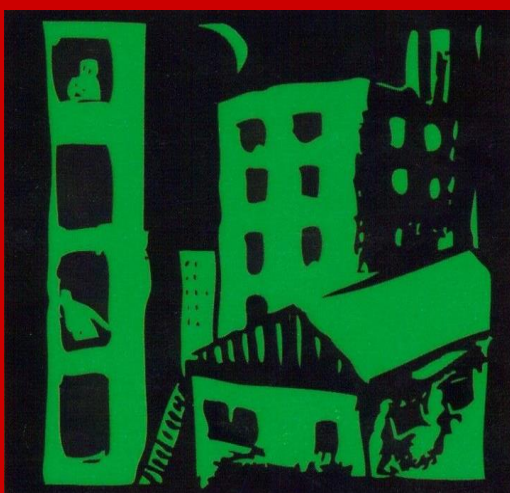


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**The effect of the
2011 Arab uprising
in the Middle East
and North Africa
(Mena region):
Morocco's quest for
constitutional
reform and the 20
February Movement**

ASHRAF BOOLEY

Senior Lecturer, Department of Private Law, Faculty of Law, University of the Western Cape, Bellville, South Africa

<https://orcid.org/0000-0003-34888388>

ABSTRACT

Historically, Morocco experienced widespread political repression during the 1970s through to the early 1990s. Through its exploitations, the monarchy regime repressed any claims aimed at challenging its authoritarian form of public space and debate. Encouraged by the uprisings in Tunisia and Egypt, and the Arab Spring, young Moroccans began to organise extensive demonstrations across the country demanding that a more substantive democracy, social

justice and an anti-corruption mechanism be put in place. The 20 February movement, named after the first demonstration held on that date in 2011, is a worthy illustration of one of the latest social movements characterised by a concentrated use of technology and their disseminated membership. King Mohammed VI, Commander of the Faithful and the highest authority in Morocco, promised in a televised speech to introduce radical and genuine constitutional reforms that would democratise the country. This article describes the historical trajectory of the monarchy, the emergence and structuring of the 20 February movement and the neutralization strategy pursued by the monarchy in bringing about a constitutional change.

Keywords: Morocco, reform, 20 February Movement, youth, Arab Spring, justice, constitution.

1 INTRODUCTION

The year 1957 marks the breaking of shackles with the French, as Morocco gained its sovereignty and opted for a constitutional democracy with an elected parliament.¹ Historically, Morocco experienced large-scale political repression during the 1970s through to the early 1990s.² Subsequently, the political reform during the 1990s expanded parliamentary power in 1992 and 1996, and in 1996 a bicameral legislature consisting of two chambers was introduced.³ Sadly, the promise of enacting a series of reforms democratising the monarchy, was largely seen as being unfulfilled.⁴

However, the Arab Spring⁵ played a major role in Morocco, forcing the monarchy to implement fundamental values and revisiting its constitutional provisions and existing structures.⁶ The Moroccan people took to the streets on 20 February 2011, demanding governmental reform, which became known as the *Mouvement du 20-Février* or the February 20 Movement.⁷ There can little or no doubt whatsoever that the February 20 Movement forced Morocco to address certain difficulties of transition into democracy not only from an internal perspective, but also from an international perspective. The

¹ See generally Eisenberg A “Law on the books vs law in action: under-enforcement of Morocco’s reformed 2004 family law, the *Moudawana*” (2011) 44(3) *Cornell International Law Journal* 693 at 693-703.

² Radi A “Protest movements and social media: Morocco’s February 20 Movement” (2017) XLII(2) *African Development* 31 at 31-55.

³ Global Nonviolent Action Database “Moroccan youth protest for constitutional reform, 2011” available at <http://nvdatabase.swarthmore.edu> (accessed 3 September 2020).

⁴ See generally Global Nonviolent Action Database (2011).

⁵ I am aware that there is an intense debate about the definition one should use for the events that have occurred in the Arab world since December 2010 and that there are objections to the use of “Arab Spring” because of certain Orientalist connotations of the terminology employed. In this article, however, the definitional debate is not to be unpacked, and the terms used, such as, “spring”, “revolution” and “uprising”, are used interchangeably. This should not indicate any methodological confusion, but rather the difficulty in grappling with the phenomenon with significant precision due to certain political outcomes.

⁶ McKanders KM “Anatomy of an uprising: women, democracy, and the Moroccan feminist spring” (2012) 32 *Boston University International Law Journal* 147.

⁷ Borwick J “Revolutionary vs evolutionary organisational change” : *HEIT* (2013).

Arab Spring jettisoned Morocco into the international spotlight. I argue, that since gaining independence Morocco has been leaning towards an evolutionary change and the February 20 Movement can be viewed as a revolutionary change.

The question is : how does one understand culture and religion, especially from a Moroccan perspective, where culture and religion are deeply embedded in its people. Schein suggests that the understanding of the different groupings or organizations could lead to difficulty and perhaps this is why change is difficult.⁸ Change is filled with complexities and will always be met by social, political and especially religious opposition in some form or another. This type of opposition is not only found in countries where Islam is the dominant religion but may present itself in countries where Islam is perhaps in the minority. For example, in South Africa, where the promulgation of the proposed Muslim Marriages Bill started in the early 1990s, it has yet to become law.⁹ When it comes to a comprehensive definition of how change occurs there is no clear consensus of how this happens. Although we can apply a practical understanding of the process of change, a thorough understanding of the theories of change can assist. The theory that I put forward is that Morocco underwent various changes in the development of democracy which can be broken down into either a revolutionary or an evolutionary change.

