

## Chapter 5

# Constitutional reform processes

*Ewa K. Strzelecka and  
María Angustias Parejo*

### 1 Introduction

---

Constitutional reforms both shape and have been shaped by political changes, and as such they represent a significant area in the analysis of sociopolitical reconfigurations in the Arab world. In this chapter we analyse the different constitutional reform processes that have taken place in the Maghreb (Algeria, Morocco and Tunisia) and the Middle East (Egypt, Jordan, Syria, Yemen, Oman and Bahrain) since the uprisings in 2011. The initial hypothesis is that the constitutional reform processes have had a decisive impact on the nature and scope of the processes of political change. The existence of a democratic procedure for constitutional reform and a broad consensus – emerging from the freely expressed will of the people, and based on the covenant and model of constitutional coexistence – all represent notable indicators for the democratisation process.

The purpose of this study is to examine and compare the latest constitutional reform processes in the aforementioned nine countries in order to offer key insights into these processes and to propose a typology of the dynamics of constitutional reform, and its scope in the Arab world. The aspects for analysis include procedures (institutions and regulations), consensus and dissent during the course of the constitutional process and the content of the constitutional reforms (democratic mechanisms and authoritarian mechanisms). The emphasis is placed on the most important elements of the processes of constitutional change and of the content of the new constitutions, while paying particular attention to aspects related with the power of heads of state, the most frequently debated reforms and the advancement of gender equality and women's rights.

## 2 Algeria: new constitution, old status quo

---

In April 2011 Algeria's President Abdelaziz Bouteflika, in power since 1999, announced a constitutional reform with which he managed to mitigate popular discontent and contain the Arab Spring in his country. The first stage of this constitutional process consisted of a parallel dialogue: on one hand, with civil society, and on the other, with the political leaders. This stage was initiated in May 2011 with the aim of listening to citizens' proposals for change. The second stage began when the president created a special committee made up of five experts. All of them were university professors and worked from April 2013 to May 2014 on preparing the first constitutional reform bill, which should have taken into consideration the proposals made previously by different political and social actors. It is worth noting that the proposals from the political parties and civil society were advisory in nature rather than prescriptive and were delivered during closed-door meetings with state officials. Since they were non-binding, their implementation depended on the goodwill of the regime.

The constitutional process speeded up following the presidential elections on 17 April 2014. The six presidential candidates all viewed constitutional reform as a priority, even though they had differing views on the content of the new constitution. As Abdelaziz Bouteflika was re-elected as president, the reform process continued in accordance with his views. On 7 May 2014 the president submitted the road map for the constitutional process to the Council of Ministers, while stressing the importance of seeking consensus between political and social groups in order to broaden democracy in Algeria. Following the decisions made at this meeting, invitations were sent out on 15 May 2014 to 150 stakeholders to take part in a second round of consultations on the draft constitution. On 16 May the proposed amendments were published on the presidency's website, with the aim of promoting greater transparency and ensuring that the media and public opinion were involved in the process.

Most of the opposition parties turned down the regime's invitation to take part in the consultation, questioning the credibility and transparency of the process. Nevertheless, 134 organisations out of the 150 stakeholders invited still agreed to take part in the consolidation of the draft constitution. More specifically, the invitation was accepted by thirty out of the thirty-six prominent figures invited, fifty-two political parties out of sixty-four, and all of the thirty-seven national organisations and associations and the twelve university professors. The minister of state and the president's chief of staff, Ahmed Ouyahia, was appointed by President Bouteflika to conduct the consultation process. Thus, from 1–8 July 2014, a total of 114 meetings were held out with the representatives of different social and political groups, and some thirty written contributions were received to be taken into consideration

with regard to the drafting of the reform bill. Following a review of the proposals that lasted from 14 to 28 December 2015, President Bouteflika met with a restricted council comprised of six cabinet members to finalise the draft constitution. The final draft was endorsed by the president on 28 December 2015, and subsequently approved by the Council of Ministers on 11 January 2016 (Benyettou 2015).

At the public presentation of the draft constitution, the government announced that 70 per cent of the constitution's amendments expressed the collective proposals of the political and social actors who took part in the consultation. However, this result was widely questioned by the opposition parties, who rejected the new constitution, describing it as a cosmetic change and not an in-depth reform. In spite of this criticism, the draft constitution was approved by an overwhelming majority in the two houses of parliament, thanks to the control exerted over parliament by the National Liberation Front (FLN in the French acronym), a party with close links to President Abdelaziz Bouteflika. The voting session was attended by 512 MPs from both parliamentary houses, 499 of whom voted in favour of the draft constitution, two against and with sixteen abstentions. The new constitution was enacted by President Bouteflika on 6 March 2016. On 7 February the clause implementation follow-up committee was created, a body responsible for the implementation of the constitutional amendments. However, the opposition remains sceptical about this control mechanism and the likelihood of any real change being made.

Among the most important changes introduced in the 2016 constitution are the restrictions on the president's term of office to two consecutive terms, the enlarging of the powers of parliament, the creation of an Independent Electoral Committee, an expansion of citizens' rights and freedoms, the creation of new national councils to respond to emerging issues, and the promotion of a multilingual national identity, specifically by acknowledging Amazigh as an official language together with Arabic.

With these changes, a slight alteration has taken place in the position of the president, though this reform has not substantially affected his governing powers and privileges. The president continues to enjoy wide-ranging powers, as head of state, chair of the Council of Ministers and commander-in-chief of all the armed forces of the Republic of Algeria (articles 70 and 77). He has the power to appoint the heads of the main posts in the areas of the administration, the political sphere, the judiciary, diplomats, national security and the Bank of Algeria (article 78). One significant innovation is that when appointing the prime minister, the president now requires the endorsement of a parliamentary majority (article 77). Another positive change is the return to restricting presidential mandates to two five-year terms (article 74). This restriction was modified in 2008, thereby enabling President Bouteflika to commence a third

term of office in 2009 and a fourth in 2014. Thus all future presidents may govern for a maximum of ten years. It should be noted that this concession by the regime took place in a context marked by the current uncertainties from President Bouteflika's delicate state of health as well as his advanced age of seventy-nine.

The 2016 constitution also introduces significant changes to the criteria for anyone wishing to stand in the presidential elections. All presidential candidates must have solely the native Algerian citizenship and be able to prove that their parents have the native Algerian citizenship, they must not be married to anyone from a different nationality other than Algerian, they must not possess a foreign nationality, and they must have resided in Algeria for at least ten years before standing for presidential elections (article 73). These measures not only make it difficult for people of immigrant origin to advance socially and politically, they also restrict the political participation of Algerians with dual nationality and who live in diaspora, which can affect members of the opposition.

The 2016 constitutional revision introduces several improvements in issues regarding human rights, including the right to freedom of peaceful demonstration (article 41 bis), of political association (article 42 bis) and of the press (article 41 bis 2). The principle of equality and non-discrimination for reasons of gender (article 29) as well as encouraging the political participation of women (article 31) were guaranteed in previous constitutions. The new feature of the 2016 constitution is its measures for promoting gender equality in the labour market, and to encourage the promotion of women in decision-making positions in public agencies and institutions (article 31 bis 2). It also recognises the role of youth as a dynamic force in the country's development (article 31 bis 3).

