

# Constitutional Reforms in Tunisia, Egypt, Morocco and Jordan: A Comparative Assessment

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The peoples of the Middle East and North Africa (the MENA region) ousted dictators who had been thought impossible to overthrow. The youth took to the streets and demanded equity, freedom and democracy. As the interdependence of the two shores of the Mediterranean is undeniable, following and sustaining the democratic process on the southern shore to the greatest extent possible must be one of the highest priorities of the Euromed Partnership. Prosperity and democracy on the northern shore of the Mediterranean cannot be stable as long as the closest neighbours in the South are still striving vainly to achieve those goals.

The upheavals and revolts for more economic justice and political participation in the Arab world will not bear fruit if they are not consolidated with constitutional reforms. The transformation of the demands into law is what will give them the chance to be satisfied.

The Arab Spring led to different results. In Tunisia, Egypt and Libya, the revolts culminated in the overthrow of dictators and a change in regime. In other parts of the southern Mediterranean, the revolts spurred the governing elite to calm people with subsidies and specific economic aid or by introducing reforms in the regime.

In Jordan and Morocco, the kings sought to pre-empt the discontent in the streets by amending the old constitutions. In Tunisia and Egypt, where the change was to be radical, it was decided to draft new ones. Of course, drafting a new constitution is a long pro-

cess. The specific conditions of these four countries – monarchies and republics respectively – may explain the different outcomes of their popular revolts.

## Differences between Monarchies and Republics in the Arab Spring

Monarchies have proved more stable in the context of the general popular discontent throughout the Arab world. No king has been forced to abdicate. The Gulf rulers could rely on their oil wealth to mitigate demands with subsidies and employment packages. The Moroccan and Jordanian monarchies do not have such resources to quieten the voices calling for fair wealth sharing and political accountability. Nevertheless, the Hashemite monarchy in Jordan and the Alaouite monarchy in Morocco enjoy a solid legitimacy. While the overthrown dictators in the republics of Tunisia and Egypt represented only themselves, the Jordan and Moroccan monarchs are backed by ancient dynasties stemming from the Prophet of Islam, Mohammed. According to the Moroccan Constitution, the Moroccan ruler is the “commander of the believers” (*amir al-m'uminin* in Arabic), the highest religious authority in the country. This is one of the most important reasons why none of the protest movements has dared to demand the deposition of the monarchs or the abolition of the monarchy and establishment of a republic.

Alongside this solid legitimacy, the monarchies also benefited from the divisions in their respective societies and political arenas. The Hashemite dynasty used the gap between the Transjordanians and Jordanians of Palestinian origin to foster the loyalty of each group to the monarch. Tribal rivalries in Jordan and the competition between political parties in Morocco granted the respective monarchs the role of arbitrator between the opposing sides.

For these two reasons the Jordanian and Moroccan monarchs benefited from a shield of legitimacy. They were able to remain in power, and it was not difficult for them to pledge to liberalise political life in their countries.

In the aftermath of the ousting of the heads of state in Tunisia and Egypt and the waves of popular protests in Morocco and Jordan, the kings of both countries immediately took measures to quieten the protestors without radically changing political life or the exercise of power in their countries. The change would occur within the continuity of the political traditions of each monarchy. In contrast, in Tunisia and Egypt, the radical outcome of the protests called for radical consequences.

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Whereas the monarchs in Morocco and Jordan conceded certain amendments to the old constitutions to their subjects, the protesters and the new political activists in the republics of Tunisia and Egypt demanded more radical change in the form of the drafting of a new constitution to achieve the objectives that had sparked the revolution.

### **The Amendments to the Old Constitutions Conceded in Jordan and Morocco**

#### *Top-Down Constitutional Reforms*

The kings of both Morocco and Jordan addressed their peoples and heralded a series of amendments to the constitutions of their respective countries. In his address to the nation on 9 March 2011, King Mohammed VI of Morocco announced considerable amendments to the Constitution of 1996. The

amendments echoed some of the demands of the demonstrations for political and economic reforms that had been taking place since 20 February that year. It is, however, significant that the king did not make any explicit reference to the protests. Probably he wanted to give the reforms a top-down character and to insinuate that a monarch acts freely and does not bow to popular pressure. Similarly, King Abdullah II of Jordan included a pledge of constitutional reform within the framework of his determination to introduce sweeping reforms ever since he acceded to the throne. Both monarchs established committees for the review of the Constitution. They appointed their members and tasked them with submitting to them suggestions for amendments. These reform initiatives have been criticised, for instance by the February 20 movement in Morocco, as being top-down and not emanating from the people and their political representatives. The people were not involved in the constitutional process. Both royal committees for constitutional amendments completed their task quickly. Both kings unveiled the suggested reforms. The suggestions of the Moroccan committee were put to a referendum and were approved by the Moroccan people on 1 July 2011. In accordance with the regulations governing constitutional revision, the recommendations of the Jordanian Royal Committee of Constitutional Review were submitted for the approval of the legislature. They were passed by both houses of Parliament in late September 2011.

