, Libya, and Tunisia. In anticipation of popular protests that could lead to the same consequences, the authorities prompted constitutional reform processes within the existing constitutional framework, therefore, avoiding *ad hoc* institutions and special procedures as in the other countries.

In Algeria, the amendment of the constitution was announced by President Bouteflika early in 2011. However, the draft amendment was finalized only on January 5, 2016, and voted upon by the Parliament on February 7, 2016. Participation was limited to the experts who drafted the amendment and to the members of the Parliament who voted, while civil society and other actors were excluded from the process of constitutional revision.

The constitutional reform process in Jordan took place in 2011, and, compared to Algeria, it provided room for some participation with the country's National Dialogue Committee. Thus, reform issues were discussed among the main actors. A committee on constitutional review was created by a royal decree to draft an amendment that reflected the outcome of the National Dialogue deliberations. The amendment was then adopted by the Parliament on August 14, 2011.<sup>5</sup>

The 2011 constitutional reform process in Morocco was very similar to that of Jordan. Thus, events started with a royal speech before the two Houses of Parliament on March 9, 2011, just a few days after February 20, 2011, when the protests in Morocco were launched that demanded reforms as a consequence of what had happened earlier in Egypt and Tunisia.<sup>6</sup>

King Mohamed VI outlined in his speech the scope of the planned constitutional reform and announced a referendum to take place to approve the

---

<sup>4</sup> See Tewfik Aclimondos, *The Army and the Constitution in Egypt* (Paris: Arab Reform Initiative, May 2012).

<sup>5</sup> Regarding this reform, see Mohammed Toriki Bani Salameh and Ali Azzam Ananzah, "Constitutional Reforms on Jordan: A Critical Analysis," *DOMES* 24 (September 2015): 139-160.

<sup>6</sup> Francesco Biagi, "The Pilot of Limited Change: Mohammed VI and the Transition in Morocco," in *Political and Constitutional Transitions in North Africa: Actors and Factors*, ed. Justin O. Frosini and Francesco Biagi (London: Routledge, 2014), 50-80, and Bernard Cubertafond, *La transition marocaine après le printemps arabe et la nouvelle constitution* [The Moroccan transition after the Arab Spring and the new constitution], Les Etudes et les essais du Centre Jacques Berque [The studies and essays of the Jacques Berque Center] (Rabat), no. 5 (November 2011).

amendment within a few months. Meanwhile, an *ad hoc* body was established to facilitate dialogue with political parties and civil society on the reforms to be introduced. However, this consultative body did not directly interact with the drafting committee appointed by the king. The amendment was approved by popular referendum on July 1, 2011.

One common characteristic of the constitutional reforms in Algeria, Jordan, and Morocco is the short time given to the process of revision. In the case of Algeria, the reform was announced early in 2011, although it was put on hold until 2016, when the constitutional amendment was quickly made. The swift constitutional reforms in the three countries aimed more at containing popular protests triggered by the Arab Spring in 2011 than at reforming the existing political regimes. In the final analysis, they did much to save the three regimes and helped them to withstand the political turmoil in the Arab region that led to the collapse of the regimes in Egypt, Libya, Tunisia, and Yemen.

## **Outcomes of the Reforms**

Despite criticism, the constitutional reforms made in Algeria, Egypt, Jordan, Morocco, and Tunisia after the Arab Spring represent a positive step toward democratic governance in the Arab region. Prior to the Arab Spring, constitutional reforms aimed to consolidate authoritarianism, mainly by extending the presidential term, increasing presidential powers at the expenses of the other constitutional powers, and, more strangely, by securing the transfer of power to the president's son in some republican regimes.<sup>7</sup> The situation is different now. With the new reforms, the rules of the political game were partially changed through obvious power shifts. Human rights charters need more strengthening, however. Furthermore, the changes have different importance from one Arab country to another, depending on many factors.

## **Constitutional Reforms and Power Shifts**

One of major positive effects of the constitutional reforms is the definitive withdrawal of the plans that aimed to monopolize power by one family by attempts to enthrone the sons of the former presidents of Egypt, Libya, and Yemen. Moreover, the presidential term, which was a sensitive and problematic issue in the past, has been limited to two terms in the new constitutions of Algeria (two five-year terms; article 88<sup>8</sup>), Egypt (two four-year terms; article

---

<sup>7</sup> Larbi Sadiki, "Wither Arab 'Republicanism'? The Rise of Family Rule and the End of Democratization in Egypt, Libya and Yemen," *Mediterranean Politics* 15, no. 1 (March 2010): 99-107.

<sup>8</sup> The 2008 constitutional amendment in Algeria provided no limit for the reelection of the president. Article 74 (paragraph 2) provided: "The President of the Republic may be re-elected." Text available at [https://www.constituteproject.org/constitution/Algeria\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Algeria_2008.pdf?lang=en) (accessed November 11, 2018).

140), and Tunisia (two five-year terms; article 75). Also, the final draft the of the Libyan constitution provides a limitation for the presidential term in office (articles 100-101).