### **3 Morocco: the monarchy's new redefinition of its control over the political scene**

---

Over the past five decades Morocco's monarchy has shown an astonishing ability to manage and respond to social and political crises by means of constitutional revision. The constitutional reform of July 2011 took place in a context of revolts and street demonstrations by dissatisfied citizens calling for a radical change in the system. Inevitably, the hasty constitutional reform process must be viewed as a strategy of rapid reaction by the regime to the challenge represented by the emergence of an independent, unprecedented movement that challenged the existing game rules. The response by those in power to the popular demands expressed by the 20 February Movement and its support

platforms extended the controversial process of liberalisation commenced in the 1990s (Parejo 2010: 92), and has been widely applauded in the international sphere as an example worthy of emulation in the Arab world. However, despite the apparent concessions, the monarchy has not ceded any of its basic prerogatives; instead it has merely redefined its control over the Moroccan political scene. This reform falls far short of achieving the ‘constitutional, democratic, parliamentary and social monarchy’ described in the first article of the recent 2011 constitution; it is a ruling monarchy and it has not made any change to the authoritarian nature of the regime. Morocco continues to be a quasi-competitive authoritarianism in which the autonomy of the government and the parliament has been subordinated by a monarchy of an executive and legislative nature, though a limited amount of political competition is allowed (Feliu and Parejo 2013: 88–91).

The address by King Mohammed VI on 9 March 2011 was the starting signal for the reform process. This famous royal address establishes the framework and the general guidelines for the constitutional amendments. Its two key topics were the constitutionalisation of regionalisation (Parejo and Feliu 2013) and the strengthening and balancing of powers (especially those of parliament and government), as reflected in the fourth point in the king’s address to the nation.

Shortly afterwards, on 11 March, the Advisory Committee for Constitutional Reform (CCRC in the French acronym) was created, under the aegis of the lawyer Abdellatif Menouni and comprised of eighteen committee members, all appointed by the king. This committee commenced its hearings on 28 March, at which a number of political–social actors had to submit their proposals. In parallel with this committee, the Political Mechanism for Monitoring Constitutional Reform was also established, headed by the royal advisor, Mohamed Moatassime. It was officially conceived as a space for constructive debate and participation by political parties, unions and other political actors for the purpose of overseeing the draft constitution process (Desrués 2012: 370).

The final draft of the new constitution was not granted much time for debate by the parties and unions that formed part of the aforementioned Political Mechanism. An oral presentation of the draft constitution’s basic principles and guidelines was given to the Political Mechanism on 7 June, though its members did not receive the full written text until 16 June. On 17 June the king announced to the Moroccan people that a referendum would be held imminently on the constitution’s amendments. The consultation campaign began on Tuesday 21 June and ended at midnight on 30 June. Almost all the parties in the Moroccan political arena (including pro-government parties, the old opposition parties and new or smaller parties) participated actively in

the constitutional consultation mechanism, and campaigned in favour of the new text. Only two small left-wing groups and a union (the Socialist Democratic Vanguard Party (PADS in the French acronym); the National Ittihad Congress Party (CNI); and the Democratic Confederation of Labour (CDT)), initially decided to take part in the process of drafting the constitution, though they subsequently left the Political Mechanism. The semi-institutional opposition (the Unified Socialist Party (PSU); the Movement for the Community (MC); and the National Union of Popular Forces (UNFP)) and the non-institutional opposition (Democratic Way (VD); Justice and Spirituality; and Islamic Youth) expressed complete and open dissent with the constitutional draft process and the underlying referendum. The 20 February Movement, meanwhile, in spite of the autonomy of each of its local groups (which function by calling assembly meetings, a factor that gives rise to differences over strategy and content) decided in unison not to collaborate with either the CCRC or the Political Mechanism, and to boycott the referendum.

The referendum was held on 1 July 2011, and the official results were published after being certified by the Constitutional Council on 16 July. Voter turnout within the national territory stood at 73.46 per cent, the lowest in the history of Morocco's referendums. Final calculations, which included both the votes recorded in the national territory and abroad, showed that the 'yes' vote won, with 98.5 per cent.

One of the most notable innovations of Morocco's new political-constitutional architecture is the new status of the government. The constitutionalisation of a representative government illustrates the struggle between democratic principles and the persistence of an active monarchical power. All the constitutions have preserved (with certain nuances) an unbalanced dual executive. In 2011 a new duality emerged which featured an executive branch that was less unbalanced. The result adopted is a shared executive power which involves a necessary collaboration between the king and a head of government, while downplaying the functional and organic separation of powers and revealing the porosity that exists between the monarchy and all the other established powers.

The new constitution's harshest critics point to a series of weaknesses in the amendments. The most important of these is the fact that the centrality of the king and the concentration of his powers have not been altered. The king continues to possess great prerogatives in the executive sphere, without any political responsibility: he is the head of state (article 42), and the commander of the faithful, the highest religious authority in the country (article 41). He chairs the Council of Ministers' meetings (article 48), which determine the main strategic lines of state policy (article 49). He appoints the head of government and the members of government proposed previously by the



head of government (article 47). The king is no longer sacred, but he is still inviolable (article 46), thus protecting his political–religious status.

The king maintains his legislative powers intact through the enactment of royal decrees (*dahir*) (article 42), his competence to address messages to the nation and to the parliament which ‘may not be made the object of any debate’ (article 52), and his authority to dissolve both houses of parliament (article 51). He controls the spheres of defence and security, and remains the supreme head of the royal armed forces and has an exclusive monopoly over military appointments (article 53) and those of ambassadors (article 55). With the aim of consolidating still further his control over state security, he heads the recently created Superior Council of Security (article 54). He has markedly increased his sphere of influence following the constitutionalisation of numerous councils (all of which he chairs), such as the Superior Council of the Judicial Power (article 56), and he appoints half of their members. In general, the king has not renounced any of his prerogatives, and continues to hold the power of veto over important decisions.

The other part of this dual executive is the government. The new government statute of 2011 enshrines a parliamentarisation of the government and the appointment of the head of government. The government emanates from the will of parliament and the investiture of the government is explicitly established once it has obtained a favourable majority vote within the House of Representatives (article 88). The constitutionalising of a representative government initiated a process of emancipation of the government from monarchical power. Some of the basic elements of majority democracy have been constitutionalised, including the appointment of the head of government within the party that emerges victorious in the legislative elections (article 47) and an asymmetrical two-chamber system. The constitution formally enshrined a two-tiered autonomy for the head of government in relation to the king: firstly, the government’s responsibility to the king is removed (article 60 of the 1996 constitution), with the new constitution formally establishing the government’s sole responsibility to parliament; and secondly, the head of government is granted the right to dissolve parliament (article 104). The new constitution strengthens the government’s powers and degree of autonomy (the constitutionalisation of the Council of Government, article 92), but it is still weak in comparison with the king. In this respect, the government’s position – less subordinate but still subordinate – can be glimpsed in the constitution’s grey areas where what is known as the material constitution can come into play, and in those domains reserved for the king where the government does not exert any responsibility. The limits of governmental power can be clearly seen in the spheres of religion, security and the Council of Ministers (articles 48 and 49), which possesses ‘political, strategic and symbolic competences

that are more powerful than those of the Council of Government' (Parejo 2015: 40–1).

The struggle of the feminist movement and associations calling for equality between men and women has gained significant advances in terms of gender equality. One of the most important of these is the broadening of the sphere of equality recognised in article 19 which stipulates that 'the man and the woman enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural and environmental character', compared with the previous article 8 in the 1996 constitution, which only guaranteed equal political rights. Also in article 19, the state works for the realisation of parity between men and women, by including in the constitution a specific authority to promote parity and the struggle against all forms of discrimination (subsequently developed in article 164). The new constitution enshrines the state's commitment to draft and implement public policies which tackle and prevent the vulnerability of certain groups of women, mothers, children and elderly people (article 34). Gender equality is also enshrined in the state's institutional structure, with article 115 stipulating that the presence of female judges among the ten elected members must be ensured within the Superior Council of the Judicial Power, in proportion with their presence in the corps of the magistrature. Finally, the constitution includes a commitment to ensure greater participation of women in the management of local and territorial authorities (article 146).