When dealing with a revolutionary change, there seems to be a complete overhaul resulting in a modified or an entirely new direction, mission, or a change in strategy, leadership and cultural shock.¹⁰ This type of change is dramatic, as the change turns everything upside down during this cycle. In other words, not much is left unchanged, the transformation is said to be complete, so we hope to believe. Furthermore, a revolutionary change is usually met with heavy resistance and violence by those who control power and those who wish transformation. The result is that we have opposing forces at play. This type of change , if it is not planned properly from the beginning, will most likely be doomed to fail because of its radical and robust nature.¹¹ In addition, a revolutionary change is largely viewed as a bottom-up approach to change the existing regime.

On the other hand, the theory of evolutionary change is that it is not radical in nature. In terms of this theory, change consists of incremental steps of improvement to correct a fault or to change a part of a bigger problem. Evolutionary change is more of a methodical and slow process, when compared to its counterpart. One of the disadvantages with evolutionary change is that the process takes time ; even a major push will not really effect fundamental change in a short space of time.¹² This type of

⁸ Schein *Organisational culture and leadership* (2004). The Jossey-Bass Business Management Series 5 at 23.

⁹ South African Law Reform Commission Project 59 *Islamic Marriages and Related Matters* (1996). See also South African Law Reform Commission Project 106 *Islamic Marriages and Related Matters* (2003).

¹⁰ McKanders (2012) 147 at 147.

¹¹ It may be advisable to mention at this juncture that there may be other disadvantages.

¹² It is important to mention at this juncture that there are other disadvantages.

change can be viewed as a top-down approach, as the holders of power are making or will make most or all of the decisions relating to change. This article will be divided into three parts : Part A will give a brief history of the monarchy; Part B will address the February 20 Movement ; and Part C will look at the reforms stemming from the February 20 Movement.

2 A BRIEF HISTORY OF THE MOROCCAN MONARCHY

Heir apparent, King Hassan II, took over the reins after the death of his father in 1961. Having studied law in Bordeaux, France, he was receptive to both worlds outside of Morocco and to the advancements towards modernity which would assist his country. King Hassan II's first legislative act was to continue the path of his father, in that Morocco would continue to move towards a constitutional democracy. Although this legislation was referred to as the Fundamental Law, it provided no date for elections or specific details concerning future institutions.¹³ It was nevertheless a legal commitment on the part of the newly crowned King Hassan II to provide democratic institutions envisaged by his father towards the end of 1962. Several years passed with no constitution and agitation grew amongst the opposition, with serious misgivings concerning the promises and intentions of King Hassan II.

In November 1962, it was officially announced that a constitutional referendum would be held, although the proposed text of the constitution was withheld from the general public.¹⁴ The first Constitution was adopted on 14 December 1962, but not without controversy. The controversy came from the National Union of Popular Forces political party (UNFP), a faction that broke away from the *Istiqlal* political party, that rejected the 1962 Constitution because it did not emanate from a constituent assembly, but rather from the Moroccan palace.¹⁵ Similar stances were taken by other political parties, such as, the Moroccan Communist Party (PCM) and the Democratic Constitutional Party (PCD), echoing for the direct involvement of the constituent assembly.¹⁶

Several authors are of the opinion that the 1962 Constitution was fashioned on the 1958 French Constitution, awarding the King greater powers.¹⁷ The 1962 Moroccan Constitution granted hereditary powers to the monarchy, under article 20,¹⁸ and stated that the State could be subject to constitutional revision in terms of article 108.¹⁹ Article

¹³ Beling W "Some implications of the new constitutional monarchy in Morocco" (1964) 18(2) *Middle East Journal* 163.

¹⁴ The national referendum that was responsible for the first Moroccan Constitution was passed with a majority of 97.86 per cent.

¹⁵ White G "The advent of electoral democracy in Morocco? The referendum of 1996" (1997) 51(3) *Middle East Journal* 388.

¹⁶ See White (1997).

¹⁷ Morocco: Constitution "A series of constitutions drafted in 1962, 1970, 1972, 1992 and 1996, that preserved the monarchical nature of the Moroccan regime" available at <https://www.encyclopedia.com/> (accessed 3 June 2019).

¹⁸ Article 20 of the Moroccan Constitution (1962).

¹⁹ Article 108 of the Moroccan Constitution (1962).

