

Role of civil society movements in building Arab constitutions

Al Hafiz Al Nuwaini: Doctor of political sciences and international law.

Nizar Mannai: Phd researcher in special law sciences at the University of Tunis.

Rawdha El Arika: Phd researcher in Law, Faculty of Law and Political Science, Tunis.

Dr. Mabrouk Sahli: teacher of political sciences at the Om Al Bawaqui University, Algeria.

Meryem Jaafar: researcher in international law and human rights studies.

Iman Mohamed Rashwan: Phd researcher in economic and constitutional law.

Hendam Rajoub: Palestinian lawyer specializes in law research.

Fawzia Qasi: teacher of political studies and international relations at the Wahran University of law and political sciences.

Karim Mahmoud: specialist in constitutional and legislative studies.

Abdelhakim Abou A Louz: researcher in religious and political changes in the Maghreb.

ISBN : 978-9938-53-014-8



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Supervised by
Youssef Aouf and Rawaa Salhi



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**ROLE OF CIVIL SOCIETY
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The role of the social protest movements in the development of the Moroccan constitution for the year 2011:

-February 20 Movement as a model-

Al Hafiz Al Nuwaini

Executive summary :

This paper seeks to analyze how the February 20th protest movement has contributed to the change of the Moroccan Constitution of 2011, especially on the human rights side, by addressing the external and internal causes of this Moroccan protest movement, and how this reactionary dynamism has prompted the regime to change the constitution of the country, as well as how this new constitutional document has responded to the demands of the February 20th protest movement in terms of rights and freedoms. This policy paper also addressed the problems of activating these constitutional rights and suggested solutions to overcome this problem.

The analysis started from a detailed explanation of the external and internal reasons that led to the emergence of the February 20th protest movement and how the Moroccan regime had two choices: either to counteract the protest movement and Allah knows how things would turn out, or bend in front of this wave, anticipate its demands and absorb the anger of the street by initiating a comprehensive reform.

The paper concluded that the 2011 Moroccan Constitution was influenced by the February 20th protest movements in the field of human rights and included an important number of fundamental rights and freedoms. But there was a problem in their

implementation and activation, which made this policy paper propose a number of recommendations in order to activate these rights and freedoms and overcome this problem.

Introduction:

The Moroccan political system is characterized by its great ability to cope with developments and adapt to the protest movements, thanks to many factors, including its historical roots, its strong desire to continue, and the status of the royal institution in this system, which preserves its continuity through its historical, symbolic and constitutional legitimacy. In response to the Arab movement which started at the end of 2010 and continues until now in a number of Arab countries, in the beginning of 2011 there sparked protests that swept all Moroccan territory and were called the protests of the February 20th Movement. The main objective of these protests was to trigger a series of reforms in Morocco, through demanding the amendment of the Constitution under the parliamentary monarchy¹. This turmoil can be seen as a fundamental motivation that resulted in a new Constitution in 2011, which is considered the outcome of the February 20th movement, which contributed to propelling the Moroccan political system to issue it, regardless of the debate over the extent of its democracy. For the first time, the Moroccans called for change, notwithstanding the fact that this demand was exclusive to the elite in the political history of this country².

The protests in Morocco were an expression of dissatisfaction with the unfair public policies for large segments of the population, dissatisfaction with social mediation institutions and a feeling of the non-representation of the representative institutions

1 Khadija Mohsen-finan: «the change of the political course and transition in Morocco and Tunisia», Powers, No. 145 (2013), p 108.

2 Vincent Geisser: «the popular protests to assault the authoritarian regimes: a revolution for the social sciences?» «The year of the Maghreb, VII (2012), p 24.

for them as well as a lack of interest in their concerns, which made them go out to demonstrate and demand other solutions.

However, these demonstrations and popular protests expressed a crisis of legitimacy in all areas, both at the social level, on the one hand, and the political level, on the other³.

The problem of the democratic transition in the Arab countries has always existed, but the way it can be achieved is another issue⁴ : either gradually⁵ or through other means of coercion and pressure like popular movement, protests and demonstrations ... Most Arab rulers opted for the second alternative -the transition to democracy using popular pressure and mass protests. However, Morocco was an exception. The ruling authority chose the first alternative, and the transition to democracy was to be achieved through the choice of the ruler - the king in this case, who led the reform path himself through a speech on the need for constitutional reforms.

The Moroccan regime quickly reacted positively to the demands of the protesters. After three weeks from the launch of the February 20th Movement, the Royal Sovereign announced, in his speech on March 9th, 2011, an amendment to the constitution which was outlined in the very speech and soon after, a committee, composed of experts and jurists in constitutional law, was appointed by himself and was called the “Constitutional Review Advisory Committee” which role was to tackle the constitutional issue that was fundamental in the February 20th protests.

3 Adil Moustaoi Srhir: «the 20 February Movement in Morocco between self-legitimization and delegitimization of the State: a Critical Analysis of discourse», *Pragmalinguistica*, N ° 22 (2014), p 112

4 Mohammed Abed Al-Jabri: «Democracy and Human Rights», book in a newspaper, published by UNESCO in 1996, No. 95, 05 July 2006, p.5

5 It means that the rulers themselves undertake the process of democratic transition, in which case they must relinquish the privileges of power and wealth with their free will, and work to allow the democratic forces in society to grow and spread and transfer the state to the rule of law and institutions.

The king of Morocco took a defensive strategic step by announcing constitutional reforms, to pull the rug from under the young protesters, control over the reins of things and gained legitimacy by putting the 2011 Constitution to a popular referendum; thus contributing to the declining popularity of the demands of the demonstrators in the streets of Morocco⁶. This quick move from the king made the difference with what happened in other Arab countries where the political regimes were overthrown through massive protests and demonstrations because they did not respond as fast as they should to the demands of the rebels who took to the streets and hastened their fall .

Based on this presentation, this policy paper will try to address a major problem concerning emptying the 2011 Constitution from its contents and, at the same time, making it more operational as far as the rights and freedoms and the way to overcome the obstacles are concerned.

We will also ask the following sub-questions: what is the general context that led to the emergence of major protests like the February 20th ones? Then, did the context affect Morocco's reforms? If yes, how did it affect them? Moreover, did the protest movement result in yielding to the demands of the rebels included in the 2011 constitution, in terms of inclusion and activation? Ultimately, what are the ways to overcome the problems of activation?

The paper will be written through the following methodology:

1. The general context in which the February 20th protests emerged.
- 2 - The role of the protest movement (February 20th) in the development of the Moroccan Constitution for the year 2011.

6 Michel Grozier and Erhard Fridberg: the actor and the system, the constraints of collective action, Paris (seuil 1977), p.79

3. The response of the Moroccan Constitution to all the human rights demands of the protest movements both at the level of the constitutional representation and the level of activation.

4 – The proposals and recommendations to overcome the problem of activating the demands of rights stipulated in the Constitution.

1. The general context of the emergence of the February 20th protests.

Protests and demonstrations have become part of the public scene in Morocco in recent years. Taking to the streets has become a habit and a strategy for a big number of claims and demands, especially as far as human the rights are concerned⁷. This new kind of behavior which was unknown to the Moroccans has been acquired and then exploited to make the concerns of the past, the present and the future interact in such a way that makes the protest movements continue and escalate and gradually move from social demands to human rights and even political demands.

The February 20th protests came within the framework of this accumulation of concerns and events, but also external and internal causes contributed to its development. As the scholar Mahdi al-Munjarah said: “We are part of everything and totalitarian analysis is necessary. Morocco is part of Africa and the Arab world... We are not part of Scandinavia “⁸. This was confirmed by the external reasons in addition to internal reasons that contributed to people demonstrating in the streets on February 20th.

7 Hassan Tariq: «The Post-February 20 phase», co-author with Abdelali Hamee El-Din: «The 2011 Constitution Between Autonomy and Democracy... Cross-Readings», Public Dialogue Series, No. 2 (Rabat 2012), p50.

8 Al-Mahdi Al-Munjarah: The Insult in the Era of the Imperial Megha, the Arab Cultural Center, 5th Edition (Casablanca, 2007), p8.

It goes without saying that it is impossible to talk about protest movements without having an incubator environment that constitutes the cornerstone on which the movements are based, and whose outputs will produce new demonstrations and protest dynamics that are more sophisticated than those that preceded them.

1.1 External reasons:

The political situation and the protest effects in the Arab region and the subsequent downfall of the regimes of Zine El Abidine Ben Ali in Tunisia and Hosni Mubarak in Egypt respectively, contributed to the rise and emergence of the Moroccan protests and demonstrations led by the February 20th Movement⁹, which prompted the regime to take a set of reforms, the most important of which was the constitutional reform.

A number of studies went in the direction that the Tunisian man Mohamed Bouazizi who burnt himself on Friday, December 17th, 2010 was the direct cause of anger and outburst among all the Tunisians, making the popular movement spread throughout Tunisia. This young man set himself on fire in protest to the arbitrary confiscation of Sidi Bouzid's police of his goods and cart. As a direct consequence, this unhappy event prompted the citizens to take to the streets and demonstrate in order to change and protest against the precarious situation of the country¹⁰.

The new and alternative media played a pivotal role in disseminating information among the various Tunisian cities. The social networking sites helped all the protesters to communicate

9 Mohammed Choucair: «The 20 of February Movement between confronting Tyranny and the dropping of Corruption», the Point of View Journal, No. 51, (Winter 2012), p. 33.

10 Naguib Bouderbala: «The Tunisian Revolution,» Point of View Magazine, No. 49, (Summer 2011), p49.

and coordinate with each other, away from the Tunisian regime's monitoring bodies. This had a clear impact on the spread of the protest throughout Tunisia and on the acceleration of the existing political regime's fall¹¹.

After four weeks of continuous protests, the Tunisian people overthrew the regime of Zine El Abidine Ben Ali on January 14th, 2011; and the power was transferred to an interim government to lead the transitional period, making the Tunisian movement the first protest movement in the wave of protests in the Arab region¹².

Undoubtedly, the success of the Tunisian popular movement clearly influenced the other Arab peoples who took advantage of their similar situations to rise up against their political regimes. The first country ever affected by what happened in Tunisia was Egypt where people came out on January 25th, 2011, to protest against the miserable economic and social conditions in all major Egyptian cities, to express their rejection of the existing political system¹³.

The case of the young Egyptian 'Khaled Said' was similar to Al Bouazizi of Tunisia. He also died because of the attack by the Egyptian police¹⁴, and after the spread of t of his death in the mass media, the feelings of the Egyptian people and the sense of injustice and oppression by existing regimes were fueled, and this contributed to the spread of the protests.