#### *Timid Constitutional Reforms*

In Morocco, the constitutional reform aimed to reduce the powers of the king in favour of elected bodies. According to the amendment, the Moroccan king has to select the Prime Minister from the political party with most seats in Parliament. As president of the government, the Prime Minister is the chief of the executive branch. However, the king still has exclusive jurisdiction in matters of religion, security and strategic policy. The ambiguity of this wording leaves the king with considerable power in national politics. Moreover the domain of Parliament has been expanded. In Jordan, the king's powers were kept intact. Some limitations were imposed on the government in favour of Parliament. For instance, the ability to issue temporary laws during parliamentary holidays has been reduced. Furthermore, the ability of the government to dissolve Parliament without re-

signing itself has also been reduced. In both Morocco and Jordan, further steps were taken to consolidate the rule of law. A constitutional court will be established in Jordan to monitor the constitutionality of laws and regulations. Moreover, an independent body has been created to supervise the elections, which had hitherto been controlled by the Minister of the Interior. This step may restore the credibility of elections in Jordan, which has been weakened over the last decade. The protection of human rights has also been reinforced, especially through the criminalisation of any infringement of rights and public freedoms. Unfortunately, the prohibition of discrimination still does not include gender alongside race, language and religion, although many women's rights activists vehemently demanded its inclusion. In Morocco, the preamble of the Constitution reaffirms the country's commitment to universally recognised human rights. In the cultural arena, the Moroccan Constitution boldly recognises Amazigh, the Berber language, as an official language alongside Arabic. The constitutional reforms in Morocco and Jordan succeeded in bringing more stability to political life and to the streets in the short run. But they must be followed by the corresponding practice. Elected Moroccan political parties must exercise their new powers self-confidently. The new election supervision body in Jordan must do a good job so that people can again trust state institutions and the pledge of democratisation.

### **Long Processes to Draft New Constitutions in Tunisia and Egypt**

The revolts in Tunisia and Egypt ended in the ousting of their presidents. The demonstrations pushed for regime change. Changing the constitutional order proved to be very difficult and complex. The political scene was set ablaze with vehement debates not only about the content of the new constitutions but also the process of drafting and adopting them. More than a year after the toppling of the former heads of state, the constitutions have not been drafted. Nor has the date of their adoption been determined. The debates about the new constitutions are highly important in the schools of Tunisian and Egyptian democracy. Is it not the essence of democracy to reveal contradictions in society, and should we not try to integrate these contradictions peacefully in the form of compromises?

### *The Process of Drafting the Constitution in Tunisia*

Shortly after Ben Ali was ousted from power, the Tunisian Constitution of 1959 was suspended. It had clearly been an instrument of the repressive and anti-democratic regimes of both Ben Ali and Bourguiba before him. The new Tunisian Constitution will be drafted and adopted by a constituent assembly. A commission was established – the Commission for the Realisation of the Goals of the Revolution, Political Reform and Democratic Transition – composed of representatives of civil society and the major political parties. This commission was intended to function as a parliament and to adopt the legal documents necessary for the organisation of the election of the members of the constituent assembly and the democratic transition in general. The new Constitution was to have been drafted within one year of the election of the constituent assembly. After the promulgation of the new Constitution, parliamentary elections were to be held. The election of 23 October 2011 saw the victory of the moderate Islamist party Ennahda (41% of the seats). They entered a coalition with two secular parties (the Congress for the Republic and the Democratic Forum for Labour and Liberties). The constituent assembly lost a lot of time building the coalition and the government and promised to finish drafting the Constitution in a year but refused to provide for this timetable in an official document. This has been criticised by the other parties in the assembly and by political activists outside it. The constituent assembly is currently working on drafting the new Constitution. The most heavily debated issue in and outside the assembly has been the status of religion and of Islam and the Sharia (Islamic law) in Article 1 of the Constitution. Secular parties and political activists feared that Ennahda might make a big push for the inclusion of the Sharia in the Constitution as the source of legislation. After some hesitation, Ennahda officially declared that it would keep the current version of Article 1, which provides that Islam is the religion of Tunisia without declaring the Sharia to be a source of law.

### *The Process of Drafting the Constitution in Egypt*

After the popular uprising and the toppling of Mubarak, the Supreme Council of the Armed Forces took power. In contrast with the process in Tunisia, it was decided to hold parliamentary and presidential elections first, before the new Constitution was

drafted. A referendum was held on 19 March 2011 on the amendment of several provisions of the Constitution of 1971. Under the revised articles, the power of the President of the Republic to declare a state of emergency is limited and requires the approval of a parliamentary majority. The term of the presidency has been reduced to four years with a two-term limit. The whole election process is subject to judicial supervision. After the election, Parliament was to appoint a 100-member constituent panel to draft the new Constitution. According to the final results of the parliamentary elections in late January 2012, the Islamists were the winners. The Freedom and Justice Party, the political arm of the Muslim Brotherhood, and the hard-line Salafist Nour Party together hold about 70% of the seats in the Egyptian Parliament. Dominating Parliament, they established a constituent panel that reflected its composition. Some 60 panel members are affiliated with these parties. Secular parties and other political factions rejected this composition. Twenty of the appointed members quit the panel, including the representatives of Al-Azhar and the Coptic Church. In late April 2012, a court ruled against the composition of the constituent panel and ordered the suspension of its work. The constitutional process is suffering a crisis, since several secular parties are threatening to establish a parallel constituent panel to draft a new Constitution. Their main argument is that the new Constitution should be drafted by a panel reflecting the interests of all Egyptians, including minorities, and not be dominated by a parliamentary majority. In Tunisia and Egypt, the change was radical and the

process of drafting new constitutions has proved to be long and risky. One might ask whether the Moroccan and Jordanian alternative of slowly and progressively introducing reforms to the regime is more conducive to stability and security. However, the Egyptian and Tunisian solutions may also be the only way to allow people to learn democracy and to guarantee real and enduring security to the entire Mediterranean region.

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Only time will tell which of the two ways of change is more beneficial to the people and the region as a whole.

## References

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