108 stated that the King assumed the title “commander of the faithful”²⁰ and that his person was considered as sacred as well as being unchallengeable.²¹ In addition, the King’s powers were expanded to incorporate the appointment and discharging of the prime minister and other ministers. Furthermore, article 35 awarded the King the right to call for a state of emergency, which was exercised in 1965 to discharge Morocco’s representative institutions, following the unrest in Casablanca leading to the country’s political instability.²²

The Moroccan Constitution of 1962 envisaged a bicameral parliament consisting of a chamber of representatives of which two-thirds were directly elected, as well as a senate-like chamber of councillors nominated through electoral colleges; theoretically the Moroccan governmental structure was strong.²³ Article 3 affirmed that if political parties participate in the organization and representation of citizens, a one-party system cannot exist in Morocco.²⁴ Although it could be argued that Morocco had a system under the control of an authoritarian monarchy, thereby limiting the powers of the political parties, it did create an atmosphere where debate and divergence constantly evolved to a point.²⁵

The riots in Casablanca culminated in the suspension of parliament, and allowed the King to assume governmental power, which in turn led to the state of emergency which endured for the next five years. As the unrest continued, the King tried to quell the unrest by reviving the constitutional legitimacy of the monarchy, which led to the promulgation of the 1970 Moroccan Constitution, seeking to repair the fractured political system.²⁶ The 1970 Constitution abolished the existing bicameral system and it was replaced with a single chamber of representatives with an unstipulated composition.²⁷ Of interest is that only one-third of the single chamber that was introduced were directly elected through the principle of universal suffrage. The 1970 Constitution was vague in terms of when the single chamber would be constituted, and the result was that elections could be postponed indefinitely thereby reducing the powers of parliament. This enabled the King to sidestep the single chamber when it came to the issuing of monarchical legislative decrees.²⁸ In addition, the 1970 Constitution consolidated his position as the sole person who possessed the authority to

²⁰ Article 19 of the Moroccan Constitution (1962).

²¹ Article 23 of the Moroccan Constitution (1962).

²² White (1997).

²³ Morocco: Constitution “A series of constitutions drafted in 1962, 1970, 1972, 1992 and 1996, that preserved the monarchical nature of the Moroccan regime” available at <https://www.encyclopedia.com/> (accessed 3 June 2019).

²⁴ Maghraoui D “Constitutional reforms in Morocco: between consensus and subaltern” (2011) 16(4) *The Journal of North African Studies* 679.

²⁵ See Maghraoui (2011).

²⁶ The Moroccan Constitution (1970) available at www.encyclopedia.com (accessed 30 July 2019).

²⁷ Article 43 of the Moroccan Constitution (1970).

²⁸ See White (1997).

initiate any constitutional amendments, a privilege previously enjoyed by both the prime minister and parliament.²⁹

During the period 1971 to 1972, because of two attempted coups against the King, he initiated a revision of the existing Constitution.³⁰ It could be argued that the attempted coups were in response to the legitimacy of the existing regime which was already based on a constitutional monarchy which many citizens viewed as seriously hampering the role of government and the legislature.³¹ The continued unrest in Morocco in a way forced the King to yield, and to implement a third constitution in 1972. According to several commentators, the 1972 Constitution was viewed as less authoritarian than the second Constitution but also less generous than the 1962 Constitution. For example, it granted extended powers to the legislature and prime minister in the economic, cultural, and social realms. Article 65 on paper stated that the council of ministers was to be consulted on key issues, such as, a declaration of war, a state of emergency, or any constitutional revision of the Constitution.³² It could be suggested that the 1972 Constitution demonstrated small steps towards a more participatory democracy, which boasted two-thirds of the legislative chamber being elected through universal suffrage, as had been stipulated in the 1962 Constitution.³³ Of note is that the expected elections of 1972 were postponed until 1976. From 1976 onwards there were no major constitutional amendments, except for two in the 1980s, which related to the regency council and the postponement of the elections. Constitutional changes occurred only again in the 1990s.

King Hassan's health in the 1990s began to weaken. There is some debate as to whether the King's health hastened the political landscape or that the existing structures would have evolved in any event, as Morocco was leaning towards an evolutionary atmosphere.³⁴ From 1992 until the passing of King Hassan, saw a compilation of political reforms that gave opposition parties, including the Islamists, greater participation in the governmental sphere. In 1997, the legislative elections proceeded, in which the King invited the leader of the Socialists Union of Popular Forces (USFP), Abderrahmane Yousoufi, to become Prime Minister.³⁵ At least one of the structural requirements representing a democratic governance in Morocco came into existence, for example, the participation of a multi-party system. However, the King's

²⁹ Morocco: Constitution "A series of constitutions drafted in 1962, 1970, 1972, 1992 and 1996, that preserved the monarchical nature of the Moroccan regime" available at www.encyclopedia.com (accessed 3 June 2019).

³⁰ See Maghraoui (2011).

³¹ See Maghraoui (2011).

³² Article 65 of the Moroccan Constitution (1972).

³³ Article 43 of the Moroccan Constitution (1962).

³⁴ Denoeux G & Maghraoui A "King Hassan's strategy of political dualism" (1998) 5(4) *Middle East Policy Council* 104 at 104.