#### **4 Tunisia: the miracle of the constitution of compromise and consensus**

---

The Tunisian constitution was approved on 27 January 2014. It was over two years after the election of the National Constituent Assembly (ANC in the French acronym), which was commissioned with the task of drafting a constitution within twelve months. This delay can be partly explained by the fact that the ANC exceeded its strictly constitutional mandate (Ben Achour 2014: 784) and the difficulty experienced by said body in reconciling its constitutional function with those of the legislature and governmental control. Furthermore, the constitutional paralysis was particularly caused by the intense, in-depth ideological debate on secularism that took place within a transition characterised by a scenario polarised between Islamist and secular parties (Szmolka 2015: 74). We must also consider other problematic factors such as the breakdown in security, outbreaks of terrorist violence, the political assassinations of Chokri Belaïd and Mohamed Brahmi, and the influence of regional politics (and particularly the developing events in Egypt and Libya) to understand the various political crises and incidents of institutional collapse



that the political system has experienced, and which have had an impact on the constitutional process.

The current constitution of 2014 is the third in modern times and was preceded by four different texts: the Tunisian draft constitution of 8 August 2012; the draft constitution of 14 December 2012; the draft constitution of 22 April 2013; and the draft constitution of the Republic of Tunisia of 1 June 2013 (Ben Achour 2014: 784).

The various draft constitutions produced by the National Assembly in 2012 and 2013 are a symptom of the antagonistic views in Tunisian politics and society deriving from two groups that are polar opposites: the secularists and the Islamic conservatives. All the draft constitutions prompted criticism from the opposition, secularist civil society, the Tunisian Association of Constitutional Law (ATDC in the French acronym) and the Democratic Transition Study Association (ARTD). These two associations organise demonstrations and study days to denounce the serious shortcomings in the texts and the semantic and referential confusion in same, in addition to the multiple legal deficiencies and contradictions, and the backward-looking nature of its measures (Gobe and Chouikha 2014: 301–10).

The assassination of Mohamed Brahmi on 25 July 2013 unleashed a storm within the insecure, unstable and divided atmosphere of Tunisian politics. This turbulent, violent situation led to an impasse until one section of civil society committed to democratisation proposed (on 29 July 2013) a new national dialogue initiative in order to emerge from the crisis and the bipolarisation that was generating the violence (Gobe and Chouikha 2015: 261–2). This consensus legitimacy initiative was sponsored by the Tunisian General Workers' Union (UGTT), the Tunisian Union for Industry, Trade and Handicrafts (UTICA), the Tunisian League for the Defence of Human Rights (LTDH) and the Tunisia National Lawyers' Association (ONAT). This quartet proposed the idea of rearranging the main political groups represented in the ANC within the dialogue, as a kind of informal mini-parliament in which a road map was adopted to bring the transition to an end by convening legislative and presidential elections. The proposed plan featured three stages: the election, by the ANC, of a new Independent High Authority for Elections; the election of a prime minister and a new government comprised of technocrats; and speeding up the process of drafting the constitution by prioritising a rule of consensus. Finally, Ennahda, together with twenty representatives from political parties, signed the roadmap on 5 October 2013.

The path chosen for the constitutional process meant that the ANC essentially lost its control of the political agenda and the process of drafting the constitution in favour of the national dialogue and the consensus committee. This ad hoc committee was created by the ANC in early July 2013 in an effort

to overcome the major differences between MPs regarding the constitutional text. Chaired by Mustapha Ben Jafar, president of the ANC and secretary general of Ettakatol, the committee were mainly comprised of the presidents of the parliamentary factions from the ANC or their representatives. This informal political arena was imposed in the final quarter of 2013 as a base for reshaping the draft constitution of 1 June 2013. After approximately twenty sessions of intensive work by the consensus committee in the last week of December focused on defusing the most controversial points, the ANC plenary debates commenced on 3 January. After many vicissitudes and negotiations, the constitution was finally approved on 26 January 2014 by an overwhelming majority: 200 votes in favour, twelve against and with four abstentions, in an atmosphere of euphoria and concord never before witnessed in the assembly (Gobe and Chouikha 2015: 262).

The constitution's painful gestation process reveals the difficulties involved for political actors with opposing views to reach consensus over their disagreements. The content of the new constitution appears to be generically in accordance with the principles of the democratic and liberal doctrine of universal human rights. Nevertheless, the constitution is the result of important concessions, sacrifice and compromise between secularists and the defenders of Islamic conservatism. It shows difficult, convoluted balances and ambiguous stipulations linked to the constitution-makers' commitment to Tunisia's Arab-Muslim particularities (Gobe and Chouikha 2015: 262–3).

One of the issues that polarised the debate, to the point of torpedoing the previous draft constitutions, is the religious question. The new constitution maintains the wording of article 1 from the 1959 constitution: 'Tunisia is a free, independent, sovereign state; its religion is Islam, its language Arabic, and its system is republican'. The constitution-makers specify the interpretive scope of the state's complex nature in article 2, which defines Tunisia as a civil state based on 'citizenship, the will of the people, and the supremacy of law'. This hybrid nature of the state is also highlighted in the constitution's Preamble, with the defence of 'Islamic-Arab identity' founded on an Islam that is open, tolerant and compatible with 'the highest principles of universal human rights', and the clear intention of 'building a republican, democratic and participatory system, in the framework of a civil state'.

The enshrinement of individual freedoms and the intervention of the state in religious matters was another of the bones of contention between secularists and Islamic conservatives. Article 6 attempted to reconcile the two – the secularists succeeded in including the principle of freedom of conscience (which represents a considerable achievement in the region, in as much as it is understood to open up the possibility for a Muslim to convert to a different religion) (Ben Achour 2014: 787) and to enshrine the state's responsibility

to protect freedom of conscience at the same level as the freedom of belief and the freedom of worship. Ennahda ensured that 'the state is the guardian of religion' and is responsible for 'the protection of the sacred' (Gobe and Chouikha 2014: 321). The state safeguards a project for society based on Arab and moderate Islamic identity, and to that end it ensures the political neutrality of 'mosques, places of worship' (article 6) and 'educational institutions' (article 16). It undertakes to spread the values of moderation and tolerance, to prohibit accusations of *takfir* (apostasy) and incitement to hatred and violence (article 6), and it safeguards the right to a free public education that fosters the national and Arab-Muslim identity of the young generations (article 39).

The great obsession of the Tunisian constitution-makers in 2014 was to break with the authoritarian, personality cult provisions of the presidential system, as enshrined in the 1956 constitution and exacerbated by the many subsequent revisions. Officially, it was a mixed, half-presidential, half-parliamentary regime (Ben Achour 2014: 792), modelled on a broadly parliamentary philosophy (Gobe and Chouikha 2015: 278) that represents a kind of compromise between the two forms of government, generating a sophisticated, confused and complex relationship between a two-headed government (president of the republic and the head of government) and a single-chamber legislative body (Assembly of the Representatives of the People).

The head of state is elected by direct universal suffrage, and his term of office is restricted to two five-year terms, either successive or separate (article 75). His prerogatives include: his representative role (article 72); his ability to set general policy in specific areas, a power he shares with the head of government (article 91) and the president of the assembly (article 77); his authority to appoint the head of government, with a very limited margin of manoeuvre, and the foreign affairs and defence ministers, decided in conjunction with the head of government (article 89); his power to table new legislation, shared with a minimum of ten MPs and the head of government (article 62); his right to submit a motion of confidence to the government, and should the government fail to win this motion, the head of state may dissolve the assembly; conversely, the assembly may force his resignation (article 99).

The head of government and the government require the backing of an absolute majority in the assembly before they can be appointed by the president of the republic (article 89). Within government, the head of government is all-powerful: he can set general state policy and oversee its implementation (article 91); he heads the administration and ratifies international treaties of a technical nature (article 92); he chairs, convenes and sets the agenda for the Council of Ministers, unless it deals with issues related to defence, overseas relations or national security, in which case the session must be chaired by the president of the republic (article 93); at a legislative level he holds the right

of legislative initiative, shared (as we have seen previously) with the president of the republic and a minimum of ten MPs (article 62), and he also exercises regulatory power (article 94).