11 Abd al-Ali Hami al-Din and Hassan Tariq: a previous reference, p09.

12 Ibid., P. 11.

13 Chadly Abdel Aziz: «The constitutional Amendments for 2011: A study in the context of the rule and content», Master thesis, Faculty of Legal, Economic and Social Sciences Suez - Rabat, 2014/2013, p21.

14 Khalid Saeed used to practice his regular activities in a coffee shop until he signed a video documenting the division of drug seizures among the police officers, indicating their corruption. Then, those involved in the video would seize his computer and attack him until he died. For further information see Abdul Qader Zawi: «The Arab Spring, bombed revolutions,» published by the Moroccan Publishing House, first edition (2014), p. 7.

The first demonstration was held in Egypt on February 1st, 2011, with the slogan “Freedom, dignity, social justice.” The protests then escalated in such a way that a message reached the whole world that the Egyptian people also wanted to overthrow the existing regime. Indeed, the demonstrations forced Hosni Mubarak to step down, on February 11th of the same year, and, soon after, power was transferred to the Military Council of the armed forces to manage the transitional period¹⁵.

The first step taken by the military council at the time was to abolish the old Constitution and to organize a referendum on a constitutional declaration of 63 articles on March 19th, 2011 to manage the country until a new Constitution was written after the legislative and the presidential elections¹⁶. The military council of the armed forces affirmed that Egypt was experiencing a constitutional moment. They were supposed to change the old Constitution and write a new one to manage the new phase of the country. This is common in the history of revolutions in the world, as most constitutions were not written in normal and quiet circumstances.

1.1 Internal reasons:

The external causes helped other internal factors. In other words, the wave of protest movements in Tunisia and Egypt could not find fertile ground to move to Morocco. The struggle between the progressive and democratic forces and all the dynamics of

15 The displacement of Mubarak ... saving the military regime in the name of meeting the demands of the revolution «, an article published on the new Arab news website, on February 11, 2017 (accessed on December 26, 2018 at 13:13), <https://bit.ly/2WjXm9X>

16 Dalia Osman: «Al-Masry Al-Youm Publishes Constitutional Declaration and the Presidential Elections Before the End of the Year», an article published on the Egyptian news website today, March 30, 2011 (accessed on 26 December 2018 at 13:13), <https://bit.ly / 2Vs7ey6>

change, on the one hand, and the authority, on the other hand, has not subsided since the independence of the Kingdom of Morocco. It has been echoed throughout the modern Moroccan political history.

Since the establishment of Morocco's independence, a conflict arose between the parties coming from the national movement and the royal palace which refused the participation of the national parties in power. This was embodied in the 1962 constitution¹⁷, which organized political life and then painted its major features, by stipulating pluralism and organizing a series of elections and other signs of democracy, without actually practicing real democracy in a way that the Royal Institution dominated the political field through a number of methods, the most important of which is the constitutional legitimacy¹⁸ which grants the king all the powers and makes the constitutional text not clear as far as the relationship between the authorities is concerned. Corruption and political tyranny characterized the regime and gradually aroused the Moroccans' anger and feeling of injustice.

This issue continued until the 1990s, when the political breakthrough began to emerge in the country through the coming out of the regime by announcing to a set of fundamental rights and freedoms, as well as the release of opposition detainees and the launching of the transitional justice experiment as an attempt to reconcile with the past. More importantly, the experience of a

17 Abdel Aziz Lozi: «The Constitutional Question and the Democratic course in Morocco», Publications of the Moroccan Journal of Local Administration and Development, Series of Topical, No. 5 (1996), p. 48.

18 In all the Moroccan constitutions since the 1962 constitution until the 2011 constitution, there is one or two chapters that give all the powers to the king. The constitutional jurists consider them as the most important chapters, and they are described as the heart of the constitution or the constitution of the constitution because of the constitutional power they enjoy.

harmonious rotation¹⁹ enabled a left-wing party to form the government in 1998.²⁰

However, despite all these achievements and moves that indicating the desire of the royal palace to move to democratization of the country, It turned out that all these moves and practices were a show behind which a new era of the rule of the royal institution was underway to ensure the transfer of power from king Hassan II to Mohamed VI, in a very secretive way, far from the crowds and noise, according to a number of researchers. This was evidenced in 2002 when a new government headed by a non-political figure was appointed and this is a departure from the democratic norms, which This unexpected change was accounted for by the fact the presidency of the government belongs to the party winning the elections.²¹

Later, the Moroccan political life witnessed other declines affecting, in particular, human rights after the terrorist attacks on the city of Casablanca in 2003²², after which the Terrorism Act was issued giving absolute powers to the judiciary. As a consequence, the political parties were weakened and caved to the wishes of the Authority and became familiar with the thesis of the store²³. The authorities were indifferent to people's de-

19 It was a political experiment that defined the compatibility between the palace and the left-wing opposition party (the Socialist Union of the Popular Forces) by taking power and forming the government for the first time in the history of Morocco. The experiment lasted four years from 1998 to 2002, where it was sacked and technocrats were appointed to form a second government.

20 «Harmonic Rotation ... When the Left Heads the Moroccan Government,» an article on Al Jazeera news website, (accessed on 26/12/2018 at 21:10), <https://bit.ly/2TrnhKO>

21 Ahmad Hadhrani: the constitutional Law and the Political Institutions, Sagilmas Printing house, (Meknes 2006), pp. 92-93.

22 «15 years after Casablanca bombings ... Proactive strikes continue,» article published on Al Hurra news website, on 16 May 2018, (accessed on 26/12/2018 at 21:36), <https://arbne.ws/2CA9RGT>

23 The concept of the storehouse in Morocco is used to express the ruling royal institution and all the surrounding circles from afar or near, where its features remain

mands and claims, which made the Moroccans, lose confidence in the institutional parties; and the 2007 elections confirmed this. However, the participation in the legislative elections in Morocco was the lowest ever recorded in the political history of the country²⁴. A new party was established by the close friend of the king and one of his advisers in 2008 to lead the electoral scene during the 2009 general elections, ahead of more deeply-rooted parties. This downturn caused great resentment among the political forces of these unfair practices which are detrimental to the political scene in Morocco. All of these phenomena led to further political and administrative corruption, which were reflected in the economic and social fields of the country.²⁵

The economic policy has become a hostage to the concern of maintaining the stability of the major economic indicators related mainly to the deficit and high indebtedness, which was reflected negatively on the man-in-the-street and the internal market, making Morocco dependent mainly on the agri-

ambiguous. Even the Moroccan government does not fall within the framework of the conservative, which only includes those close to the center of the decision and authority. Our history has been identified with progressive and pro-democracy dynamics, considering it the first obstacle in the path of democracy, and considered by another category as a safety valve that ensures the stability of Morocco.

It is also considered a parallel state within the state, in a way that it is the part that controls the entire course that specifies the roles of the other actors, especially in the political sphere. In the modern Morocco, it is forbidden to talk about every conservative practice with legitimacy and legal wrongfulness. The conservative practice has become deflated and the democratic practice has also become the concept of the conservative directly refers to each authoritarian and dictatorial acts, which are intended to subject everyone to one ruler.

For more information, see Abbas Bouganem, «The conservative extensions in Modern Morocco,» *Point of View Magazine*, No. 38, (Fall 2008), p 28.

24 Amr Hamzawy: «the Moroccan Legislative Elections of 2007 Results and Contents», an article published on the website of the Carnegie Institute, <https://bit.ly/2UWvHM9>.

25 Mohammed Basak Manar: *The Proceedings of Democratic Movements in the Arab Countries*, Publications of the Arab Democratic Group, p. 4.

culture sector, which cannot be controlled as it relates to the climate.²⁶

The international financial 2008 crisis emerged and had a direct negative impact on Morocco, especially at the levels of export, tourism, foreign investment and Moroccan immigrants' remittances. The trade deficit increased to 38 percent in the same year compared with the 2007 deficit of about 17 percent due to the increase in the value of imports especially oil, and the weak export value.²⁷

In 2010, Morocco experienced a significant a marked decline in its economic activity due to drought, the increasing costs of the imported primary resources, and the increasing public indebtedness, as well as the continuity of the effects of the global financial crisis. The growth rate fell to 4% compared to 5% in 2009, despite the increase in tax revenues and phosphate revenues. Besides, the balance of trade deficit continues due to high management costs and the high costs of the clearing funds¹, which only big companies benefit from. Moreover, in 2010, Morocco had to resort external indebtedness by borrowing a billion Euros, making external indebtedness increase by 15 percent compared to the Gross Domestic Product²⁸.

All of these economic downturns have affected Morocco's social situation and have exacerbated the social sufferings of large

26 Haimoud Mohammed: «the economic outcome for the year 2004 between the continuing futility of economic growth and the growing financial and social constraints,» the point of view magazine, new success printing house, (2005), p. 230.

27 Muhammad Bask Manar: A previous reference, p. 5.

28 Is a governmental institution based on a system of social support in Morocco, which supports commodities and raw materials such as gas and sugar for the benefit of simple citizens in the Moroccan society, but many studies have shown that big companies are the biggest beneficiaries of this fund. This made repair the Moroccan clearing system one of the most challenges facing the Moroccan regime because of its association with macro-economic balances and the recommendations of the international financial institutions and the social stability of Morocco.

segments of society. According to a field study, in terms of socio-occupational status, the working class represents 42.71% and the student class represents 26.28%.²⁹ These figures help to understand the essential elements that have produced and are still producing a protest ideology that is renewed and developed due to general conditions.

The features of these protest movements began with the first waves of protest against the deteriorating social situation because of the high prices and the high costs of living. The small and remote cities were the first initiators, like Bouarfa in 2007, Safra 2007, Sidi Ifni in 2008 and Azilal 2010 who protested to express their anger as to the frequent interruption of water and electricity and also against marginalization and we shall not forget The repeated demonstrations of the obstructionists against the policy of the state³⁰ should not be forgotten as they contributed to the overall unrest.

All these conditions were, however, defined by the Moroccan political system, from the spread of political and administrative corruption, which was reflected on all economic field, to social unrest. Thus, the Moroccans were afflicted by corruption and poverty, which had a clear impact on the social situation of a wide group of Moroccan people, who were ripe for external influences from Egypt and Tunisia. This makes us emphasize the fact that reducing the emergence of the February 20th protests to political reasons alone, in isolation from economic and social causes, leads us to incomplete analyzes, assessments and solutions. Because of this complex situation, the Moroccans, like other Arab people in some countries,

29 The Moroccan Strategic Report 2006-2010: the Publications of the Center for Studies and Research in Social Sciences, Al-Najah Al-Jadida Press, p 475.