³⁵ See Denoeux & Maghraoui (1998) at 104.

authority still extended to the appointment of the political leadership of Morocco, as well as the various heads of organs of State.³⁶

In 1996, by referendum, the fourth Constitution was promulgated, and introduced concessions to invite opposition parties, especially the USFP and *Istiqlal* political parties, to participate.³⁷ The 1996 Constitution seems to revert back to the bicameral system of 1962; however, there was a change of representation, for example article 2 that now stated that sovereignty belonged to the nation.³⁸ King Hassan's rule from 1961 until 1999 could be described as autocratic, for example, political opponents being arrested, tortured or simply disappearing, following the two failed military coups.³⁹

Despite the absence of many democratic principles and certain human rights shortcomings under the King, Morocco was viewed as one of the most liberal and progressive countries in the Mena region, with the exception of Tunisia. Historically, we may include Turkey as well. Although Morocco has been a constitutional monarchy for much of its break from the French, it has always leaned towards a democratic transition, albeit at a slow pace. One can conclude that it could best be described as an evolutionary change. The various reforms that were implemented in the four constitutional revisions from 1962-1996 included the introduction of a directly elected lower house, the prohibition of torture, the emergence of participatory political party opposition, and the revising of the Personal Status Code (CPS) which improved the status of women in the sphere of family law. These and many other factors made Morocco a beacon of hope for the implementation of a democratic system of governance under the rule of King Hassan II.

After the passing of King Hassan II, he was succeeded by his son Mohammad VI in July of 1999, and he instantly became a symbol of an even more democratic Morocco. According to Campbell, King Mohammad VI, was portrayed by Moroccan people and the foreign media as the "King of the poor", lauding modesty, social justice and moderation, unlike his predecessor.⁴⁰ King Mohammad VI, from 1999 until 2010, witnessed some moderate improvements which in a way distanced him from his predecessor, for example, permitting exiled opposition leaders to return, the release of political prisoners from incarceration, and dismissing some of his predecessor's stalwarts.⁴¹

³⁶ See Denoeux & Maghraoui (1998) at 104.

³⁷ Morocco: Constitution "A series of constitutions drafted in 1962, 1970, 1972, 1992 and 1996, that preserved the monarchical nature of the Moroccan regime" available at www.encyclopedia.com (accessed on 3 June 2019).

³⁸ Article 2 of the Moroccan Constitution (1996).

³⁹ See Denoeux & Maghraoui (1998) at 104.

⁴⁰ Campbell PJ "Morocco in transition: overcoming the democratic and human rights legacy of King Hassan II" (2003) 7(1) *African Studies Quarterly* 38 at 38-58.

⁴¹ Denoeux G "Countries at the Crossroads 2011: Morocco" available at <http://freefomhouse.org> (accessed 6 June 2019).

According to Maghraoui, there were few signs of King Mohammad VI ceding power to elected officials or striving to preserve civil liberties and upholding the rule of law.⁴²

In part, King Mohammad VI owed his popularity by distancing himself from the spoils and arbitrariness of his predecessor. Sadly not any significant programme of reforms took place.⁴³ Limited steps took place in the areas of electoral professionalism and transparency, but setbacks predominantly in the spheres of media freedom and the stagnation of judicial independence characterized the others.⁴⁴ Despite numerous indications of King Mohammad VI departure from his predecessor's autocratic style of governance he seems to be locked as a prisoner of the authoritarian system of governance that at times seemed unable to change. Another reason for the slow pace of reform was the fact that King Mohammad VI was still surrounded by the old guard of advisors, dignitaries, and high-ranking army officials who possessed significant power under King Hassan II still sitting at the same table.

This Part provides us with evidentiary proof that the monarchy was extremely influential in Moroccan politics, and no evidence of only being a figurehead. In addition, it seems that the broad-based reforms of his predecessor did not gather the momentum as expected. Another argument that could be put forward is that existing structures and the mindsets of those in power, provided an obstacle to the further development and realisation and protection of fundamental human rights in Morocco.

3 MOROCCO'S FEBRUARY 20 REFORM MOVEMENT: A DEMAND FOR REFORM

The February 20 Movement originated in the midst of the popular uprisings that spread across Middle Eastern North African (MENA region) and Libya during the Arab Spring calling for the removal of their authoritarian, corrupt and dependent political governments.⁴⁵ There is sufficient evidence that the February 20 Movement is the Moroccan extension of the Arab spring.⁴⁶ The February 20 Movement gained momentum by the youth of Morocco calling for change and addressing short videos on various social media platforms, such as, Facebook and YouTube to the monarchy.⁴⁷ It is an important point to mention that the February 20 Movement members were mostly unknown. They were mostly born in the 1980s-1990s and are considered to be among the sixty per cent of the Moroccan population who were at the time under forty years of age.⁴⁸ Of interest was the fact that Islamist movements were not the motivators of the protests, this is of importance as Morocco is always characterised by so called

⁴² Maghraoui D "PJD, Islam and Governance" Center for the Middle East Rice University's Baker Institute for Public Policy (2011) available at <http://www.bakerinstitute> (accessed 10 June 2019).

⁴³ See generally Maghraoui (2011).

⁴⁴ See generally Denoeux (2011).

⁴⁵ Al-Akhssassi M "Reforms in Morocco: monitoring the orbit and reading the trajectory" (2017) 10(4) *Contemporary Arab Affairs* 482 at 482-509.

⁴⁶ Lawrence AK "Repression and activism among the Arab spring's first movers: evidence from Morocco's February 20th Movement" (2016) 47(3) *British Journal of Political Science* 699 at 699-718.

⁴⁷ See Radi (2017).

⁴⁸ See Radi (2017).