The pressure exerted by progressive feminist organisations on the authorities and institutions responsible for navigating the transition and the major mobilisation campaigns it deployed (especially in 2012 and 2013) led to the issue of gender being accepted into the transition's political agenda, and consequently permeating the constitutional debate. In the constitutional sphere, the fruits of this struggle were reflected in a regulation which, to a certain degree, meets the demands of most of the feminist collective (Martínez-Fuentes 2014: 4). Thus, the women's constitutional statute of 2014: guarantees the protection, consolidation and promotion of women's accrued rights (article 46); it enshrines an equal citizenship (preamble, article 2 and article 21), in which 'male and female citizens have equal rights and duties, and are equal before the law without any discrimination' and are granted 'freedoms and individual and collective rights' (article 21); it stipulates that male and female citizens both possess the right to 'decent working conditions and to a fair wage' (article 40); in the political arena it makes a political commitment to affirmative action and states that it 'guarantees the representation of women in elected bodies' (article 34) as well as working to achieve parity between women and men in elected assemblies (article 46). Finally, the document highlights two very important achievements: the constitution includes a state commitment to 'eradicate violence against women' (article 46).

## 5 Constitutional development in Egypt: three changes in three years

---

Egypt has undergone three constitutional reform processes since 2011. The first reform was the interim constitution proclaimed on 30 March 2011 by the Supreme Council of the Armed Forces following President Hosni Mubarak's resignation from his post. The second reform involved the proclamation of the 2012 constitution, which came into force on 26 December and was devised under the hegemony of an Islamist majority within the constitutional assembly. The third reform was announced in July 2013, when the armed forces deposed President Mohammed Morsi in a coup, thus paving the way for a new constitution, adopted on 18 January 2014.

The 2012 and 2014 constitutions brought a rupture with the constitutional order of Hosni Mubarak's regime, but they did not represent a satisfactory change in democratic terms. Both documents were enacted within a context of polarisation and hostility between Islamist and secular parties (Szmolka

2015: 74), and they were used as a means to reinforce political alliances and to extend the dominant groups' advantage over their rivals (al-Ali 2016: 124). The two constitutional processes were distinguished by a lack of national consensus and the marginalisation of the opposition groups. The secular and liberal parties were marginalised following the political victory of the Islamist parties in the 2012 elections, while the Muslim Brotherhood were excluded from the transition process as a result of the military coup on 3 July 2013 and the subsequent outlawing of the Muslim Brotherhood by Cairo's Administrative Court on 23 September 2013.

The 2014 constitution, currently in force, is the result of a process established in the Constitutional Declaration proclaimed on 8 July 2013 by the interim President Adly Mansour, who replaced President Mohammed Morsi. The constitutional process was initiated by a technical committee of ten experts made up of lawyers and professors of law who, within a space of thirty days, submitted a first draft of the constitutional text, comprising 198 articles. The document was then debated and further developed by an assembly of fifty members, who proposed a constitution of 247 articles. This latter committee represented different political, social and military sectors; however, it did not include the Muslim Brotherhood, the most powerful organisation in the post-Mubarak period, and whose political arm (the Freedom and Justice Party) won three consecutive elections after 2011 (to the People's Assembly in 2011–12, the Shura Council in 2012 and the Presidency of Egypt in 2012) and two constitutional referendums (in March 2011 and in December 2012). The exclusion of the Muslim Brotherhood and the relative homogeneity of the constitutional assembly members meant 'serious disagreements would be unlikely, which was later seen when the overwhelming majority of the 247-article draft constitution was approved inside the plenary by more than 88 per cent of the total votes' (Meyer-Resende 2014: 7).

The regulations of the constitutional process had envisaged different public consultation mechanisms, but in the event these were limited to a constitutional referendum, held on 14 and 15 January 2014. The referendum was skewed in favour of a 'yes' vote, as the 'no' campaigns were repressed and intimidated by the security forces (Meyer-Resende 2014: 4–8). As a result, the constitution was endorsed by 98.1 per cent of voters, even though voter turnout was low – 38.6 per cent, only five percentage points above the turnout for the previous 2012 constitutional referendum.

While the 2014 constitution has many similarities to the one enacted in 2012, it also has significant differences. The biggest change lay in the removal of the language and the articles favoured by the Islamists in the 2012 text. The 2014 reform increased the power of the military forces, which had previously been bolstered through the prerogatives of budgetary and judicial autonomy in



the 2012 constitution. One new feature was the abolition of the Shura Council. However, the 2014 reform does not go so far as to encourage separation and balance between the three powers of the state.

The 2014 constitution does not restrict the authority of the president, though his office is limited to a maximum of two four-year mandates, as stated in the 2012 constitution. The president is the head of state and has wide-ranging executive powers which he shares with the government. The problem lies in the fact that the division of responsibilities between the president and the prime minister is not explicitly stated in the constitution, which can affect the former's accountability. The president can exert significant influence over the legislature. He has the right to veto the law and to appoint up to 5 per cent of the members of the People's Assembly, a figure that becomes particularly significant when electoral results are closely fought or disputed. At the same time, parliament has the power to impugn the presidential mandate with a two-thirds majority, and if support is achieved via a popular referendum, the president may be ousted.

The 2014 constitution devotes two chapters (the second and the third) to issues related with human rights. The 2014 reform, compared with the 2012 constitution, is notable for the fact that it commits the state more explicitly to the 'agreements, covenants, and international conventions of human rights that were ratified by Egypt' (article 93) and to the principle of gender equality. What is more significant is that the 2014 constitution omitted the controversial clause of the 2012 constitution describing women in controversial terms as 'the sisters of men' (preamble). The 2014 constitution acknowledges the equality of all citizens and explicitly prohibits discrimination on the basis of sex (article 53). It stipulates that the state commits to 'achieving equality between women and men in all civil, political, economic, social, and cultural rights' (article 11). Furthermore, it must take necessary measures to ensure the 'appropriate representation of women in the houses of parliament' (article 11), though the constitution does not specify the precise mechanism through which the gender quota will be applied. The progress made in terms of women's rights is also challenged by the use of shariah law as 'the principal source of legislation' (article 2). The 2014 constitutional amendment specifies, nevertheless, that references for the interpretation of shariah are 'the relevant texts in the collected rulings of the Supreme Constitutional Court' (preamble), and do not depend on the opinions of the al-Azhar Council of Senior Scholars, as was stipulated in article 4 of the 2012 constitution. The 2014 reform also removed the controversial article 219, which broadly defined the principles of Islamic shariah, and generated concern that Salafists might make use of this mechanism to impose a restrictive view of women's rights and freedoms in society.



## 6 The constitutional reform promoted by the king of Jordan

---

The constitutional reform in Jordan was advocated by King Abdullah II in response to the mass protests of 2011, and with the aim of bringing an end to the political crisis. The Royal Committee on Constitutional Review, set up in April 2011, comprised people loyal to the regime, and did not include any representatives of the political opposition or the reformist movement (Bani Salameh and Ananzah 2015: 145; Gluck and Brandt 2015: 8). Despite the fact that King Abdullah II stated that the objectives of the constitutional reform were ‘civic activism and effective public participation’, the amendments were not submitted to public participatory consultation, nor were they the result of a transparent process (Gluck and Brandt 2015: 8). The forty-two amendments to the 1952 constitution, as proposed by the Committee on Constitutional Review in August 2011, were voted on by the House of Deputies and the Senate in September, and approved by royal decree on 30 September 2011 (Szmolka 2014: 130–34).

The constitutional reform of 2011 did not make any changes to the section devoted to ‘The King and His Prerogatives’ (articles 28–40), and thus the monarch’s enormous power remained intact. The Hashemite king of Jordan is sworn in as head of state (article 30), chief executive and supreme commander of the land, naval and air forces (article 32). He is also responsible for appointing the prime minister (article 35), approving his cabinet and designating the members of the Senate (article 36). The king also has the power to dissolve both chambers of parliament, to enact and veto laws, ratify treaties, declare war, make peace, appoint judges, intervene in death penalty sentences, grant special pardons and remit sentences. The king appoints the members of the constitutional court, which was set up for the first time in Jordan as a result of the 2011 constitutional reform.