30 Ben Ahmed Hoka: «the Cultural Transitions and the Origins of Protest Movements: A Study on the Role of Values in Stimulating the Protest Behavior in the Activists of the February 20 Movement», Research Journal, 61-62 (2015), p. 41.

have become increasingly aware of the culture of protest and demonstration and the need to be understood and researched.

2. The role of the protest movement (February 20th) in changing the Moroccan constitution.

The emergence of the February 20th Movement in Morocco was a landmark event, to negate the theory of the youth's lack of interest in the political field. On the contrary, young people have shown great interest in political life through participating using and practicing other forms and ways, and by engaging in other modern techniques and approaches³¹. These modern approaches were considered as an extension of the youth dynamics in various Arab countries, which brought down totalitarian regimes (Tunisia, and Egypt); and in Morocco, relying mainly on the virtual space as a field of mobilization and discussion, the youth played a key role. They also adopted slogans and demands that all fall within the overall and total reform of the Moroccan regime. It was a good point for the success of the protest movement in uniting the demands of a constitutional nature, at first, which then evolved into political, economic and social claims.

2.1 February 20th Movement Identity:

It all began on the social network "Facebook", where this virtual space was the venue for gathering and meeting the ideas of the youth of the February 20th movement before moving into the real world space and going out on the first march on a the Sunday morning, February 2th0. This virtual space was the platform of this youth dynamism to present theirs founding document and declaration of its birth.

31 See the annual report on the situation of the human rights in 2010: Publications of the Moroccan Association for Human Rights, (2011), p. 84.

In its organizational paper, the movement presented itself as a Moroccan youth group independent of all political organizations and parties, bearing the love and affection of this country, which represented the main reason for their desire to protest and demand change for freedom, dignity and social justice³².

The 20th February protest movement was characterized by its organizational success in its early stages, due to its local coordination and spread throughout the Moroccan territory, and its diversity to the extent of ideological and political contradictions among its components. The most important thing is the distinction achieved by the movement at the level of their multi-ethnic and cultural sensitivities composition³³; as it gathers Leftist, Islamic and Amazigh as well as different political currents of those who believe in the revolutionary option to those who embrace reform.

The movement was organizationally betting on federalism, away from the specific identities of each spectrum, avoiding any political hegemony over it, and thwarting all attempts to monopolize the personal or collective leadership of this protest move. These were the most important challenges of the joint struggle and the success of the movement³⁴.

32 Habbad al-Rahim al-Atri: *Protest Movements in Morocco: From the Uprisings to the Movements of 20 February*, Center for Arab Unity Studies publications, *The Arab Future Magazine*, No. 63 (Beirut, 2011), p. 298.

33 Mohamed Darif: *The Democratic Transition in Morocco: The Path to Building Reforming kingdom (uprising, Reform and Revolution)*, Knowledge Forum (Beirut, 2013), p. 191.

34 The components of the February 20 movement represent a very remarkable issue, so that the movement has been able to include many political, legal, economic and social spectrums, despite their differences of reference and ideology and the diversity of their demands. Once the protest was called up, the human rights movement joined in with all its key activists such as, the Moroccan Organization for Human Rights, the Moroccan Forum for Truth and Equity, the Association of Justice, the Moroccan organization for the Human Rights, the Moroccan league for the defense of the human rights, the Moroccan Observatory for Public Freedoms, the dignity Forum for Human Rights, Amnesty International - Morocco and associations of the disabled are all invited to protest. . In addition, some of the political parties that have become fully involved as the Vanguard Party, the United Socialist

The monitoring of the February 20th Movement, in terms of its unprecedented role in the constitutional reform at the level of human rights in Morocco calls for studying the role of this protest dynamic in the 2011 constitution, focusing, especially, on the rights aspect. As we all know, the most important thing that can be attributed to this movement is that it has been a major and direct factor in ending the waiting period for a comprehensive constitutional review, which was greatly delayed and did not have priority in the Royal institution. This made everything change after the first exit of the movement and give top priority to the constitutional reform, in all its aspects, including fundamental rights and freedoms.

2.2 The role of February 20th movement in the 2011 Constitution:

Sunday, February 20th, 2011 was a crucial day in the success of the Moroccan movement, which is basically formed in a virtual space, and experienced the descent of more than a quarter of a million Moroccans to the streets of Rabat that day³⁵. Their demands came as a compilation of all the demands expressed by the various constituent groups of the movement, especially the

Party, the Democratic Opposition Party, and all the radical leftist streams, in addition to the group of Justice and Charity and the Urban Alternative. Then there are parties that adopted the speech and the demands of the February 20 movement without being officially involved, such as the Socialist Union of Popular Forces Party and the Party of Progress and Socialism and Justice and Development Party, but the youth of these parties joined the dynamic and participated in protests and demonstrations.

The movement of February 20 also witnessed the participation of independent figures from political parties and known aspects, in addition to the support of a number of contractors and economic actors, most notably Miloud al-Shaabi and Karim al-Tazi, who announced their support for the dynamic in public.

35 Mounia Bennani Chraïbi and Mohamed Jekhllaly: The Protestant Dynamics of the February 20 Movement in Casablanca, French Review of Political Science, No. 62, Vol 5, (2012), p 873 and afterwards.

Radical Left, the Justice and Charity Movement and the human rights organizations, which brought together political, economic and social demands, mainly those stipulated in the International Covenants on Civil and Political Rights as well as Economic, Social and Cultural Rights.

The demand for parliamentary monarchy and the change of the constitution was the first and most prominent demand of the February 20th Movement. In this context, the conditions for the election of a constituent body by the people were called upon to carry out the task of preparing the constitution and submitting it to the referendum on the basis where the monarchy prevails and does not govern, and has only legal authority without any executive, legislative or judicial powers³⁶.

The demands were expressed in a number of slogans, such as accountability of symbols of corruption, the need to dissolve the parliament and to overthrow the government. The people wanted to eradicate corruption, but the most powerful slogan was “freedom, dignity, social justice.” It stems from the conviction of the protest dynamic that the dissemination of human rights culture and the guarantee of its application in the constitution will be the first step in the path of reform and progress towards democracy. The participants in the February 20th protests demanded all kinds of civil and political rights through the release of prisoners of conscience and the guarantee of freedom of opinion and expression, as well as the economic and social rights embodied in the demands of the creation of a social welfare fund for the poor families, the creation of a compensation fund for unemployment; the confiscation of agricultural lands and their equal redistribution among small farmers, wage increase and students scholarships increase³⁷.

36 Abdelali Hami al-Din and Hassan Tariq, op. Cit., P. 41.

37 See the foundation floor of the movement February 20 for dignity - the uprising is the solution, and this is what was stated in this document, the first demand of

Subsequently, the royal speech came, on March 9th, announcing a comprehensive constitutional reform; it was meant as the King's step to take control of the matter, to pull the rug out from under the new actors represented by the February 20th movement, and to re-legitimize the royal institution and its status in the Moroccan system. Thus, the protest movement produced a constitutional reform that has always been the demand of many political forces for ten years³⁸. However, these demands were granted only after the regional protest and massive demonstrations that led to the overthrow of a number of political regimes. Thus, the palace realized that Morocco was experiencing a “constitutional moment” and that it was high time he made the changes

The royal discourse defined what he called the constraints and foundations upon which the constitutional reform should be based. These major trends came in a way that exceeded the perception of the traditional elites that have never expected the Royal Institution would undertake such reforms. The outline of seven main points was as follows³⁹:

- The constitutional consecration of the contractual nature of the unified Moroccan identity, rich in its diversity , and in its Amazigh core as a resource for all Moroccans;
- To consolidate the state of rights and institutions, expand the scope of individual and collective freedoms, ensure its practice, and strengthen the human rights system in all its political, economic, social, developmental, cultural and environmental dimensions, in particular by adopting the relevant recommendations of the Equity and Reconcilia-

which was to change the regime of government from constitutional monarchy to parliamentary monarchy.

38 See the statement of the movement of February 20, during a press conference on 17 February 2011 at the headquarters of the Moroccan Association for Human Rights, Rabat.

39 Mounia Bennani Chraïbi and Mohamed Jeggllaly, *op cit*, p 883.

tion Commission and the international obligations of Morocco;

- Promote the judiciary to an independent authority and strengthen the powers of the Constitutional Council in order to consolidate the Constitution;
- Consolidate the principle of separation and balance of power, deepen democratization, modernization and rationalization of institutions through an elected parliament coming by free and fair elections and the appointment of a Prime Minister from the political party leading the legislative elections as the head of the executive authority ...;
- Strengthen the constitutional mechanisms to train the citizens by strengthening the role of political parties and civil society;
- Strengthen the mechanisms for the creation of public life and linking the exercise of responsibility accountability.

Establishment of good governance bodies, human rights and the protection of freedoms.

The King entrusted the task of preparing the new draft to an advisory body the day following the speech (March 10th, 2011). This mechanism consisted of 19 individuals⁴⁰, under the supervision of King Mohammed Mutasim's advisor. There were several opinions and reactions about this appointment. Some considered it "makes us in front of a granted constitution", and that the writing of constitutions democratically requires the election of a constituent body entrusted with the preparation and writing of the constitutional document⁴¹. In contrast, there are those who

40 Mohamed El-Sassi: «Political Parties and the Constitutional Review Series for 2011», Moroccan Journal of Political and Social Sciences, No. 3, Part 5 (June 2012), p17.

41 See the text of the Royal Speech dated on 9 March 2011: A publication in the Moroccan Journal of the Local Administration and Development, Series of Texts and Documents, No. 246 (Rabat, 2011), p17.

consider that there is no objection to this appointment, since the appointees are legal experts, constitutionalists and jurists.

The Advisory Committee adopted a participatory approach to the extent that it tried to listen to all aspects of Moroccan society. It received “185 memoranda, 33 of which are from political parties, 5 from civil and union organizations, and correspondences from numerous civil societies.”⁴² Here, it is recorded that for the first time in the history of Moroccan constitutions, the constitution is written by Moroccan experts. All the previous constitutions were drafted by French constitutional jurists like Michel Rousseau, Maurice Duverger and John Dubois under the control of Hassan II.⁴³

We will not delve deeper into the details of this constitution and the amount of discussion and murmurs that took place during and after its official abolition.⁴⁴

The constitutional document was published in the Official Gazette on July 29th, 2011, to be formally adopted as a new constitution for the Moroccan regime. It included a set of new and evolving requirements compared to the rest of the previous constitutions, where in the field of the rights and freedoms it ensures and guarantees the rights already mentioned in the previous constitutions, in addition to mentioning new rights that did not

42 This body was composed in addition to its Chairman Abdullatif Al-Manouni of: Abdullah Saif, Mohammed Al-Baraduzi, Amina Al Masoudi, Zeinab Al-Talib, Mohammed Saeed Bennani, Najib Bahamad, Adres Alizmi, Mohammed Al-Tawzi, Raja Naji Makkawi, Nadia Bernoussi, Albert Sasson, Abderrahmane Lebek, Lahas Ulhaj; Abdel Aziz Al Maghari; Ibrahim Al-Samlai. These members are distinguished by the fact that the majority of them are academics and university graduates, with the approach of gender, jurists, judges and sociology.