Orientalists' assumptions.⁴⁹ Due to the various social platforms used by the youth to democratise Moroccan society, these protests acquired a new name in the Middle East as the "Twitter revolution".⁵⁰

The February 20 Movement slogans and calls were for the establishing of a democratic Morocco through weekly demonstrations, calling for significant reforms of the monarchy.⁵¹ In getting their message across to all, the protestors made use of all available social and media platforms pressing for political reforms and urging the people to demonstrate together in the streets to demand change and reform.⁵² Thousands of young Moroccans joined the protest movements that demonstrated in various Moroccan cities and regions on 20 February 2011, raising slogans such as "freedom and democracy now", "the people want change" and "for the sake of dignity". Although the 20 February Movement was not formally allied to mainstream politics, it was later supported by one of the oldest, the Moroccan Human Rights Organisation (AMDH).⁵³

In addition, people of the Berber movement, from different political parties, Marxists groups as well as labour unions joined the Movement, or at least participated in the demonstrations.⁵⁴ Islamism⁵⁵ in Morocco incorporates a large range of trends that differ extensively in their ideological tenets as well as the extent of their aspirations.⁵⁶ The Islamists of the Party of Justice and Development (PJD) did not support or participate in the February 20 Movement; however, the biggest Islamist group, the Justice and Spirituality Group (JSG – *Al-Adl wal ihsan*), an Islamist group in opposition to the monarchy, joined at a later stage.⁵⁷ Although, the monarchy maintained a conservative approach to the February 20 Movement, surprisingly, Prince Moulay Hicham El Alaoui, a close relative of King Mohammed VI, pronounced support in

⁴⁹ Desrues T "Mobilizations in a hybrid regime: the 20th February Movement and the Moroccan regime" (2013) 61(4) *Current Sociology* 409.

⁵⁰ Brouwer L & Bartels E "Arab spring in Morocco: social media and the 20 February movement" (2014) 27(2) *Afrika Focus* 9.

⁵¹ See Al-Akhsassi (2017).

⁵² See Desrues (2013).

⁵³ See Brouwer & Bartels (2014).

⁵⁴ See Brouwer & Bartels (2014).

⁵⁵ Bassam T *Islamism and Islam* New Haven : Yale University Press (2012) at 1-288. Islamism remains a contentious issue between those who advocate the political character of Islam and those who rebuff the possibility of turning the Islamic creed into a political map designed to govern Muslim societies. A comprehensive discussion relating to Islamism is beyond the scope of this article.

⁵⁶ Flah L "The discourse of Jama'at Al Adl Wal Ihsan (justice and spirituality group) on the concept of democracy" (2016) *International Journal of Linguistics* 1.

⁵⁷ See Brouwer & Bartels (2014). The choice of name "*Al Adl wal Ihsan*" (Justice and Spirituality Group) mirrors admirably the vision of JSG's founder Sheikh Abdesalam Yassine. *Al Adl* (justice) refers to a just reform of government that is expected to achieve equity in all realms of life whereas *Ihsane* (spirituality) refers to an advanced stage in the journey the *Sufi* disciple marked by a profound knowledge of God. The use of *Sufi* terminology helps to preserve Yassine's supremacy as spiritual leader notably with the growing of democratisation of the JSG.

an interview with France 24.⁵⁸ The protestors' demands were numerous. In a press conference on 17 February 2011, Tahani Madman, a nineteen-year-old student and active member of the Movement announced some of the Movement's initial claims at the headquarters of the AMDH in Rabat.⁵⁹

These claims became more detailed in a national press release on March 13.⁶⁰ In an official statement the February 20 Movement on its Facebook page posted its founding declaration, a mixture of macro-political demands and socio-political measures.⁶¹ The macro-political demands included a democratic constitution to reflect "the true will of the people", to install a parliamentary monarchy, the dissolution of the government and parliament, the formation of an interim transitional government subject to the people's will, and an independent, honest judiciary.⁶² The socio-political measures focused on demanding: the release of all political prisoners and prisoners of opinion; the trial of those responsible for arrests, torture and disappearances; fighting against corruption and the trial of those involved in corruption cases; the recognition of *Amazigh* (Berber) as an official language in addition to Arabic; the immediate and comprehensive integration of the unemployed into the civil service; the ability of all citizens to access social services and the improvement of its cost-effectiveness; the nationalisation of public services; increased wages; an end to the high cost of living; and the guarantee of dignified lives for the people.⁶³

Inasmuch as the effectiveness of the February 20 Movement was distinguished by its popular and youthful momentum during the early stage of the uprisings, the size of its membership differed from one region and one city to another. This happened to the extent that for a few weeks the movement experienced a noticeable decline in its level of mobilization and the size of its membership. However, that may have been attributable to the structural limitations in the formation of the February 20 Movement itself as well as political factors linked to initiatives by the State.⁶⁴ For example, one of the key activists linked to the February 20 movement in Rabat explained that there were groups trying to obstruct the protest: "authorities paid poor people to provoke the protestors into a demonstration".⁶⁵ It is also reported from May 2011 onwards, that the police resorted to using violent tactics as well as hiring "counter-demonstrators" in an effort to provoke change of peaceful demonstrations into violent demonstrations.⁶⁶

⁵⁸ The Interview "Prince Moulay El Alaoui of Morocco, cousin of King Mohammed VI" available at www.france24.com (accessed 3 September 2020).

⁵⁹ Global Nonviolent Action Database (2011).