In August 2014 two new amendments to the constitution were approved, one of which granted the king an additional power – the exclusive prerogative to appoint army commanders and the heads of the intelligence services. Two years later, in April 2016, another constitutional reform was enacted which further increased the king’s absolute powers. The draft amendment was drawn up by the government of Prime Minister Abdullah Ensour and was approved by the House of Deputies and the Senate with the utmost urgency, without being subjected to in-depth debate or submitted to public consultation. The reform was ratified by royal decree on 4 May 2016. As a result, changes were made to six articles of the 2011 constitution, including the approval of the controversial amendment to article 40 concerning the issuing of royal decrees, for which the requirement was abolished that such decrees be duly signed by the prime minister and the ministers concerned. The abolition of this control

mechanism thus formalised the king's absolute, unilateral power to appoint the crown prince, the speaker and members of the senate, the chairman and members of the constitutional court, the chief justice, the army commander and the heads of the intelligence and gendarmerie services.

The 2016 amendments represented a backward step for the democratisation of Jordan, and went against the demands of the 2011 protest movement, which called for limitation of the monarch's absolute power. Admittedly, in 2011 the king did make some concessions in order to pacify the revolt, but in effect they were a series of superficial, nominal reforms that fell short of representing structural changes. The 2011 constitutional reform brought some selective improvements in the areas of human rights and civil liberties. For example, the use of torture was banned and safeguards for the freedom of expression were increased. However, no progress was made in the area of women's rights. The recommendation from feminist movements – that article 6 of the constitution be amended and amplified by adding the word 'gender' to the prohibition of discrimination between citizens – was ignored. This failure to explicitly prohibit discrimination for reasons of gender has hampered the reform of laws prejudicial to women.

## 7 Yemen: everything has changed and nothing has changed

The constitutional process in Yemen, unlike that of other countries affected by the Arab Spring, did not begin immediately after the fall of the regime. Priority was given, firstly, to establishing a national dialogue in order to lay the foundations for a future constitutional reform. The National Dialogue Conference (NDC) was convened on 18 March 2013, sixteen months after President Ali Abdullah Saleh signed a power transfer agreement brokered by the Gulf Cooperation Council, in Riyadh on 23 November 2011. The NDC lasted until 25 January 2014, producing a document over 350 pages in length, with almost 1,800 recommendations to be taken into consideration for the drafting of the new constitution. The document was the result of a consensus between 565 members of the National Dialogue. They came from different political and social sectors and represented both the traditional elites, who attempted to preserve their powers and privileges, and agents of change, who pressed for greater democratisation. The outcome of the NDC reflects the balance and the tensions between these powers, sometimes including contradictory recommendations within its final document. What is more, the NDC did not manage to reach consensus on the most important agreement as regards Yemen's future: the project for a federal state and its political-administrative

division. In the final week of the National Dialogue, the Houthis withdrew from the conference in protest at the assassination, on 21 January 2014, of Ahmed Sharif al-Din, one of their representatives in the NDC. Subsequently, they denounced the NDC outcomes.

Given the difficulties involved in managing the NDC, President Abd Rabbuh Mansour Hadi attempted to drive the process forward by forming smaller and more manageable – but less representative and less accountable – working groups (Philbrick 2016: 60). The Constitutional Drafting Committee (CDC), constituted on 9 March 2014, was comprised of only seventeen members. Most of them were university lecturers, ex-diplomats and legal experts. Despite the fact that the draft constitution, issued and formally presented on 17 January 2015, was based on recommendations agreed between a broad social and political sector in the NDC, disagreement over key issues regarding the transformation of Yemen into a six-region federation served as a pretext for the non-democratic groups to block the constitutional process. Specifically, the Houthis, supported by the ousted president, Ali Abdullah Saleh, rejected the draft constitution and resorted to violence to impose their own political agenda. As a consequence, instead of convening a constitutional referendum, President Hadi was forced to sign a peace agreement with the Houthi rebels, on 21 January 2015, according to which amendments could be made to the draft constitution. Even so, the government's concessions did not succeed in preventing civil war. On 25 March 2015 an international coalition led by Saudi Arabia launched a military intervention against the Houthis in response to President Hadi's request for support. The armed conflict, which is still ongoing, unsettled the democratic transition and created concern over the future of Yemen.

The Yemeni transition to democracy was negotiated and based on national dialogue. The national authority for monitoring the implementation of NDC outcomes was established on 24 April 2014 and composed of eighty-two members. It received the draft constitution from CDC on 17 January 2015 to ensure that the new constitution was consistent with the final NDC document. This mechanism proved to be necessary, but not sufficient. It was not accompanied by the implementation of a transitional justice system that could foster reconciliation over past conflicts. Moreover, it was not backed by a genuine commitment to the democratic and peaceful methods of resolving political problems by the elites. As a consequence, the 2015 draft constitution fell victim to power struggles. The Houthis chose to carry out a coup d'état and proclaimed their own constitutional declaration, on 6 February 2015, which in fifteen articles defines a new type of transitional government in Yemen, led by a presidential committee made up of five members. This declaration was rejected by the other political actors and by the international community, though it is still being applied by the Houthis in the territories they control.

Article 1 of this document acknowledges the validity of the 1991 constitution of Yemen, as amended to 2009, providing that its measures do not come into conflict with the Houthis' constitutional declaration. Thus, the constitution of the old regime remains in force in Yemen five years after President Saleh's resignation from power.

The draft constitution of 17 January 2015 not only proclaimed a new federal system, it also significantly redefined the scope of the three state powers. At the legislative level, two houses of parliament were restructured. The Shura Council was abolished and a new Federal Council was established in its place, with 40 per cent representation assigned to the southern regions. The federal regions had their own executive authority, constituted by a regional president and a regional government. The president of Yemen was defined as a symbol of unity. He was elected for a five-year term which could only be repeated once. The president shared executive power with the vice-president. Both would be elected at the same time, though they could not be from the same region. The 2015 draft constitution considerably limited the powers of the president in comparison with the wide-ranging powers assigned to the head of state in the constitution that had been proclaimed during Ali Abdullah Saleh's regime. The president's role was reduced to a representative function and his other powers could only be exercised when previously approved by parliament. Measures were also envisaged to foster greater plurality in the selection of candidates for the presidential elections.

The 2015 draft constitution represented an important step forward in terms of women's rights and gender equality (Strzelecka 2015: 240 and 434). Following the NDC consensus-based recommendations, it included such significant improvements as guaranteeing women no less than 30 per cent of representation in various government institutions and authorities (article 76), setting a minimum age for marriage at eighteen years for both sexes (article 124), and the commitment by the state to empowering women, equal opportunities and protection from all forms of violence (article 128). The draft constitution acknowledged that all citizens should enjoy equal rights and liberties, free from discrimination for reasons of gender or other factors (article 75). Nevertheless, this article was undermined by article 135, which noted that all rights and freedoms would be guaranteed 'as long as they do not conflict with the conclusive provisions of the Islamic shariah'.

## 8 The farce of the 2012 Syrian constitution

---

The 2012 constitution was one of the main reforms adopted by the Bashar al-Assad regime in response to the popular protests which shook the country from March 2011 onwards. The constitutional reform was not the result of

dialogue with the revolutionary forces, but a unilateral strategy by the regime for the purpose of retaining power (Álvarez-Ossorio 2015: 171; Heydemann 2014). On 15 October 2011 President al-Assad set up a committee comprised of twenty-nine members, including three women, which had the mission of drawing up a new constitution. The committee was comprised of legal experts, members of the regime and one single representative of the so-called 'loyal opposition' – Qadri Jamil, a communist politician who was known for his declarations in favour of reforming the system without any need to abolish the regime. The draft constitution was officially published on 15 February 2012, to be later submitted to referendum on 26 February 2012. According to official data, the draft constitution was endorsed by 89.4 per cent of voters, though a turnout of only 57.4 per cent was recorded – a rather unlikely figure if we consider that much of the country was not under the regime's control (particularly the provinces of Homs, Hama, Daraa, Idlib and Raqqa) and that the referendum was boycotted by most of the opposition and revolutionary forces (Álvarez-Ossorio 2015: 172).