43 Abdul Rahman Alal: «The Constitution of 2011 ... Reflections and Doubts» Journal of Tracts in Thought, Politics and Economics, Double Number 19-20, New Success Press, (Casablanca, 2012), pp. 36-37.

44 Hakim al-Tozani: «The Question of Democratic Transition in the Horizon of the Constitutional Document of 2011», Journal of Law, Special Series of Issues, 5 (2012), p. 156,

exist and Constitutionalizing them as is internationally recognized.

The new constitution was passed in a popular referendum on July 1st, 2011, as an attempt to respond to the demands of a constitutional and political reform, which emerged during the protest movement of the February 20th Movement which expressed the need to disseminate and recognize the culture of human rights internationally and constitutionalize it to be guaranteed by the power of the constitution.

This situation has accelerated the pace of constitutional reforms in Morocco. The 2011 Constitution includes many new rights, freedoms and principles related to ensuring the practice and application of these rights. The provisions relating to the rights of citizens have been divided into various constitutional texts, beginning with the preamble which became an integral part of the Constitution. The first part was devoted to general provisions, to the rest of the chapters in other sections that have an indirect relationship with the rights and freedoms of the citizens (Chapter 133 for example), as well as the allocation of a specific chapter on human rights (Part Two), entitled “Freedoms and fundamental rights”⁴⁵. Thus, a very important place was given to the citizens’ rights and freedoms in the 2011 Constitution. .

Ultimately, the demands of the protest movement of February 20th at the level of rights, contributed to the constitutional reform, and found its way in the 2011 Constitution, and was recognized and guaranteed to be worked on constitutionally.

45 Mohamed Zine El Din: «Power and Governance in the 2011 Constitution,» Journal of Tracts in Political Thought and Economics, op. Cit., P. 24.

3. The Moroccan Constitution's response to all human rights demands of the protest movements both at the level of constitutional representation and the **problematic of operationalization.**

The 2011 constitution came in a way that tried to respond to all the demands of the street and the protest movements, in order to absorb their anger and avoid the aggravation of the political and societal crisis. It adopted a number of demands of the protesters, primarily the human rights demands and openness to the culture of human rights.

The Constitution of July 29, 2011, clearly reflected the basic rights and freedoms. As far as civil and political rights are concerned, it states that political parties are established and can freely exercise within the scope of the law and the provisions of the Constitution. It is prohibited for parties to be founded on religious, ethnic, linguistic or regional grounds, and in general on any basis of discrimination or conflict with human rights, nor should the purpose of their establishment be to undermine the Islamic religion or the monarchy, the constitutional and democratic principles, or the national and territorial unity of the Kingdom. The rules governing the political parties system shall be regulated by law (Chapter 7).

Trade union organizations are established and their activities could be exercised within the law and the respect for the Constitution. Their structures and conduct must be in conformity with the major orientations of democracy. The law specifically sets up the rules for the establishment of trade union organizations and the conduct of their activities ... (chap. 8).

Furthermore, the new Constitution supports the roles of the parliamentary opposition by guaranteeing their rights, such as freedom of expression, opinion and assembly, and provides time

in the public media in such a way that commensurate with their representation, and they can benefit from public funding ... (Chapter 10), and ensure the full exercise of freedoms and rights associated with electoral campaigns and voting, for free and fair elections (Chapter 11).

The establishment of associations was dealt with in Chapter 12, together with non-governmental organizations, as it stated their freedom of establishment and practice of their activities, within the framework of respect for the law and the provisions of the Constitution, and stressed that their organization and conduct must be in conformity with the provisions of democracy.

The Constitution also stipulates that political parties, trade union organizations and civil society organizations cannot be dissolved or arrested except by a judicial decision. This is a condition for respecting the principle of the freedom to establish such civil, political and trade union organizations⁴⁶.

46 There was controversy over the fact that the constitutional version presented to the king, which was published in the Official Gazette, where one news sites stated that a member of the constitutional committee responsible for drafting the constitution issued a statement saying that «the version that was submitted to the king is not the one that was put to the referendum of the Moroccan people, and that the version that the version that appeared in the Official Gazette was also not the first to be presented. In addition, the French version is not like the Arabic version,» the official said. «This is a lot of ink, which made the secretary general of the government get out of his silence and moving this statement. For more, see the article entitled «Constitutional absurdity» published in the news website February.Com, <https://bit.ly/2JvguAc>.

All the parties participating in the February 20 protests expressed their rejection of the 2011 Constitution. They considered that it was not within the expectations of the protesters and their real desire for change. They continued to protest against this constitution. However, the Moroccan regime knew how to weaken this movement by using disintegration, polarization and repression, and to finally make it weak and make it live so-called in literature as a lost opportunity, i.e. that they missed the opportunity of Moroccan mobility within the framework of the Arab movement to achieve real change,

as they describe it. They also considered that the conservative approach was a fundamentally flawed process, prompting the movement to call it «the granted constitution». It is no accident that the Movement has refused to call for proposals to the

And to ensure that the Moroccans living abroad enjoy full citizenship rights, like the right to vote and to stand for election (Chapter 17), and their participation in consultative institutions and good governance, special bodies were established by the Constitution or the law (Chapter 18).

In addition, the 2011 Constitution has devoted section II to fundamental rights and freedoms, including the various civil, political, social, economic, cultural and environmental rights⁴⁷. The first chapter of this section deal with equality between men and women in the various rights and duties set out in this Constitution and in international conventions ratified by Morocco (Chapter 19).

It is emphasized, in the chapter 20, that the right to life is guaranteed by law and every person has the right to safety of himself and his relatives and the protection of his property. The authorities guarantee the safety of the citizens and the integrity of the national territory within the framework of respect for the rights and freedoms that are guaranteed to everyone (Chapter 21). Physical or moral rights of any person, in any circumstances, should not be affected by any private or public body (Chapter 22).

Advisory Committee; many activists have concluded that the Commission lacks legitimacy and does not exercise the principle of people's sovereignty. It called for boycotting the referendum because the reforms are formal and do not affect the political system that remained dictatorial in its composition. The movement clearly showed in a number of statements on Facebook and other websites its categorical rejection of what it called a «political game» which is always controlled by the monarchy.

See Morocco's July 29, 2011 Constitution.

47 Ahmed Moufid: Fundamental Rights and Freedoms in the Moroccan Constitutions, an article in the book: Fifty Years of Moroccan Constitutional Life, Proceedings, Moroccan Association of Political Science, Al Ma'aref Al-Jadida, Rabat, 2013, p53.

The Constitution considers the arbitrary or secret detention and forced disappearance⁴⁸ to be among the most serious crimes and their perpetrators are subject to the most serious crimes. All incitement to racism, hatred or violence is prohibited. The law also penalizes the crime of genocide and other crimes of humanity, war crimes and all gross or systematic violations of the human rights (Chap. 23).

Everyone has the right to the protection of his or her private life, and the confidentiality of communications is not infringed, and cannot be authorized to be obtained, or disseminated, in whole or in part, or used against any person except by judicial order and in accordance with the conditions and modalities established by law. The Constitution guarantees the right to travel to all the citizens in all the national territory, and to leave and return to it (Chapter 24). The 2011 Constitution added the freedom of creativity, publication and presentation in the fields of literary and artistic creativity, scientific and technical research (Chapter 25), as well as the freedom of thought, opinion and expression, which were previously guaranteed by the previous constitutions. It also recognizes the right to obtain information from the public administration, elected institutions and the public service bodies. This right can only be restricted by law, in order to protect all the matters relating to national defense, protecting the internal and external security of the State and the private life of individuals, as well as the prevention of the violation of fundamental freedoms and rights provided by the Constitution, and the protection of the sources of information and the areas strictly determined by the law (chap. 27).

It guarantees the freedom of the press, which cannot be restricted by any form of tribal censorship. However, everyone has the

48 Abdelkader Mousaed / Malikah Al-Nuaimi: Al-Nasser in Human Rights and Fundamental Freedoms, Saliki Brothers Press, Tangier, 6th Edition, March 2016, p. 195.

right to express himself and freely disseminate ideas and opinions, except as expressly provided by law, and the public authorities encourage the regulation of this sector and the establishment ethical rules relating to it in a democratic and independent way (Chap. 28). The freedom of gathering, assembly, peaceful demonstration, the establishment of associations, union and political affiliation are guaranteed, and the conditions for their exercise are defined by law (Chapter 29).

One of the most important provisions of the 2011 Constitution is its **constitution** of the rights of foreigners, where the foreigners have the same basic rights as the Moroccan citizens according to the law (Chapter 30). This is a precedent in the Moroccan constitutions, where the foreigner will have the same rights as the Moroccan, including the participation in local elections under an international law, or an international convention or do likewise practices⁴⁹.

The State, the public institutions and the local communities, in accordance with the means available to them, shall equally provide the right to: treatment and health care, social protection and health coverage, access to quality and modern education, adequate housing, employment and support by the public authorities in the search for a job, access to water, a healthy environment and sustainable development... (chap. 31). In addition, the State guarantees the social, economic and social protection of the family and provides basic education for children equally regardless of their family status (chapter 32) as education is a fundamental right of the child and a duty of the family and the State⁵⁰.

49 Morocco ratified the International Convention for the Protection of Persons from Enforced Disappearance on 2 August 2012 and this was issued in the Official Gazette No. 6078 of 30 August 2012.

50 Al-Sharif Tishit: Fundamental Rights and Freedoms in the Constitution of 2011, Journal of Tracts in Thought, Politics and Economics, No. 39-40, New Success Press, Casablanca, 2016, p52.

The 2011 Constitution also enumerates some of the rights of the young people⁵¹, it states in the chapter 33, the expansion of the participation of young people in the social, economic, political and cultural development of the country and facilitating their access to culture, science, technology, art, sports and recreational activities ... The State also undertakes to implement targeted policies for the benefit of persons and groups with special needs, and facilitating their enjoyment of the fundamental rights and duties recognized for everyone (chapter 34), and for this purpose, it undertakes in particular: addressing the vulnerable situations of groups of women and mothers, children, elderly persons and their prevention, as well as the rehabilitation of those with physical or sensory or motor or mental disabilities and integrate them into the social and civic life.