⁶⁰ See generally Global Nonviolent Action Database (2011).

⁶¹ See generally Global Nonviolent Action Database (2011).

⁶² See Al-Akhsassi (2017).

⁶³ See Desrues (2013).

⁶⁴ See Brouwer & Bartels (2014).

⁶⁵ See Brouwer & Bartels (2014).

⁶⁶ Human Rights Watch "Morocco: Police Violence a Test for Revised Constitution" available at www.hrw.org (accessed 3 September 2020).

According to al-Akhssassi, there were structural limitations marked from the outset by three organizational features that had the greatest effect on its socio-political network.⁶⁷ First, it was a movement of radical origins. Hence, its formation depended on radical intellectual and political currents which drew from the culture of the “revolutionary” Moroccan radical left. The Movement attempted to absorb new generations of the youth and women into this way of intellectual and political radicalism. However, it was this political delineation that contributed to creating an intellectual, political and behavioural gap between the 20 February Movement and the bloc of nationalist political forces that possessed political experience and deep roots in society.

This delineation in turn was applied to the actual “break” that distinguished the 20 February Movement’s attitude and approach to the struggle from that of nationalist political society which was marked by traditionalism and defeatism. This is perhaps what inspired the self-criticism of the Movement by some of its activists. In answering the first question, posed by al-Akhssassi, the February 20 Movement was driven by young people and the political inexperience that has been attributed to them caused high expectations for the regeneration of Moroccan society, in terms of political and social participation within it, to be attached to the initial demonstrations.⁶⁸

Al-Akhssassi’s next point is that the 20 February Movement was distinguished as being simultaneously a formative and a pioneering movement. Its membership included two radical political components that were opposed in their intellectual and political aims, namely, the radical Marxists, represented by the radical left current, and the radical Islamists, represented by the JSA.⁶⁹ Although this is correct, one must bear in mind that they only joined the Movement at a later stage. The result is that it created a hybrid “radical” formation had a negative effect on the level of popular membership in the movement, according to the assessment of its activists.⁷⁰ However, in a country such as Morocco, where Islam is the dominant faith, there are bound to be heated debates, and perhaps losing sight of how and what the February 20 Movement was about and why it started with the youth and not any political alignment. Further discrepancies found in Moroccan society are between those who support, albeit reluctantly, reforms backed by the monarchy and those who advocate a process of change that refutes the influence of the monarchy.⁷¹

Moreover, the tactics adopted by the JSA for membership into the movement provoked doubts and anxieties in the ranks of the leftist groups.⁷² According to Fathallah Arslane, a spokesman for the JSA, allegations that the group was preparing to seize power through an armed uprising and replace the monarchy with a radical Islamic

⁶⁷ See Al-Akhssassi (2017).

⁶⁸ See Desrues (2013).

⁶⁹ See Al-Akhssassi (2017).

⁷⁰ See Al-Akhssassi (2017).

⁷¹ See Desrues (2013).

⁷² See Al-Akhssassi (2017).

fundamentalist government stem from fabricated reports in the local pro-State media.⁷³ In response to increasing pressure by the authorities and press reports linking the group to radicalism, the JSA organized what they describe as an extensive “Open Doors” campaign in an effort to reach out to Moroccans in order to refute allegations by the group’s critics linking them to radicalism and terrorism. Arslane believes that the popularity of the “Open Doors” program worried the authorities, especially ahead of next year’s parliamentary elections, prompting them to clamp down.⁷⁴

Al-Akhssassi’s last point is that the Movement was distinguished by its ambiguous orientation.⁷⁵ On the one hand, the Movement fell into the centre of a “dual attraction” between the general context and the particular context. The former was the Arab Spring, the events of which had shaken the pillars of autocracy and the pockets of corruption in the Mena region and perhaps elsewhere in the Arab world. The latter was represented by the youth protest and demand movements, which were governed by the conditions of the national situation.⁷⁶ This dual attraction affected the two different contexts of the Movement with regard to the trajectory of its struggle and its political development. These are indeed the dimensions with which the February 20 Movement ended up . However, one must note, that this not a unique situation. Almost all protest globally will have some resemblance to the above.

4 CHANGE IN 2010 – FEBRUARY 20TH MOVEMENT

In 2010, everything changed in the Mena region as the Arab spring emerged and gathered momentum, causing the collapse of various authoritarian governments, such as those in Tunisia, Egypt and Libya. As a result of various protests in the Mena region, King Mohammad VI, as an immediate response to Morocco’s protest, called for a revision of the Constitution, embracing and moving the country closer towards democratic principles and values.⁷⁷ The 1996 Constitution can be viewed as an important road map leading up to the new constitution, which seemed to have been accepted by popular vote (through elections as one of the essential elements of democratic change) of the people in July 2011. Of interest is the fact that many Moroccans did not target the King or demand a change of the regime; instead, they called for an unaffected constitutional monarchy, the disbanding of parliament, and the dismissal of Prime Minister Abbas El-Fassi and the many relatives occupying senior positions in government as well as the entire cabinet.⁷⁸

In response, the King decided to establish a constitutional reform committee, although handpicked by himself. The King announced the following : the new

⁷³ Zambelis C “Morocco cracks down on Islamist opposition group JSA” (2006) 3(22) *Jamestown Foundation Terrorism Focus* 1.