The 2012 constitution introduced a package of reforms that failed to favour the democratisation of the state, but instead strengthened the authoritarian system and left intact the enormous power held by the president. In theory, the president shares executive authority with the prime minister (article 83), but in practice his power enables him to exert great control over the government. The president appoints his deputies and vice-president (article 91), the prime minister, ministers and deputy ministers (article 97), as well as supervising the implementation of all state policy (article 98). Furthermore, he may assume legislative authority when the People's Council is not in session. The president has the power to dissolve the People's Council (article 111), propose legislation (article 112) and veto laws (article 100). In addition, in his function as commander in chief of the army and armed forces (article 105), he can make decisions regarding military power, declaring war and concluding peace agreements (article 102).

The new constitution stipulates that the president may serve a maximum of two seven-year terms (article 88). However, this measure is not retroactive in its effect, which means that President Bashar al-Assad can stand again for elections and extend his mandate until 2028. What is even more worrying is the fact that the constitution allows the current president to carry on in power after his mandate has expired if no new head of state is elected (article 87). Furthermore, the criteria established for presidential candidates favour those close to the regime and represent a disadvantage for religious minorities and political dissidents who have been political prisoners or have been forced to leave the country in recent years. The constitutional text specifies that all candidates must be Muslim, enjoy civil and political rights, and must not have

been convicted of a dishonourable felony (even if they were reinstated); they must have been living permanently in Syria uninterruptedly for the previous ten years, and they must not be married to a foreign woman (article 84).

The 2012 constitution made some progress in terms of greater openness to political pluralism (article 8). A positive feature was also the removal of the article 8 of the previous 1973 constitution stating that Ba'ath Party was 'the leading party in the society and the state'. The creation of a plural system, however, has not favoured democratic change; instead it has been used by the regime as a discursive tool to rebuild itself and legitimise its power.

Another of the nominal changes was the introduction of the concept 'human rights' into the 2012 constitutional text, and which did not exist in the 1973 constitution. In a positive sense, the constitutional reform endorses equality among citizens and prohibits all discrimination on the grounds of sex (article 33). The text includes the article that existed in the 1973 constitution, guaranteeing women full participation in political, social, cultural and economic life. Moreover, it acknowledges freedom as a 'sacred right' and commits the state to guaranteeing the principle of equal opportunities for all (article 33).

## 9 The Sultanate of Oman: the liberalisation of absolutism in the 2011 Basic Law

---

The Sultanate of Oman has no constitution, yet it adopted the Basic Statute of the State or Basic Law on 6 November 1996, which was amended in 2011. The 2011 reform was a political liberalisation measure issued in response to the popular protests that broke out in the sultanate in January 2011. In March 2011 Sultan Qaboos bin Said al-Said ordered that a technical committee of specialists be created to prepare the constitutional reform. The five amendments to the eighty-one articles of the Basic Law were ratified six months later, on 20 October 2011, via Royal Decree 99/2011 (Szmolka 2014: 130–4).

The constitutional process was neither transparent nor participatory, taking place as it did within the framework of an absolutist political system. What is significant about it is the fact that it was a tentative step in the transformation of an absolute monarchy into a constitutional monarchy, with several regulatory and legislative powers being ceded to the Council of Oman. Previously, both parliamentary houses – the Majlis al-Dawla (the State Council, the members of which are appointed by the sultan), and the Majlis al-Shura (the Advisory Council, made up of representatives elected via universal suffrage) – had performed a merely consultative function. At present the Council of Oman has the power to draft laws, but the sultan will always have the final word in terms of their enactment and ratification. He



also has the power to dissolve the Shura Council and to call new elections, while maintaining control over parliament.

The sultan of Oman is head of state and supreme commander of the armed forces. He is also the prime minister and presides over the specialised councils, unless he delegates this function to a third party. The sultan also appoints the members of the cabinet, the state council and other senior officials of the country's general administration. He is responsible for appointing judges and Oman's foreign policy representatives as well as establishing and regulating the state administrative apparatus. He also enacts laws, signs international treaties, declares wars and makes peace.

The new feature in the 2011 constitutional amendment was the change in the process determining the succession to the throne. According to the article 6 of the Basic Law the Royal Family Council shall, within three days of the throne falling vacant, determine the successor to the throne. However, if no agreement is reached, the Defence Council, together with the chairmen of both Houses of Parliament and the chairman of the Supreme Court, along with two of his senior deputies, shall instate the person designed by the sultan in his letter to the Royal Family Council. The function of these six state officials is purely symbolic, but it implies that at least one representative of the people – the chairman of the elected Shura Council – participates in the process of confirming the legitimate successor to the throne, making the process more transparent.

The 2011 amendment did not introduce any changes in the area of human rights. It is worth noting, however, that article 17 of the Basic Law guarantees equality between all citizens, without any discrimination for reasons of 'gender, origin, colour, language, religion, sect, domicile or social status'.

## **10 The 2012 constitution of the Kingdom of Bahrain: a frustrated aspiration for democratic change**

---

One of the main demands by protestors in Bahrain, where demonstrations began on 14 February 2011, was to reform the constitution to establish a constitutional monarchy where the king's powers would be of a symbolic nature. To resolve the political crisis, King Hamad bin Isa al-Khalifa convened a national dialogue, which was inaugurated on 2 July 2011 and brought together some 300 representatives from the different political groups (37 per cent), civil society organisations (36 per cent), public opinion leaders (21 per cent) and the mass media (6 per cent). The opposition was granted thirty-five seats (11.6 per cent), of which only five were assigned to the main Shiite Islamist party, al-Wefaq, which had won 45 per cent of the seats in the October 2010

parliamentary elections. Al-Wefaq's participation in the national dialogue did not last long, as on 18 July 2011 the party announced its withdrawal from the process in protest at the Sunni regime's violent repression of the Shiite protest movement. In spite of the opposition's withdrawal, the dialogue continued until late July 2011, producing as a result a package of 291 recommendations for political, social and economic reforms that were used as reference points for drafting amendments to the constitution. It is worth noting that the results of the national dialogue, on which the 2012 draft constitution was based, were approved by the government, but rejected by the opposition (Szmolka 2014: 130–4).

On 16 January 2012 King Hamad announced the constitutional amendments, which were put to the vote in both the Council of Deputies and the Shura Council in April, and subsequently ratified by royal decree on 3 May 2012. The 2012 constitutional reform was widely criticised by the opposition as insufficient, given that it did not respond to the demands formulated in the Manama Document, issued on 12 October 2011. This document was signed by five opposition parties: the Shiite Islamists of al-Wefaq, the left-wing parties (Wa'ad and the National Democratic Gathering Society), the Nationalist Democratic Assembly closely linked to the Iraqi Ba'ath Party, and al-Ikhaa, the Shiite party of Persian descendants. In spite of its importance, the document was ignored by government, thus highlighting the limits of the top-down change authorised by the king and led by the crown prince.

The amendments to the 2012 constitution did not restrict the absolute powers of the king, who is head of state, supreme commander of the defence forces, the person responsible for appointing and removing members of the Shura Council, judges, the prime minister and the ministers proposed by the latter. The hereditary succession to the throne follows the male descendants of the al-Khalifa dynasty, beginning with the firstborn son.