The Constitution went in chapters 35 and 36 towards the enshrinement of the principles of the economic constitutional law. In addition to the right to property and freedom of initiative, freedom of association and free competition⁵² were enshrined in order to encourage and attract the foreign investors with a constitutional guarantee of their economic rights.

In order to exercise these fundamental rights and freedoms enshrined in the Constitution, the citizens must respect the Constitution and the law and enjoying them (rights and freedoms) with responsibility and citizenship, which also entails the performance of duties (chap. 37).

In addition, the 2011 Constitution adopted new rights for the first time. However the citizens have the right to submit proposals in the field of legislation, as well as the right to submit petitions to the public authorities (Chapters 14 and 15, respec-

51 Abdel Moneim Al-Falous: Constitution of the Rights and Freedoms of Foreigners, Moroccan Journal of Local Administration and Development, No. 101, November-December 2011, p53.

52 Ahmed Mufeed, op. Cit., P. 55.

tively)⁵³. The conditions and modalities of the exercise of these rights shall be governed by a regulatory law promulgated in this regard⁵⁴.

This Constitution stipulated the presumption of innocence and the right to a fair trial of individuals (chap. 23) and that the accused would be presumed innocent until proven guilty by a court decision (chap. 119). As well as guaranteeing the rights of the defense in all courts (120). For the first time, the right to compensation in the case of damage is also justified by judicial error (chapter 122).

A number of recommendations of the Equity and Reconciliation Commission relating to fundamental rights and freedoms have been drafted in order to ensure that the 2011 Constitution contains the most important requirements and contents of the human rights and their guarantees in comparison to previous constitutions. This is what made a number of researchers call it the Constitution “Rights and Freedoms”⁵⁵. In addition to the consti-

53 For the sake of reference, the subject of the rights of young people is still new even at the international level, and only in recent years talking about it began. In its resolution 2250, the Security Council called for the affirmation of the role of youth in the rejection of violence and hatred and in the promotion of peace and tolerance, an excerpt from the intervention of Al-Hafiz Al-Nuwaini: during a seminar on «Means of Social Communication and Youth Empowerment: Reality and Means of Activism» in El-Ayoun on 28 May 2017. unpublished

54 There are those who consider that freedom of competition has a constitutional value inherent in freedom of initiative. It is from the logic that the Constitution is the natural place for the establishment of freedoms, even though they did not fall within the freedoms and rights guaranteed by Title I of the 1996 Constitution. And the legislator has already placed it in the place of freedoms through the Law 99/06 on freedom of prices and competition.

55 Several questions have arisen here. Will these proposals reach the level of the legislative initiative, to whom will the proposals be sent and what is the role of the parliamentarians in this process, and whether the scope of the legislation includes the areas provided for in Chapter 71 of the Constitution or exceeds them to other areas. Shall they be presented individually or collectively, and then what are the conditions for exercising them. See the speech of the President of the House of Counselors during the course organized by the Council of Counselors by the

tutional legislator's emphasis on a number of rights and duties⁵⁶, it has also emphasized a set of safeguards to protect them.

However, the majority of these rights and freedoms are mere formality without any implied effectiveness, since their practice is often linked to a regular or regulatory law, which allows the Moroccan legislator to remove it from its content and deprive it of its obligatory value by law.

In conducting an analytical study of the content of the Constitution, especially in the aspect of rights and freedoms, there are a number of points that have not yet been resolved. There is no one who denies the institutionalization of the Moroccan constitution for the problematic nature of international conventions on domestic legislation, its recognition of cultural pluralism in the country, and the prevalence of equality in political, civil, economic and social rights and cultural activities⁵⁷. But, there are stuck issues.

It therefore appears that the Constitution, despite its declaration of an important number of fundamental rights and freedoms, it has not accompanied them with means that would guarantee its practice on the ground or that it has put restrictions that limit the effectiveness of such guarantees. For example, the international conventions of the human rights have not been resolved but they are made conditional on the national identity, the Is-

Unity and Democracy team, about the topic of Legislative Initiative of the Citizens and how to prepare petitions and influence public policies», Rabat, 28 March 2012. 56 Reference is made to two draft organizational laws 44.14 and 64.14, respectively, defining the conditions and modalities of exercising the right to submit petitions to public authorities and specifying the conditions and modalities of exercising the right to submit petitions in the field of legislation have not been officially accredited until now.

57 Memon Kharrat: the Human Rights in the Moroccan Constitution between Global Highness and National Privacy, in the Constitution of 2011 in Morocco: Multiple Approaches, Publications of the Journal of Rights, Special Series, No. 5, 2012, p. 207.

lamic religion and the constants of the Kingdom. The same is true in article 19 when the constitutional legislator spoke about the equality of men and women in the civil, political, economic and social rights as stipulated in the international treaties, where they are restricted by respecting the Kingdom's constants and laws, which will lead to the retention or modification of the existing laws that will not reach the core and achieve equality as they are internationally.⁵⁸

4 - Proposals and recommendations to overcome the problem of activating the demands of rights enshrined in the Constitution.

As we have already seen in detail and analysis, the Moroccan political system did not intend to undertake any reforms or attempts at change. However, the Arab and Moroccan protest movement in particular, represented by the social movement of February 20th imposed a voluntary choice to adopt political and constitutional reforms. The human rights demands of this dynamic protest made it include most basic rights and freedoms in the 2011 Constitution as recognition of the need to respect and open up to the human rights as is internationally recognized.

It is therefore possible to say that the February 20 social protest movement has all the credit and direct impact in the political and constitutional reforms of Morocco, and the constitution of a set of basic rights in the 2011 constitution and the allocation of a full section with reference to it in chapters other than the section dedicated to it, in an attempt by the Moroccan regime to reflect the demands of the rights of this dynamic protest, and to try to absorb its anger and respond to its human rights demands.

58 It is noted that the list of rights and freedoms set out in the Constitution of 29 July 2011 is not exclusive in view of the referral of constitutional law to the requirements of international human rights law and international humanitarian law, and given the relationship between international legislation and national laws.

However, the actual exercise of these rights did not proceed according to what is assumed and what is internationally applied at least at the current time. It has experienced an ambiguity and malfunction during the activation and publishing. The experience of Morocco in respect of rights and freedoms and the rule of law and the openness to the civil society in all its institutions according to the reports of international organizations, is a delayed experience and has yet to live up to internationally accepted standards. Morocco received a report from the Fraser Institute for 2015, which is below the international standard for the measurement of freedom. Morocco, at the level of the practice of “personal freedom” for example has been ranked at a bad position despite preceding other Arab countries. The report concludes by inviting the Moroccan government to work on improving the rights and freedoms of the Moroccan citizens⁵⁹.

In this regard, we can present a number of proposals and recommendations that are characterized by scientific rigidity and enforceability, and which can contribute to the improvement of the constitutional product - which the street protest caused - and facilitate passing it and work according to it in the interest of this people and the homeland.

These recommendations and proposals are as follows:

- The possibility of amending certain constitutional provisions: as we all know that all Arab countries, including Morocco, are not prepared during this period to write new constitutions, because, as we know, constitutions cannot be written in ordinary situations but written in crisis. All peoples have no effort to pay its political, economic and social cost (crisis). However, amendments to some constitutional articles can always be made in accordance with priority and context. For

59 Benrabé Lopez Garcia: Morocco and the Arab Spring in a changing world, 11 Papers IEMed, European Institute of the Mediterranean, March 2012, p 14.

example, with respect to the 2011 Constitution of Morocco more specifically the chapters relating to the human rights articles, the constitutional legislator can conclusively resolve the controversy over the universality of the ratified international human rights conventions if he removes the phrase that contains the conditions of this universality (within the scope of the provisions of the Constitution and the laws of the Kingdom and its national identity) of export and Chapter 19, because this raises the question of the universality of international conventions relating to the human rights, and raises the question of the real desire of the Moroccan state to open up to the human rights system and to include it in its public policies.

- Working hard on the legislative relevance in the field of human rights: It is true that the 2011 Constitution brought a number of fundamental rights and freedoms, but it linked them to ordinary and regulatory provisions that regulate how to exercise them and this evacuated the rights of their content, and made us in front of what is described in the international jurisprudence as the “Clawback”⁶⁰. This means that the constitutional text grants rights in appearance and makes them conditional in substance. However, we can take advantage of this as a solution to this problem by the fact that the Moroccan legislator would formulate these texts in a way that responds to Morocco’s international obligations in the field of human rights and in a way that explains all the ambiguities contained in the constitution in a clear and explicit manner. The legislator can also review the previous laws of the constitution and amend them accordingly, like the Criminal Code which states the death penalty (although it has been discontinued but is still present in the law) is un-

60 Omar Bendoro: *The New Constitution and the Importance of Change*, Books of Perspective, New Success Press, First Edition, 2011, p. 6.

favorable and unconstitutional to what is provided in the Constitution, which explicitly recognizes in Chapter 20 the right to life. And therefore, the death penalty should not be retained In the Penal Code. Moreover, all the domestic laws must be adapted to suit the ratified international human rights conventions and the 2011 Constitution.

- Strengthening the independence of the judiciary: The Moroccan judiciary, as an independent authority under the 2011 Constitution, plays a pivotal role in interpreting and obscuring (intentionally or unintentionally) what exists in the constitutional texts and the internal laws through the difficult confrontation of justice as an element of development and the building of a state of truth and law, and the obligations of the international conventions and treaties imposed on our country. It is the duty of the judiciary to establish a delicate balance between the rule of law and the respect for fundamental rights and freedoms and the application of the principles of justice, which are essentially judgments and decisions within a reasonable time, in a manner that reflects the proper interpretation of the legal rule and the proper application of the international laws and conventions ratified by the Kingdom, and for the benefit of citizens of the country.

The Moroccan judiciary, in its ordinary and specialized forms, continues to be a major contributor to the human rights, by making the Moroccan laws responsive to all the international human rights obligations. Although the legislator is committed to the conformity of its domestic law with the international human rights principles and norms. However, the jurisprudence also has a word in this concern. Moreover, it is not necessary to know only the legislative requirements since the law is not only reflected in legislation but in all components, including the judiciary.

Thus, the judiciary (from the constitutional judiciary through administrative to the ordinary judiciary) can grant genuine independence, and can cover and solve the problems and ambiguities of some provisions of the Constitution of 2011, especially in the field of human rights.