The Tunisian 2014 constitution is particularly detailed concerning presidential terms, with the aim to avoid the past experiences of successive constitutional amendments which allowed Ben Ali to stay in office for five terms. Thus, the new constitution provides that no person can hold the presidential office for more than two terms, whether consecutive or separate (article 75, paragraph 5). Furthermore, amendment of the constitution to increase the number or the length of presidential terms is explicitly prohibited (article 75, paragraph 6).

The same safeguard does not exist in the Algerian and Egyptian constitutions. Tunisian experience has shown that limitation of the presidential term can be accepted in a specific context to buy political stability during a period of political pressure and then removed when the regime has become well-established. This was precisely the case in Tunisia in 1988 when Ben Ali, after seizing power following the 1987 coup d'état, amended the 1959 constitution. The presidential terms were limited to three in his aim to gain legitimacy.<sup>9</sup> This limitation was removed by the 2002 constitutional referendum that paved the way for Ben Ali's two additional terms.

It is interesting to note that, in 2011, King Mohamed VI of Morocco accepted limitation of his powers as well as cohabitation with a government that was headed by a prime minister representing the majoritarian party in Parliament; in the past, the prime minister had been appointed by the king, regardless of the results of parliamentary elections.

The powers of the president have been considerably limited by the 2014 Tunisian constitution, which opted for a semi-presidential system in which the president shares powers with a government that is headed by the majoritarian party in the Parliament. This represents an important change in the Tunisian constitutional system, as the president had been the cornerstone of the political regime since the end of the monarchy in 1957.

Besides a reshuffle of the executive, the constitutional reforms in the Arab Spring countries reinforced the parliament mainly by improving its oversight powers over the government. Thus, the Egyptian Parliament "exercises oversight over the action of the executive authorities," according to article 101 of the 2014 constitution. In this regard, members of the Parliament have the option to submit questions to any member of the government (article 129), to address interrogations (article 130), and even to withdraw the confidence of the House from the government or any member of the government (article 131). Also, they can discuss public issues with the presence of the government

---

<sup>9</sup> It is worth mentioning that the decision was greatly welcomed by the opposition, as the former president Bourguiba had declared himself a president for life through a 1975 constitutional amendment.

(articles 132-133), request urgent briefings or statements from the government (article 134), and establish fact-finding commissions to conduct investigations of any type of issue (article 135).

In Tunisia, the 2014 constitution provides that the government is accountable to the Parliament (article 95). Also, written and oral questions to the government can be posed by any member of Parliament (article 96). In addition, according to article 97, a vote of no-confidence against the government is possible.

Another aspect of the power shifts resulting from the new constitutional reforms is the creation of new independent bodies in the aim of better governance. Thus, independent electoral authorities have been created in Egypt (article 208: National Electoral Commission), Jordan (article 67: Independent Electoral Commission), and Tunisia (article 126: High Independent Electoral Authority). Anticorruption bodies also have been created by the constitutions of Algeria (articles 202-203), Morocco (article 36), and Tunisia (article 130).

It is anticipated that the new constitutional bodies will contribute to improved governance mainly by limiting the powers of the executive branch, which used to benefit from excessively broad powers before the reforms. However, the autonomy of these bodies is not always guaranteed. In Algeria and Egypt, the head of the executive branch still has some powers over the constitutional bodies, such as the nomination of their members and their forced resignation. The Tunisian and Moroccan constitutions, however, offer better guarantees for autonomy to, *inter alia*, the electoral (in Tunisia), the anticorruption, and the media bodies. In Tunisia, all these bodies are elected by the Parliament to which they are accountable.

## **Constitutional Reforms and Human Rights Charters**

Human rights charters have been improved in the recent constitutional reforms in Arab countries. It has been clear since the beginning of the Arab Spring in 2011 that the peoples of the region seek respect for liberties and rights. The slogans of the Tunisian Revolution were “Liberty” and “Dignity.” There were almost the same demands in the other Arab Spring countries.

The freedoms of expression, association, and assembly, therefore, have been improved mainly by broadening their scope to include academic freedom and the right of access to information and information networks. Freedoms of religion and faith also have been reinforced. These basic rights were gravely violated during decades in Arab countries during which people were deprived of, *inter alia*, their rights to create political parties and civil society organizations. In Libya, political parties even were prohibited, while one state-party had been imposed for decades in Algeria, Egypt, and Tunisia. Freedom of the press had suffered, as well, from the same violations. Free media always were muzzled and people were deprived arbitrarily from access to information.

Women rights are still far from meeting international standards in the Arab world. However, the constitutional reforms in Morocco and Tunisia represent a positive change in the region. Article 46 of the Tunisian constitution is a good example of the strengthening of women's rights through a constitutional process. It provides that:

The state commits to protecting women's accrued rights and works to strengthen and develop those rights.

The state guarantees the equality of opportunities between women and men to have access to all levels of responsibility in all domains.

The state works to attain parity between women and men in elected Assemblies.

The state shall take all necessary measures in order to eradicate violence against women.