⁷⁴ See generally Zambelis (2006).

⁷⁵ See Al-Akhssassi (2017).

⁷⁶ See Al-Akhssassi (2017).

⁷⁷ Ottaway M “The New Moroccan Constitution: Real Change or More of the Same” 2011 available at <http://carnegieendowment.org> (accessed 10 June 2019).

⁷⁸ See generally Denoeux (2011).

constitution would enhance the prerogatives of the Prime Minister and parliament; the strengthening of political parties; increasing the independence of the judiciary; and the allocation of more authority to the local levels of government. The proposed changes were viewed as vague and seemed to fall short of the demands of the protesters.⁷⁹ Some observers argued that the new constitution was a design of a truly participatory process and that in essence the King continued to hold power. However, despite the observers' arguments, the Moroccans voted in favour with almost 98 percent. This Part will highlight some of the most prominent constitutional provisions of the new Constitution.

The new constitutional text has embraced the many concerns from civic associations as well as the many slogans of the protestors. The preamble to the new Constitution is an integral part of the text which has 180 articles, compared to the 1996 Constitution which contained only 108 articles.⁸⁰ This an increase of 72 more articles compared to previous versions of Morocco's constitutional trajectory. The preamble specifies a convergence of Arabo-Islamic, Amazigh and Saharan components that is nourished and enriched by its African, Andalusian, Hebrew, and Mediterranean influences.⁸¹ The preamble of the new Constitution considers the diversity of the Morocco people. If the first two lines of the 1996 constitutional preamble is derived from the language of decolonisation and world solidarity to specify Morocco's place in an "Arab Maghrib" and "African unity", the new introductory stanza envisages a broader globalism that assumes a closeness with the North African Union running parallel to an Arabo-Islamic *umma* (community), African solidarity and Euro-Mediterranean allegiance.⁸² Although, this may seem to be pure conjecture at this time, however the contrast with prior official identity statements gives pause for thought.

It is of interest to point out that Morocco, despite what is envisaged in article 1 of the 2011 Constitution,⁸³ did not venture into a parliamentary monarchy as is evident in the British or the Spanish model where "the King reigns but does not govern". In Morocco, the King continues to be the main actor in determining the political dictates and adopting decisions of strategic importance for the country. Article 49 states that the King continues to chair the Council of Ministers, an organ of State that resolves matters of significance relating to the State.⁸⁴ Article 47⁸⁵ states that , after consultation with the head of government, the King can dismiss ministers and possesses the power to dissolve

⁷⁹ See generally Denoeux (2011).

⁸⁰ Dolinar M "An Extension of the official Moroccan Identity in the Constitution of 2011: Appeasing Requirements of the Arab Spring Demonstrations" ECPR Press available available at <https://ecpr.eu> (accessed 6 June 2019).

⁸¹ Silverstein P "Weighing Morocco's New Constitution" 2011 *Middle East Research and Information Project* available at <http://merip.org> (accessed 7 June 2019).

⁸² See generally Silverstein (2011) .

⁸³ Article 1 of the Moroccan Constitution (2011).

⁸⁴ For example, strategic orientations of State policy, any proposed revision of the Constitution, drafting organic laws including framework laws, general guidelines of finance bill, drafting amnesty law, drafting text relating to the military sphere, the declaration of a state of siege and of war, and appointments to high public office in terms of article 49 of the 2011 Moroccan Constitution.

⁸⁵ Article 47 of the Moroccan Constitution (2011).

the cabinet. Also, in term of article 96, the King has the power to dissolve the Houses of Parliament (after consultation with the President of the Constitutional Court and after informing the presidents of the two houses of Parliament as well as the Head of Government.⁸⁶ Article 56 allows the sovereign to continue his role as president of the Higher Council of the Judicial Power,⁸⁷ and as supreme commander of the Royal Armed Forces,⁸⁸ and is also to chair a new national security body, referred to as the Supreme Security Council, established under article 54,⁸⁹ as the forum for consultation on strategies relating to the internal and external security of the country as well as the management of crisis circumstances.

A provision of significant importance for the new Morocco, stems from article 19 of the previous constitutions,⁹⁰ which in a sense granted the King almost unlimited power, which has now been split into articles 41 and 42. The thinking relating to the splitting was to separate spiritual power from secular power so that there is no confusing of powers stemming from the previous constitutions. Article 41 maps out the King's prerogatives in the religious arena, postulating that as the "Commander of the Faithful" the King shall ensure respect for the faith of Islam, shall be a guarantor of freedom of worship and shall preside over the High Council of *Ulemas* (Muslim clerics), which is the only body empowered to issue officially sanctioned religious opinions (*fatwas*).⁹¹

In terms of article 42, the King as Head of State, Supreme Representative symbol of the unity of the nation, guarantor of the permanence and continuity of the State and supreme arbitrator between institutions, shall ensure compliance with the Constitution, the proper functioning of constitutional institutions, protection of the nation's democratic options and of rights and freedoms of citizens and communities, as well as compliance with the international commitments of the Kingdom. He shall be guarantor of the independence of the country and of the territorial integrity of the Kingdom, within its authentic borders.⁹² From a representative perspective, the reform of the old article 19, is commendable.⁹³ An unprecedented change in more than five decades has now been altered, losing its "sacredness".