The constitutional reform introduced some improvements regarding the increasing of parliamentary powers, including a greater capacity to control government and the budget. However, this was not sufficient for the opposition, who aspired to having an elected government, introducing a more redistributive electoral system, abolishing the Shura Council, designated by the king, and founding an elected single-chamber parliament. The constitutional reform was also disappointing in terms of improving safeguards for human rights and for establishing specific measures to prevent discrimination against the majority Shiite population by the minority Sunni elite. Articles 1, 5 and 18 of the 2012 constitution, as stipulated in the previous 2002 version, guarantee equality between men and women and prohibit gender-based discrimination. Nevertheless, this equality is only guaranteed if it is compatible with 'the provisions of Islamic shariah' (article 5).

**Table 5.1** Constitutional processes in MENA countries (2011–16)

Countries and their constitutions	Causal factor	Promoter	Representation and political interaction	Regulation that determines the process	Institutional mechanisms	Process	Reforms	Approval mechanisms	Constitutional referendum (Approved/ voter turnout)
Algeria (2016)	Popular uprising	President	Controlled, conditional inclusion	2008 constitution – 2014 Constitutional Review Law	Two rounds of consultations with social and political actors – 5-member experts' commission	Semi-transparent	Greater consensus, though not unanimous; mostly rejected by the opposition	Block vote by both chambers of parliament – Enacted by the president of the Republic	No
Morocco (2011)	Popular uprising	The king	Conditional inclusion, exclusion and self-exclusion	King's address of 9 March 2011	Advisory committee for constitutional reform – Political mechanism for monitoring constitutional reform – Royal Cabinet – King	Semi-transparent	Consensus-building between most political parties – Dissent from the semi-institutional and non-institutional opposition, and from the 20 February Movement	Referendum of 1 July 2011	Yes (98.5 per cent/ 73.46 per cent)
Tunisia (2014)	Popular uprising	The Quartet headed by UGTT – The National Dialogue	Inclusion and consensus	2011 Constitutional Law 2011-6 regulating the temporary organisation of public powers – National Dialogue road map, 5 October 2013	National Dialogue consensus committee – National constituent assembly	Almost entirely transparent	Compromise and consensus	Voted by the National Constituent Assembly – Enacted by the president of the Republic	No
Egypt (2014)	Military coup	Interim president / military power	Non-inclusion	Constitutional declaration 8 July 2013	10-member technical committee – 50-member constitutional assembly	Non-transparent	Non-consensual	Voted by the constitutional assembly – Public referendum	Yes (98.1 per cent / 38.6 per cent)

**Table 5.1** Constitutional processes in MENA countries (2011–16) (cont.)

Countries and their constitutions	Causal factor	Promoter	Representation and political interaction	Regulation that determines the process	Institutional mechanisms	Process	Reforms	Approval mechanisms	Constitutional referendum (Approved/ voter turnout)
Jordan (2011 constitution, amended in 2014 and 2016)	Popular uprising	The king	Non-inclusion	Royal decree	Royal Committee on Constitutional Review (in 2011)	Non-transparent	Non-consensual	– Voted by the Chamber of Deputies – Voted by the Senate – Royal decree	No
Yemen (2015 draft constitution)	Popular uprising	– President – The National Dialogue Conference (NDC) – NDC-related Committees	Greater inclusion	– GCC Initiative – NDC Final Document – Presidential decrees	– 565-member NDC – 17-member Constitutional drafting technical committee – 82-member national authority for monitoring the implementation of NDC outcomes	Semi-transparent	Greater consensus	– Supervised by the NDC – Outcomes Monitoring Committee – Public referendum	Process interrupted by civil war
Syria (2012)	Popular uprising	President	Non-inclusion	Presidential decree	29-member constitutional committee	Non-transparent	Non-consensual	– Public referendum – Presidential Decree 94/2012	Yes (according to the governmental data: 89.4 per cent/ 57.4 per cent)
Oman (2011 Basic Law)	Popular uprising	Sultan	Non-inclusion (no political parties exist)	Royal decree	Technical committee of specialists	Non-transparent	Non-consensual	Royal Decree 99/2011	No
Bahrain (2012)	Popular uprising	The king and the crown prince	Non-inclusion	Royal decree	2011 National dialogue	Non-transparent	Greater consensus in the national dialogue between groups loyal to the regime; rejected by the opposition	– Voted by the Council of Representatives – Voted by Shura Council – Royal Decree	No

## 11 Conclusions

---

The initial hypothesis of this research study, that constitutional reform processes have a decisive impact on the nature and scope of processes of political change, has been partly confirmed. Constitutional processes are relevant, but not determinant for political changes of a much more complex nature. Political processes are structured by power relations, which at the same time determine the nature and scope of the constitutional changes. In Tunisia a process of transition took place in a context of deep political polarisation between secularist and Islamic conservatives. This has hampered the constitutional process, resulting in four failed attempts at drafting a new constitution. The last national dialogue initiative and the consensus committee, however, succeeded in bringing together all the different representatives of the political spectrum. They worked as the artificers of this difficult compromise and hard-to-reach consensus, both of which facilitated the miracle of the first democratically drafted constitution in Tunisia's history.

The Tunisian laboratory thus highlights the importance of negotiation, compromise and the power of informal political arenas to overcome political crises and institutional collapse. A significant, albeit certainly imperfect, democratic procedure within the constitutional reform process also took place in Yemen, where the inclusion and participation of elites and change agents produced a consensus-based draft constitution that partially, but importantly, redefined the nature and power of the regime. However, this constitutional process was interrupted and halted when one of the rebel groups violated the agreement and then civil war broke out.

The constitutional amendments in Jordan (2011), Oman (2011), Bahrain (2012) and Syria (2012), meanwhile, were the product of strategies for survival by the respective regimes, and were promoted 'top-down' through a process that excluded the revolutionary movements and all opposition groups not loyal to the regime. In the case of Egypt the hegemony of the Islamist parties, who had been elected democratically, resulted in the self-exclusion of the liberal and secular parties from the 2012 constitutional reform. Shortly after the 2013 Egyptian *coup d'état*, the use of a legal recourse to outlaw the Muslim Brotherhood enabled the old elites to get rid of a powerful rival from the 2014 constitutional process. Strategies of exclusion – or rather, the non-inclusion of specific actors in the constitutional processes – helped to ensure the survival of the authoritarian regimes in Syria and Jordan, and to shape a new form of authoritarianism in Egypt.

In Algeria the participation of different political parties and civil society in the constitutional process was restricted to consultations of a non-binding nature, and which were carried out under the guidance of the regime, as a

result of which certain opposition groups turned down the government's invitation to take part in the constitutional process. The National Liberation Front, which has a large majority in both chambers of parliament and it is closely linked to President Bouteflika, wielded enough power to singularly push their position through and passed the 2016 constitutional amendments in the parliament without the opposition's support. In Morocco the process of drafting the new constitution allowed the authorities to introduce some of the political demands called for over recent years, though without losing control of the process. The reform operation refocused the debate towards a text framed within axes of reference highly influenced by the king's address of 9 March, which demarcated the outlines of the epistemic framework of what was possible. The royal palace has ably demonstrated its ability to define the agenda and the public space for discussion with an argumentative discourse based on participation and consensus. The reform process succeeded in galvanising the actors as a whole, and in placing them on one side or the other of the line of inclusion.

Tunisia, which is currently the only democratic system in the region, has constitutionalised a kind of hybrid (half-parliamentary, half-presidential) government. This includes a bicephalous executive, which shares executive and legislative powers, and enforced cohabitation spaces and a vigorous assembly which requires, on a large number of issues, the agreement of an absolute parliamentary majority and in which particular recognition is made of the scrutiny exercised by the opposition.