The Moroccan constitution created a special body for parity and the struggle against all forms of discrimination against women (article 19).

In addition, the recent constitutional reforms have improved individual liberties and the right to personal safety. Prohibition of torture and other types of degrading abuse has been expressly made. This represents an important step toward more respect for human rights in a region where torture and other similar maltreatments have been used systematically by authoritarian regimes mainly to silence opposition and criticism.<sup>10</sup>

Social, economic, and cultural rights have been reinforced in the recent constitutional reforms. The rights to health, education, and work have been explicitly included in the constitutions. Also, the cultural rights of the Amazigh (Berbers) in Algeria and Morocco have been reinforced. The Amazigh language, therefore, has become a recognized national language after ages of neglect.

Despite improvements, human rights need more guarantees in Arab constitutions to ensure full respect for people's freedoms. Some barriers still exist, such as the limits imposed on human rights under the pretext of respect for religious, moral, and public order, as well as national interest. The Algerian

---

<sup>10</sup> See Amnesty International, *Challenging Repression: Human Rights Defenders in the Middle East and North Africa* (London: Amnesty International, 2008); Cairo Institute for Human Rights Studies, *Bastion of Impunity, Mirage of Reform—Human Rights in the Arab Region: Annual Report 2009* (Cairo: CIHRS, 2009); and United Nations Development Programme (UNDP), *Arab Human Development Report 2009: Challenges to Human Securities in the Arab Countries* (Beirut: UNDP, 2009).

constitution provides that:

Diffusion of information, ideas, images and opinions in all liberty are guaranteed within the frame of the law and the respect of the Nation's religious, moral and cultural constants and values (article 50, paragraph 3).

Similar provisions exist in the constitutions of Jordan (articles 14 and 15) and Morocco (article 27), under which public order, morality, and national security serve as rationales to limit liberties. These restrictions represent a potential risk to human rights, in general. In the same vein, the 2014 Egyptian constitution makes several references to law to structure different aspects of human rights without safeguards (i.e., articles 57, 62, and 64).

The Tunisian constitution is more cautious regarding the limits that can be placed on some liberties, mainly when it specifies that judicial authority's role is to protect rights and freedoms guaranteed by the constitution. It states in this regard:

The limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defence, public health or public morals, and provided there is proportionality between these restrictions and the objective sought.

Judicial authorities ensure that rights and freedoms are protected from all violations. There can be no amendment to the Constitution that undermines the human rights and freedoms guaranteed in this Constitution (article 49).

These provisions extend sufficient safeguards against any possibility to pass laws that could violate constitutional liberties and rights by a majority potentially hostile to human rights. Also, article 49 of the Tunisian constitution prohibits any limitation of these constitutional liberties and rights by executive decree. Such limitation could happen only by a law passed by the Parliament to avoid unilateral and arbitrary decisions that threaten human rights.

## **Conclusion**

The Arab Spring is considered “a political tsunami,” which has led to unprecedented and unexpected power shifts and deep changes in the MENA

region since 2011.<sup>11</sup> From a constitutional perspective, the deep changes have taken place, so far, mainly in Tunisia with the implementation of the 2014 constitution. During the three years of the existence of the NCA (2011–2014), an inclusive and participatory constitutional process permitted all actors, without any exclusion, to express and defend their positions, in an environment of unrestricted access to the media and public spaces during the process. Thus, the Tunisian NCA was open to all political, cultural, and religious organizations and actors who were able to express themselves before the legislators, who were elected to vote on the new constitution on their behalf.

Public and private media alongside civil society organizations played an important role in helping citizens and the public at-large to be informed about the constitutional process and the various issues that were at stake. Thanks to a large mobilization led by civil society, the majority was not able to use its power in the NCA to pass provisions that could threaten human rights. In many cases, it was forced to retract its preferred position and to accept a better state of liberties and rights in the new constitution, mainly concerning the rights of women and minorities.

The constitutional reform processes in Algeria, Egypt, Jordan, and Morocco were obviously different from the Tunisian process, as inclusiveness and participation requirements were not fully met. This explains the differences in the outcomes of the constitutional reform processes. Indeed, an inclusive and open reform process led to genuine reforms that, in turn, will help to improve governance, while insufficient inclusiveness led to only some limited reforms. Yet, these reforms represent, above all, a positive step, although they need to be enhanced for better democratic governance in the Arab region.

Undoubtedly, constitutional reforms in the Arab region indicate an important political and institutional transformation. Thus, constitutional researchers need to focus on the way the new constitutions are being implemented to reach a better understanding of the new dynamics among the political actors and the shifts of power as result of these dynamics. It seems that a fertile field of research is open to constitutionalists in which empirical studies are a prerequisite for a deep understanding of emergent constitutionalism in the Arab region and its development.

---

<sup>11</sup> Larbi Sadiki, “The Meme of the Arab Spring,” in *Routledge Handbook of the Arab Spring: Rethinking Democratization*, ed. Larbi Sadiki (New York: Routledge, 2014), xxxii.