According to Biagi, the split between articles 41 and 42 provides no certainty as to whether it will bring about significant change from a purely practical perspective.⁹⁴ However, article 42 of the new Constitution proceeds further and states that the Sovereign shall exercise his powers through royal decrees (*dahirs*), which must now be

⁸⁶ Article 96 of the Moroccan Constitution (2011).

⁸⁷ Article 56 of the Moroccan Constitution (2011).

⁸⁸ Article 53 of the Moroccan Constitution (2011).

⁸⁹ Article 54 of the Moroccan Constitution (2011).

⁹⁰ The Moroccan Constitution (1962) etc .

⁹¹ Article 41 of the Moroccan Constitution (2011).

⁹² Article 42 of the Moroccan Constitution (2011).

⁹³ Article 19 of the Moroccan Constitution (2011).

⁹⁴ See generally Biagi F " The 2011 Constitutional reforms in Morocco : more flaws than merits" *An evolving EU engaging a change Mediterranean region Jean Monnet Occasional Paper* No. 07/2014 available at <http://aei.pite> (accessed 9 June 2019).

countersigned by the head of the government. It should be noted, however, that while royal decrees do not require to be countersigned by the head of government, this has now become an exception - they do relate to matters of great importance.⁹⁵

In addition to article 47, relating to the appointment of the head of government, they cover the religious prerogatives inherent in the institution of the “Commander of the Faithful”,⁹⁶ the appointment of ten members of the Regency Council,⁹⁷ the dissolution of Parliament,⁹⁸ the approval of appointments of magistrates by the Higher Council of Judicial Power,⁹⁹ the enacting of a state of emergency,¹⁰⁰ the appointment of half of the members of the Constitutional Court,¹⁰¹ as well as the presentation of constitutional amendments for a referendum.¹⁰² Surprisingly, for a King who is going to reign as a parliamentary monarchy, much of his time is absorbed by the abovementioned articles.

Sadly, although a fully independent judicial system was one of the demands of the protestors, it is not precisely articulated as a guarantee, as the King continues to oversee the appointment of judges. This is not a foreign design : for example, in South Africa, judges are selected and interviewed by the Judicial Services Commission (JSC) and it proceeds to make recommendations to the President. The President then makes the final decision based on the recommendations put forward by the JSC. However, the judiciary is independent from other organs of State.

However, the 2011 Constitution added 17 new articles to relevant sections, such as, safeguarding the presumption of innocence, *habeas corpus* and the right to a fair trial (including speedy and public), due process and state provided counsel and appeal, such as what South Africa has, which is referred to as Legal Aid.¹⁰³ These provisions allow judges to act within the law and to be impartial as well as excluding outside influences so as to protect the judicial process at the same time. Although the reforms to the judiciary in communicating the core democratic values of justice are to be welcomed, much more must be done, however, so that the judiciary can be viewed as being totally independent, echoing the calls of the protestors.

5 CONCLUDING REMARKS

Indeed, the constitutional process has evolved and embraced a more democratic process in contrast to the past constitutions and introduced some democratic core values. However, the 2011 Constitution is still viewed by some observers as a “grant”

⁹⁵ Article 42 of the Moroccan Constitution (2011).

⁹⁶ Article 41 of the Moroccan Constitution (2011).

⁹⁷ Article 44 of the Moroccan Constitution (2011).

⁹⁸ Article 51 of the Moroccan Constitution (2011).

⁹⁹ Article 57 of the Moroccan Constitution (2011).

¹⁰⁰ Article 59 of the Moroccan Constitution (2011).

¹⁰¹ Article 230 of the Moroccan Constitution (2011).

¹⁰² Article 174 of the Moroccan Constitution (2011).

¹⁰³ Chentouf A “Justice Sector Reform after 2011 Constitution: Progress and Challenges” 2018 *Institutional Reforms Research* available at <https://mipa.institute> (accessed 9 June 2019).

from the sovereign, and that the Constitution did not emerge from a democratically elected constituent assembly, not to mention the fact that the separation of powers is more theoretical than substantive and the King continues to retain near absolute or absolute power. The new Morocco now meets some established criteria towards democracy, such as, free and fair elections, multiple political party participation representing the people, a separation of powers, and individual rights and freedoms. Although, Morocco can be an example of evolutionary change working towards a peaceful transition, the transition is far from complete. It now remains the task of the various political actors to promulgate laws and to implement them as articulated in the Constitution. In addition, the King must now exercise extreme caution not to overreach the powers that have been retained. Although, many of the concerns of the protestors have been met albeit the law must now be implemented, the protestors will not be silenced.

This article has demonstrated that democracy can occur in different forms and that there is no "one size that fits all". However, the constitutional provisions are promising in the realization of the most basic and fundamental human rights. In addition, this a top-down policy by creating structures for the advancement of the people. Yes, the King does still possess the majority of power; however, some of the previous structures have been removed, thereby ensuring a more transparent and accountable government, which would serve the Moroccan people in its quest for transformation. By dismantling those structures Moroccans now have a say in the type of laws they want , and perhaps this is the start in making Morocco more accountable for its human rights obligations locally, regionally, as well as internationally.

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