- The independent human rights institutions: A number of institutions in charge of the rights and freedoms, such as the National Council for Human Rights, Al-Waseet Foundation, the Council of the Moroccan Community Abroad and the Commission for the Prevention of All Forms of Discrimination, have been established under the 2011 Constitution. These institutions are concerned with the protection and promotion of the human rights. Thus, if they are granted actual independence, they can also contribute to the real activation of the rights and freedoms that have been enshrined in the Constitution. They can also contribute to explaining some of the purposes of the Constitution at the rights level.

- The civil society monitoring and evaluation: the civil society has become an important force thanks to the protest movement. This was confirmed by the recognition of this role by the 2011 Constitution when it states the role of the civil society in monitoring and evaluating the public policies in the country. It also plays an important role in influencing and exerting pressure on the State and its public policy in the field of human rights, including the full and effective mobilization of human rights practice and removing all reservations made by the States parties to the provisions and requirements of the international human rights conventions.

The civil society associations work to ensure that their laws comply with the requirements of international human rights conventions and strengthening their involvement in the international human rights system by organizing campaigns, seminars,

memos, forums and other events in order to remove the reservations to human rights conventions.

The Civil society can also interact with the UN human rights system, through its parallel reports submitted to all contractual and non-contractual bodies, and this is one of the most important means of pressure and control to activate the constitutional rights and not to escape the obligation of adhering to them. It has also been able to take part in protest movements. We have recorded its contribution to various protest movements at the Arab level and its contribution to the dynamic protest on February 20, so it is able to play an important role in this regard. We must take care of it, keep pace with it and value its efforts

- The inclusion of the human rights dimension in the various public policies: The human rights dimension must be applied in a cross-cutting manner, i.e present in all public policies and all fields, as it is one of the pillars of any public policy and the path towards development and democracy.
- Activating the participative democracy: the real necessity of activating the principle of democracy away from the formal reality, as it enables the citizens to participate effectively in all the stages of preparing, managing and implementing the public policies in the field of rights, with the consequent discussion and accountability and public deliberation on the choices and references governing the political decisions related to it.
- Linking the responsibility to accountability: by fighting corruption and punishing the spoilers, and linking each official to accountability in case of misusing the position of responsibility, through internal control and the actual activation of the complaints and follow-up of each guilty official, and therefore we must work according to the principle of linking the responsibility to accountability stipulated in the 2011 Constitution.

Conclusion:

Throughout the pre-2011 period, most of the Arab countries were living with old constitutions that did not fully respond to developments in the world. They helped the ruling authorities to move away from their peoples, in addition to other circumstances, which led to the creation of political, economic and societal crises that led to social protest movements in demonstrations calling for change. Tunisia and Egypt were the first countries to experience the winds of the Arab movement, followed by the Kingdom of Morocco, which also experienced the protests of the February 20 Movement.

The dynamic of February 20th came out to protest on February 20th, for many reasons including what is external represented by the wave of Arab mobility, and what is internal which is embodied in the economic and social conditions that the people knew at that time. This protest dynamic demanded, among other things, the change of the 1996 Constitution, because it was the highest law in the country. Therefore, its first demands were constitutional reforms and the opening up to the rights. Indeed, the ruling party in Morocco responded to the demands of the February 20th Movement to make a comprehensive constitutional reform that was announced during the Royal Speech on March 9th, 2011. This speech outlines the constitutional reform, which was boldly described by some traditional elites as an attempt to meet the demands of the protesters and include all their slogans in it.

The policy paper noted that the 2011 Constitution had complied with all the human rights demands of the February 20th protest movement and recognized the basic rights and freedoms to the extent that some researchers described it as the Constitution of Rights and Freedoms. But it faced problems in activating and exercising these rights (intentionally or unintentionally).

The paper presented a number of recommendations and proposals in order to overcome the problems of passing and activating defined by the 2011 Constitution, in terms of the human rights aspect, because the Kingdom of Morocco is not prepared to prepare another constitution, because the circumstance does not allow and never helps. Some of the proposals include: the modification of some constitutional articles and the suitability of the internal legislation with the international human rights; strengthening the judiciary; and allowing the civil society to play a greater role.

The Policy Paper

The Role of the Tunisian General Labor Union (commonly known as UGTT) in the 2014 Constitution-building/drafting: swinging back and forth between limited efficiency and a search for the desired effectiveness.

Nizar Mannai

In the wake of the Tunisian revolution, a new Constitution was born on January 27th, 2014. The Constitution-building process was characterized by a wide participation of trade unions. The Tunisian General Labor Union (TGLU) shouldered the lion's share in laying the foundation for that building/drafting.

Typically, a union is defined as a professional association consisting¹ of persons “practicing the same profession, similar trades or related professions contributing to the establishment of specific products or the same liberal profession.”² It has a civil personality³, and its mission is to study and defend the economic and social interests of its members⁴.

In Tunisia, the spirit of trade unionism had come into existence well before the right to establish trade unions was recognized. Indeed, the trade union movement emerged by the early twentieth century, particularly since the establishment of the Pan-Tunisian Labor Association, which was founded by Muhammad Ali al-Hami in 1924. The movement then carried out several strikes,

1 The 2014 Constitution recognizes the freedom to form the in Article 35.

2 Article 242 of the Labor Code.

3 Article 244 of the Labor Code.

4 Article 243 of the Labor Code.

the most important of which was the strike of the shipping and dock labor at the ports of Tunis and Bizerte in 1924⁵. However, the colonial authority was able to eradicate these movements. Trade union rights were first enshrined under the supreme order of November 16th, 1932⁶. Subsequently, a union was established by the leader Farhat Hached on January 20th, 1946, and was called the Tunisian General Labor Union⁷. The organization was, then, defined as a national, democratic union organization independent of all political organizations, deriving its legitimacy, power and decisions from the labor norms⁸. Its objectives are to unite and organize all intellectual and manual laborers, along with retirees, on a national scale; to improve their economic and social conditions, to raise their awareness and defend their moral and material interests; to work towards the establishment of an independent national socialist economy free of all forms of subordination, and to achieve equitable distribution of national wealth to ensure the aspirations and meet all laborers and people's expectations at the grass root level as well as to defend public and individual freedoms, entrench democracy, respect human rights and support trade union activity at the regional or international levels.⁹

The Constitution can be defined as a document which is formulated by a special authority called the constituent branch in accordance with certain procedures, and which enjoys precedence over all other legal norms, irrespective of their origins. This document contains legal rules governing political

5 Taher Haddad, *al-Omal at-Tounisiyun wa Dhuhur al-Haraka an-Naqabiya*, ad-Dar at-Tounisiya lel Nash'r, 1972, p. 32.

6 Samia Ishaouia, *Mumarasat al-Haq an-Naqabi Dakhila al-Muasasa*, Master's Thesis in Social Law, Faculty of Law, Sfax, 2013/2014, p 5.

7 Farouk Mechri, *Le droit du travail en Tunisie*, Sud Editions, Tunis, 2009, p. 200 et seq.

8 Article 1 of the Basic Law of the Tunisian General Labor Union.

9 Article 2 of the Basic Law of the Tunisian General Labor Union.

power, enshrining rights and freedoms and defining the system of enactment of legal rules.¹⁰

By Constitution-building we mean the constitutional process, on the one hand, and the determination of the content of the constitutional document, on the other. The process refers to the steps taken in the Constitution-building cycle, which cover the established procedural system of negotiation, drafting, enactment and implementation. The process also refers to the prior idea of the promulgation of Constitution itself and the procedural options followed by electing an Assembly -a Constituent Assembly or through a grant...). It is conceivable that in the process of Constitution-building, every process of amendment and revision of its text could be incorporated into the process. The meaning of the content is the provisions that have been stipulated by the Constitution.¹¹

The discussion of the role of the Tunisian General Labor Union in the Tunisian Constitution-building of 2014 is important in many respects:

First, the historical context gives great importance to this issue, since the 2014 Constitution is a minor text that was the product of the 2011 revolution and it is considered as the foundation of the Second Tunisian Republic. It would be appropriate for this text to be studied.

Secondly, many unions have participated in building the 2014 Constitution. However, accuracy requires that we exclude unions that had a secondary and sometimes marginal role, especially the Tunisian Order of Lawyers and to a lesser extent the Confederation of Industry and Trade (commonly known as

10 See Hamad Reda bin Hammad, *al-Qanun ad-Dosturi wa al-Andhima as-Siyasiya*, University Publishing Center, 3rd ed., 2016, p 23.

11 Andrew Ladley, *Constitution Building after Conflict: External Support to a Sovereign Process*, op. Cit., p. 14.

UTICA). Instead, focus should be placed on the Union which played a central and pivotal role in the Constitution-building of the Second Republic, namely, the Tunisian General Labor Union. This, in fact, gives a sort of uniqueness to the Tunisian constitutional experience as compared to other Arab countries, especially since it is difficult to find in these countries a trade union organization enjoying as significant a political weight as that of the Tunisian Labor Union.

The latter derives its weight from being one of the most important societal movements in Tunisia, if not the most important one. It is representative of the largest public and societal base that has reached 600,000 members in recent years¹². This weight is also derived from the national role it played historically in both the struggle against colonialism and the building of the independence state. It is important to note that the Union was represented in the National Constituent Assembly, which drafted the 1959 Constitution of Tunisia with a number of trade union representatives. It participated in the government and state institutions with a large number of trade union executives during the early years of independence¹³.

This very role has made the Union not only a defender of economic and social interests of those under its auspices when it comes to fateful issues of national dimension, but also a defender of the national interest, wherever it exists, whether be it in the gains of the revolution, the stabilization of a democratic system and the establishment of a civil state, and the enshrinement of rights and freedoms following their universal conception, and other issues.¹⁴

12 Hatem Murad, *al-Hiwar al-Watani fi Tunis*, Nirvana, Tunisia, 2015, p. 41.

13 Tayeb Baccouche, *Tatawor al-Alaqaq bayna as-Siyasa wa al-Haraka an-Naqabiya fi Tunis*, *Ash'ghal Nadwat an-Naqaba wa al-Mojtamaa*, Tunis Min 1 ila 7 Dicambar 1987, *Silsilat Ilm al-Ijtima*, ed. 15, Tunis 1989, *al-Matbaa al-Asriya*, Tunisia, p. 12.; Mohamed Nasser, *Taqdim Marjaa Qanun ash-Shogh'l wa al-Dhaman al-ijtimai fi Tunis li Muhammad al-Hadi bin Abdullah*, I.2, June 2009, p. 5.