The wide-ranging powers held by heads of state in Syria, Jordan, Oman, Bahrain, Algeria, Morocco and Egypt have not been limited; instead, in some cases they have been expanded (Jordan), extended (the renovation of President al-Assad's mandate in Syria) or redefined (Morocco). Furthermore, significant powers have been granted to the coup perpetrators in Egypt (military elite). At the same time, a series of liberalisation reforms have been adopted, such as the introduction of political pluralism in Syria; the restriction of the presidential mandate in Algeria to two terms of office; the constitutionalisation of a representative government and a wider sphere of action for the head of government in Morocco; the granting of limited legislative power to the parliament in Oman; the enlarging of the competences of the Council of Representatives in Bahrain; the establishing of accountability mechanisms for the government and parliament in Jordan; the granting of greater legislative, regulatory and executive control powers to parliament in Morocco; the selective progress made on the issues of human rights and civil liberties in Jordan, Syria, Egypt, Algeria and Morocco; and the improved safeguards for gender equality and women's rights in Syria, Egypt, Algeria, Morocco and Tunisia.



A relatively limited impact of these liberalisation reforms until now may suggest a strategy of ‘authoritarian upgrading’ (Heydemann 2007) rather than democratisation. Their potential positive repercussions in terms of long-term change, however, should not be underestimated. Moreover, the important socio-economic and political developments might occur outside the bounds of the authoritarian resilience paradigm. The experience of the Arab Spring shows that even the most repressive regimes of Hosni Mubarak, Zine al-Abidine Ben Ali, Ali Abdullah Saleh and Muammar al-Gaddafi, who all made use of the mechanisms through which they were seemingly able to reconfigure authoritarian power by adopting nominally liberalising reforms, did not survive the popular uprisings (Pace and Cavatorta 2012: 127). In any event, the true scope of the political changes through constitutional reforms remains to be seen. It requires a longer-term perspective to enable us to discern how authoritarian regimes have been reconfigured; how Tunisia’s young democracy is on the way to becoming gradually institutionalised and consolidated; and how the reforms have impacted on the revolutionary movements for change, particularly in those contexts that are still highly politically unstable, such as Syria and Yemen.

## References

- Al-Ali, Zaid (2016), ‘Egypt’s third constitution in three years: a critical analysis’, in Bernard Rougier and Stéphane Lacroix (eds), *Egypt’s Revolutions: Politics, Religion, and Social Movements*, New York: Palgrave Macmillan, pp. 123–38.
- Álvarez-Ossorio, Ignacio (2015), ‘El enroque autoritario del régimen sirio: de la revuelta popular a la guerra civil’, *Revista CIDOB d’Afers Internacionals*, 109: 157–76.
- Bani Salameh, Mohammed T. and Azzam A. Ananzah (2015), ‘Constitutional reforms in Jordan: a critical analysis’, *Digest of Middle East Studies*, 24: 139–60.
- Ben Achour, Rafâa (2014), ‘La Constitution tunisienne du 27 janvier 2014’, *Revue Française de Droit Constitutionnel*, 4 (100): 783–801.
- Benyettou, Wissam (2015), ‘Will Algeria Start 2016 with a New Constitution? Long-awaited Constitutional Revision and the Road to Democratic Transition’, ConstitutionNet, November 24. Available at <<http://www.constitutionnet.org/news/will-algeria-start-2016-new-constitution-long-awaited-constitutional-revision-and-road>> (last accessed 12 July 2016).
- Desrues, Thierry (2012), ‘Le Mouvement du 20 février et le régime marocain: contestation, révision constitutionnelle et élections’, *L’Année du Maghreb*, VIII: 359–89.
- Feliu, Laura and María Angustias Parejo, (2013) ‘Morocco: the reinvention of an authoritarian system’, in Ferran Izquierdo (ed.), *Political Regimes in the Arab World*, Abingdon and New York: Routledge, pp. 70–99.
- Gluck, Jason and Michele Brandt (2015), *Participatory and Inclusive Constitution Making: Giving Voice to the Demands of Citizens in the Wake of the Arab Spring*, Washington, DC: United States Institute of Peace.

- Gobe, Éric and Larbi Chouikha (2014), 'La Tunisie politique en 2013: de la bipolarisation idéologique au "consensus constitutionnel"?', *L'Année du Maghreb*, 11: 301–322.
- Gobe, Éric and Larbi Chouikha (2015), 'La Tunisie de la Constitution aux élections: la fin de la transition politique?', *L'Année du Maghreb*, 13: 261–80.
- Heydemann, Steven (2007), *Upgrading Authoritarianism in the Arab World*, Analysis Paper 13 (October), Washington, DC: The Brookings Institution.
- Heydemann, Steven (2014), 'Syria and the future of authoritarianism', in Larry Diamond and Marc F. Plattner (eds), *Democratization and Authoritarianism in the Arab World*, Baltimore: Johns Hopkins University Press, pp. 300–14.
- Martínez-Fuentes, Guadalupe (2014), 'Túnez: nueva constitución y la democracia posible', *Real Instituto Elcano*, ARI 7/2014: 1–9.
- Meyer-Resende, Michael (2014), *Egypt: In-depth Analysis on the Main Elements of the New Constitution*, Brussels: Directorate-General for External Policies of the European Union.
- Pace, Michelle and Francesco Cavatorta (2012), 'The Arab uprisings in theoretical Perspective: an introduction', *Mediterranean Politics*, 17 (2): 125–38.
- Parejo, María Angustias (2010), 'Liberalización política y redefinición de la oposición: la *Utlá* y la reforma constitucional en Marruecos (1992–2006)', *Miscelánea de Estudios Árabes y Hebraicos*, 59: 91–114.
- Parejo, María Angustias (2015), 'Cambio y límites del cambio en Marruecos: propuestas de reforma constitucional sobre el Gobierno', *Revista CIDOB d'Afers Internacionals*, 109: 23–44.
- Parejo, María Angustias and Laura Feliu (2013), 'Identidad y regionalización: los actores políticos marroquíes ante la reforma constitucional de 2011', *Revista de Investigaciones Políticas y Sociológicas*, 12 (2): 109–26.
- Philbrick, Stacey (2016), 'Yemen, five years gone', in *Reflections Five Years After the Uprisings*, POMEPS Studies, 18: 60–2.
- Strzelecka, Ewa (2015), *Gender, Culture, Islam and Development: the Construction of a Political Culture of Feminist Resistance in Yemen*, PhD Dissertation, University of Granada.
- Szmołka, Inmaculada (2014), 'Political change in North Africa and Arab Middle East: constitutional reforms and electoral processes', *Arab Studies Quarterly*, 36 (2): 128–48.
- Szmołka, Inmaculada (2015), 'Exclusionary and non-consensual transitions versus inclusive and consensual democratizations: the cases of Egypt and Tunisia', *Arab Studies Quarterly*, 37 (1): 73–95.

# Political Change in the Middle East and North Africa

After the Arab Spring

EDINBURGH  
University Press  
**Edited by Inmaculada Szmolka**

EDINBURGH  
University Press

not for distribution or resale. For personal use only.

Edinburgh University Press is one of the leading university presses in the UK. We publish academic books and journals in our selected subject areas across the humanities and social sciences, combining cutting-edge scholarship with high editorial and production values to produce academic works of lasting importance. For more information visit our website: [edinburghuniversitypress.com](http://edinburghuniversitypress.com)

© editorial matter and organisation Inmaculada Szmolka, 2017

© the chapters their several authors, 2017

Edinburgh University Press Ltd  
The Tun – Holyrood Road  
12 (2f) Jackson’s Entry  
Edinburgh EH8 8PJ

Typeset in 12/14 Arno and Myriad by  
IDSUK (Dataconnection) Ltd,  
printed and bound in Great Britain by  
CPI Group (UK) Ltd, Croydon CR0 4YY

A CIP record for this book is available from the British Library

ISBN 978 1 4744 1528 6 (hardback)

ISBN 978 1 4744 1530 9 (paperback)

ISBN 978 1 4744 1529 3 (webready PDF)

ISBN 978 1 4744 1531 6 (epub)

The right of the contributors to be identified as authors of this work has been asserted in accordance with the Copyright, Designs and Patents Act 1988 and the Copyright and Related Rights Regulations 2003 (SI No. 2498).