14 See, for example, the draft Constitution submitted by the Union to the National

This study seeks to examine the extent to which the Union played an effective role in the building of the Tunisian 2014 Constitution. The effectiveness of this context is the extent to which the Union has succeeded in defending the interests of those under its auspices and the demands of the population at large and its ability to achieve the goals of the revolution for freedom and dignity, in the performance of that role, in case it has really played a role in the Constitution-building.

The answer to this question will be divided into two sections: a section dedicated to demonstrating the limited efficiency of the role played by the Union in the Constitution-building, and another section related to the search for a more effective role for the Union in the Constitution-building.

Limited efficiency in the role played by the Union in the Constitution-building

For this section, we will consider the limited efficiency first at the level of the role of the Union in charting the process of the Constitution-building, and at the level of its role in drawing up the content of the Constitution-building.

+ Limited efficiency at the level of the role of the Union in charting the process of the Constitution-building.

This limited efficiency is salient in the adoption by the Union of the option of rebuilding the Constitution, on the one hand, and its fostering dialogue to complete the Constitution-building, on the other.

Constituent Assembly; See also, Hela Yousfi, *PUGTT une passion tunisienne. Enquête sur les syndicalistes en révolution (2011-2014)*, IRMC - KARTHALA, 2015, p. 98 et seq.

* When the Union adopts the option of rebuilding the Constitution.

The period after January 14th, 2011 was characterized by ambiguity and lack of clarity of vision regarding the constitutional process. Only during sit-ins at Kasbah 2¹⁵, which were led by youth bases supported by societal forces, was there a clear idea of a new Constitution for the Republic of Tunisia through the election of a National Constituent Assembly, which was primarily¹⁶ concerned with the preparation of the Constitution of the Second Republic. The Union was the most important body promoting the idea of electing a National Constituent Assembly to work on drafting a new Constitution.

We can conclude that the weakness of the political leadership at the time made the Union the most important body to adopt the demand for re-establishment. In other words, the failure of political parties and politicians to play their part in receiving and defending the popular demand which, in this regard, takes the shape of rebuilding the Constitution that leads to the emergence of a strong movement or community movements that play this role; and here we are talking about the Union. The more indecisive and distracted parties are in the establishment stages, the more noticeable the presence of social movements grows.

However, the intervention of the Union during the sit-ins of Kasbah 2 to adopt the option of rebuilding the Constitution could be criticized for being somewhat late. The absence of an

15 Because it has other functions such as the exercise of legislative authority and control of the work of the Government pursuant to the Constitutive Act of December, 16 2011 on the provisional organization of public authorities, knowing that the elections of the National Constituent Assembly was held on October, 23 2011.

16 This sit-in took place in February 2011 and also called for the overthrow of the government of Mohamed Ghannouchi.

ideological character and the central revolutionary organization¹⁷ of the Tunisian revolution gave the Union the lead in defining the revolutionary course. This, in turn, gave rise to expectations that the initiative of introducing the idea of rebuilding the Constitution would stem from the Union. This call was supposed to come to complement the revolutionary course, in full harmony with people's aspirations, ambitions and desires to chart a new constituent process. It can be explained that the revolution was not only related to the overthrow of corrupt people from the government, but that the moment of revolutionary change has begun from the early days of its outbreak, and that it was coupled with a comprehensive call for a break away from a whole system, and a desire to rebuild and structure institutions and authorities on democratic grounds. All the circumstances were conducive to hold that the constitutional moment was inevitable, as we were facing a genuine constitutional crisis accompanied by a fervent desire to review the basic principles governing the society.

Given these two fundamental conditions, it would be appropriate for the Union to translate people's demands of change by proposing the idea of re-establishing and drafting a new Constitution. However, by reviewing the Union's positions on January 14th, 2011, we find that it initially went in the option of reforming and amending the 1959 Constitution while maintaining it. In its statement of January 15th, 2011, it called for several reforms, including the establishment of an independent committee to review the Constitution¹⁸. The option of rebuilding the Constitution came only following the movements carried out by the public in what is known as Kasbah 2 sit-ins¹⁹.

17 Hassan Tariq, *Dosturaniyat ma Baad Infjarat 2011, Qira'a fi Tajarib al-Maghrib wa Tunis wa Mis'r*, Arab Center for Research and Policy Studies, Beirut, 2016, p. 9.

18 www.turess.com/echaab/16169

19 This is what makes us say that perhaps the position of the leadership in the Union did not correspond to the aspirations of those under its auspices. This is what we saw in the early days of the revolution, where the leaders themselves were pushed to

* When the Union fostered dialogue to complete the Constitution-building.

The Tunisian Constitution-building of 2014 was affected by many political crises that engulfed the general situation in the country, which caused the constitutional process to be disrupted at times, and halted at other times. The national dialogue was sponsored and led by the Tunisian General Labor Union, the lifesaver of the constituent process.

The Union launched the idea of a dialogue council in the first place on June 18th, 2012. Among the points that were to be discussed was that of the Constitution. A seminar on national dialogue was launched on October 16th, 2012, in which many parties and organizations participated, but most of the parties representing the then ruling coalition did not participate²⁰.

The second round of dialogues was launched on May 16th, 2013 after the assassination of Shokri Belaid on February 6th, 2013. This tour has seen extensive participation of civil society and parties even those that did not participate in the first round of dialogues. Among the points included in the agenda was the completion of the writing of the Constitution and setting a date for its presentation to be discussed and ratified²¹.

engage in popular movements by the roar of the masses of the Union and citizens in general who were heading to the headquarters of the Union, especially Mohammed Ali square in Tunis, adjacent to the headquarters of the Union, to conduct marches and demonstrations in quest of support. See: Menem Barhoumi, *am-Muasasat as-Siyasiya fi al-Marhala al-Intiqaliya at-Tunisiya*, Mujamaa al-Atrash lil Kitab al-Mokhtas, p. 208; Azmi Bishara, *al-Thawra at-Tunisiya al-Majida*, Bonyatu Thawra wa Sayruratuha Min Khilali Yamiyatiha, Arab Center for Research and Policy Studies, 2012, p. 146. The writer puts, “The rules of the Union played ... a key role in the revolution, but the leadership of the Union’s joining of the revolution was delayed until it reached its stage, or rather its last days”

20 From the Troika parties only Democratic Forum participated, whereas neither Ennahda Movement nor Conference Party did. See Hatem Murad, *al-Hiwar al-Watani fi Tunis*, op. Cit., p. 24 et seq.

21 Hatem Murad, *al-Hiwar al-Watani fi Tunis*, op. Cit., p. 33.

The official launching of the national dialogue followed the crisis after the second political assassination of Mohamed Barahmi on July 25th, 2013. This crisis occurred as a result of the complete suspension of the constituent process after the opposition had announced its formal withdrawal from the National Constituent Assembly²², which resulted in a decision by the President of the Council to suspend the work of the latter. Accordingly, a rescue front²³ was formed to uphold the dissolution of the Constituent Assembly because it lost its legitimacy, since the people elected it to end its work a year from that date, and beyond that time limit its legitimacy expires²⁴. Some even went so far as to call for the intervention of the army as had been the case in Egypt²⁵. The civil society and many opposition parties participated in the so-called sit-in protests in front of the building of the Constituent Assembly, while the ruling parties and the majority in the Constituent Assembly hold onto their legitimacy (Troika parties).

Hence, the national dialogue came to push each party to make some concessions. A roadmap was already agreed upon. One of the most important points was the resumption of the National Constituent Assembly, with a timetable for consensus on the points of contention and ratification of the Constitution²⁶.

The constituent process turned out to be indeed successful, and the Constitution was finally ratified on January 27th, 2014. It was mainly thanks to the dialogue option that was followed and

22 60 out of 217 representatives withdrew. See www.arab-reform.net/en/node/1350

23 Hatem Murad, *al-Hiwar al-Watani fi Tunis*, op. Cit., p. 37.

24 See Naji Bakoush, *at-Taqrir al-Ibtidai, Qira'at fi Dostur aj-Jomhuriya ath-Thaniya, Aamal Moltaqa Hawla ad-Dostur aj-Jadid lil Jomhuriya at-Tunisiya Ayam 8 - 9 wa 10 Mares 2014, Manshourat Madrasat ad-Doctura bi Koliyat Sfax, Mujamaa al-Atrash li Nashr wa Tawzii al-Kitab al-Mokhtas*, 2017, p. 10.

25 Hatem Murad, *al-Hiwar al-Watani fi Tunis*, op. Cit., p. 51.

26 Conference Party did not participate in the dialogue. Hatem Murad, *al-Hiwar al-Watani fi Tunis*, op. Cit., p. 61.

enforced by the Tunisian National Dialogue Quartet, which was awarded the 2015 Nobel Peace Prize²⁷, led by the Tunisian General Labor Union²⁸, thus enabling political consensus.

All this could be boiled down to the conclusion that consensus²⁹ is the backbone of the process of building democratic constitutions during interim stages that come after an exceptional event such as war or revolution, because these periods are characterized by political fluctuations and instability. In Tunisia, with the major crisis that preceded or coincided with the national dialogue sessions, it was possible that the country would enter real chaos that could lead to civil war if it were not for the dialogue that produced political consensus among the political fractions, in which the civil society led by the Union played a key role. It supported the consensual legitimacy, hence the electoral legitimacy; and the first was strengthened by undermining the second due to the rise of voices proclaiming that the Constituent Assembly was devoid of any legitimacy.

Still, the role played by the Union was not without shortcomings and criticism. This role was not completely independent of foreign parties that pushed for success. Many foreign countries and international organizations such as the United Nations Development Fund, the European Union and the Institute of Defense Analysis followed up on the process of the national dialogue and intervened in its course. They even paid frequent visits to the National Dialogue Quartet at the headquarters where the dialogue took place³⁰.

27 See the report entitled "Tunisia's National Dialogue Quartet receives Nobel Peace Prize" on 09-10-2015 at www.france24.com

28 The leadership of Hussein al-Abbasi, Secretary-General of the Union, in the Quartet was influential in the success of the negotiating process. See Hatem Murad, *al-Hiwar al-Watani fi Tunis*, op. Cit., p. 92.

29 Andrew Ladley, *Constitution Building after Conflict: External Support to a Sovereign Process*, op. Cit., p. 8.

30 Hatem Murad, *al-Hiwar al-Watani fi Tunis*, op. Cit., p. 49 et seq.

The role of the Union was not completely neutral either, in relation with political parties invited to the talks. It may be useful to point out that there is an intellectual and actual convergence between the Union and the left-wing parties due to the heavy presence of the left wing within the Union. Suffice it to recall that Hama Hammami, spokesman of the Popular Front, declared at a press conference that Hussein Abbasi, the secretary-general of the Union, was the right person, given the circumstances, to lead the government –during the national dialogue when negotiations were underway regarding the election of a then prime minister³¹.

On the other hand, the relationship of the Union with the Ennahda Movement, a party with Islamic background, was during the revolution one of dissonance. This dissonance, especially in the period immediately after the revolution, was manifested by the voices blaming the Union for the large number of strikes that negatively affected the economy, while the Union believed that the objectives of the aforementioned party were to change the Tunisian social pattern, and so it had to be on the lookout - here we understand it repeated demand to preserve the civil character of the state³². This tense relationship culminated in the attack on the headquarters of the Union on December 4th, 2012 and the attack on trade unionists by revolution protection associations. Several trade unionists openly accused Ennahda Movement of being involved.³³

31 See www.babnet.net/rttdetail-74122.asp

32 http://www.leaders.com.tn/uploads/FCK_files/Motion%20UGTT.pdf This is the text of the initiative put forward by the Union on July , 29 2013. Among its proposals is to review the latest version of the draft Constitution to rid it of the impurities that affect the state's civilization, knowing that the Union in the initiative presented on 18 June 2012 had already called on politicians to dialogue and the first points he raised is to adhere to the civilian character of the state, see Hatem Murad, *al-Hiwar al-Watani fi Tunis*, op. Cit., p. 24.

33 See the statement of the Ennahda Movement on April, 10 2013, in which we enounce those declarations.

From this vantage point, it can be noted that the Union sought during the national dialogue sometimes to try to bring Ennahda Movement to its knees and force it to accept the roadmap. The failure of the negotiations at some point led the Union to announce their defeat. This announcement was followed by the resolution of the Administrative Authority on September 22nd, 2013 to launch protests and sit-ins so as to force the government to resign. The Union explicitly accused Ennahda Movement of procrastination in accepting the roadmap, and the latter accused the Union of taking the opposition's side against the backdrop of their threats to stir up public anger³⁴.

The absence of neutrality in some cases is manifested in the fact that the Union did not conduct a dialogue between politicians, but rather pressured, menaced and threatened them. In a declaration made by the Secretary General of the Union, Hussein Abbasi said that if the parties failed to reach consensus, he would go out to the media to reveal their flaws³⁵.

+ Limited efficiency at the level of the role of the Union in drawing up the content of Constitution-building.

The Union had an impact on drawing up the content of the provisions relating to the trade union rights as well as the provisions that have nothing to do with these rights³⁶, but this influence did not have the required efficiency.

34 See http://allayafathia.blogspot.com/2013/11/blog-post_17.html

35 Hatem Murad, *al-Hiwar al-Watani fi Tunis*, op. Cit., p. 92 and 93.

36 This is evident that some of the discussions of the constituent committees and declaration made by the union, particularly the draft constitution submitted by the Union, which was one of the most important projects on which the Assembly members worked. In spite of the fact that the Assembly members decided at start from scratch, they later opened on several draft Constitutions especially the draft Constitution of the Union. This position was expressed by Professor Shafiq Sursar in his speech on the role of societal movements in proposing the contents of the Constitution, the fourth session of the Arab Academy of Constitutional Law, 26 November - 8 December 2018, Tunisia, unpublished speech.

* The limited efficiency of the Union's influence in the drafting of provisions relating to the trade union rights.

The Union has been instrumental in devising and drafting the provisions on the trade union rights in the 2014 Constitution. It is noted that Article 27 of the draft Constitution proposed by the Union has been almost taken into account in the drafting of Article 36 of the current Tunisian Constitution. Section 27 of the said draft Constitution states that "trade union rights are guaranteed, including the right to strike", which is almost the same as the first paragraph of Article 36, which states that "trade union rights, including the right to strike, are guaranteed."

It should be recalled that the text of the paragraph referred to in the first draft of Tunisia's draft Constitution was not identical to its current content. It stated that "trade union rights are guaranteed, including the right to strike, unless the lives, health or security of people are endangered." This drafting was strongly opposed by the Union, which called on the Constituent Assembly to repeal the provisions of that paragraph of the restriction on the freedom of strike as it may be a loophole to infringe this freedom³⁷, and threatened to carry out trade union movements in the event of failure to comply with their demand. Ultimately, the Constituent Assembly responded to the Union's demand not to restrict freedom of strike in Article 36 of the 2014 Constitution.

What can be deduced from this is that the process of writing or drafting the new Tunisian Constitution was open to civil society and stakeholders, and the Union is one of its important components³⁸. We are therefore facing an open constituent process and a constituent authority that is open to civil society.

37 <http://elaph.mobi/Web/news/2013/4/803559.html>

38 The Union is considered an interested party when it comes to a text that concerns trade union rights.

This is undoubtedly due to the limited parliamentary democracy that led to a breach between the society and the political class. Therefore, new and innovative mechanisms have emerged, namely, the openness that allows the participation of societal movements in decision-making and the drafting of the constitutional text. This openness, however, has not been exploited by the Union as it should at times be when it comes to one of the aspects of the exercise of the other trade union rights, namely, collective bargaining or, more generally, social dialogue, knowing that strikes and social dialogue are the main pillars of the exercise of the trade union rights. The latter is no less important than the right to strike. In fact, the Union, in the draft Constitution that it prepared, vested in social dialogue the importance it deserves. Article 26 of the draft stipulates that “the State shall undertake the necessary measures to promote social dialogue at the national and regional levels and at the level of the sector of activity and institution within the framework of an agreed social contract. Workers and employers or more representative organizations have the right to negotiate and conclude collective agreements.” It is well known that the social dialogue is one way to maintain social peace. However, the Union did not push for the enshrinement of this right in the 2014 Constitution, to which they turned a blind eye. Perhaps if the Union had exercised some pressure on the Constituent Assembly towards its enshrinement, as was the case with the revision of the Article on the right to strike, the current Constitution would have guaranteed the right to social dialogue. Moreover, the Union did not face in the draft Constitution it had put in the hands of the establishers of the freedom to establish trade unions, a freedom enshrined in Article 35 of the 2014 Constitution.

It can be said that the role played by the Union in the enshrinement of rights and freedoms that are related to its activity is important but incomplete and of limited efficiency and scope.

* The limited efficiency of the Union's influence in the drafting of provisions not relating to the trade union rights.

The Union had an influence on the adoption, drafting and writing of the provisions that were not directly related to trade union freedom and rights. This influence was the result of the Assembly members' inspiration of the many provisions from the draft Constitution of the Union submitted to the Constituent Assembly³⁹, as a result of the pressure exerted by the Union as it was not satisfied with the first version of the draft Constitution⁴⁰, which they considered disappointing to the workers, and to Tunisians in general, because it does not meet their expectations on the economic, social and even political levels after the revolution, and insisted on the revision of this version⁴¹.

The approach adopted by the Union was designed to shape the political, economic and social system that guarantees the establishment of a democratic and social republic based on the sovereignty of the people and the essence of freedom and social justice.⁴²

39 Several committees of the Assembly ensured in their reports that the Constitution of the Union was one of the adopted sources along with the drafts of other Constitutions and also sometimes consulted with the opinions of experts from the Union, especially with regard to the Committee on Rights and Freedoms and the Commission for the preamble and general principles and the amendment of the Constitution. See http://www.arp.tn/site/main/AR/docs/archive_anc.jsp

40 See about this version Qira'a fi Moswadat Mashroua al-Dostour, Taqyim wa Iqitrahah, al-Yawm al-Dirasi Abdel Fattah Omar January 15, 2013, National Library, Tunisia March 17, 2013.

41 <http://www.tunisiefocus.com/politique/la-centrale-syndicale-ugtt-juge-decevant-le-projet-de-constitution-35310/>

42 See the statement issued by the Union on the occasion of the presentation of the version of the draft Constitution, which states, for example, that "the contribution of the Tunisian General Labor Union in this transitional process and in the process of democracy building is an urgent need and a key factor in its success and laying solid foundations for the new democratic republic by contributing to the vision of a Constitution that establishes a political system that combines political freedom with social justice. "

The mark of the draft Constitution of the Union is clear in the 2014 Constitution at various levels and to varying degrees. In the preamble, the draft was based on the dialectic of rupture and communication: a break with the authoritarian political system and social injustice, and continuity with the gains of the people before and after the revolution and its Arab Muslim identity, thus the preamble included values and foundations and premises on the one hand, and goals on the other.⁴³

The dialectic (rupture/continuity), as well as the relationship between the principles and the goals are present in the 2014 Constitution. Moreover, many ideas and expressions by which Assembly members were influenced were copied from the preface to the draft Constitution of the Union (the revolution for freedom and dignity; the breakaway with tyranny, injustice and inequities; the universality of human rights; the Muslim and Arab identity of the Tunisian people; the separation of powers and multi-party...).

43 “We, the representatives of the Tunisian people elected in the first free, democratic and fair elections,
To fulfill the principles of the revolution for dignity and freedom which broke with the system of tyranny, corruption and social injustice,
With loyalty to all the martyrs and the struggles of our people for liberation and emancipation, and to affirm the gains of the Tunisian people since independence in the building of a free and independent national state,
Bearing in mind that human dignity and democracy are the basis of the political system and social peace,
And with loyalty to the cultural heritage of the Tunisian people, which is the product of a long history spanning thousands of years and of the Arab-Islamic civilization as a fundamental factor of its identity.
Believing in human values and universal principles, and in support of peoples’ aspirations to resist tyranny and to get rid of hegemony,
In an effort to establish legitimacy based on the sovereignty and essence of the people, freedom, social justice and citizenship,
And adherence to a republic based on the separation of powers and pluralism and the peaceful transfer of power,
Based on the will of the Tunisian people to elect a National Constituent Assembly to put in place a new Constitution for the country...”

In addition to that, the draft Constitution of the Union proposed changing the country's slogan from "order, freedom and justice"⁴⁴ to "justice, freedom and dignity". This is partially adopted. Article 4 of the 2014 Constitution states that the slogan of the Republic of Tunisia will be "freedom, dignity, justice and order."⁴⁵

Furthermore, the 2014 Constitution carries economic, social and cultural rights in line with the draft Constitution of the Union (including the right to work⁴⁶, the right to social insurance, the right to health care⁴⁷, the right to education and culture^{48...})⁴⁹

Moreover, the draft Constitution of the Union aimed at the establishment of a semi-presidential system that combines the characteristics of the presidential system with the characteristics of the parliamentary system⁵⁰, the establishment of a Constitutional Court through the proposal to establish a Constitutional Court that exercises control over the constitutionality of bills and laws⁵¹ and adopts a new vision of the administrative organization of the country based on decentralization and local democracy⁵². All these proposals have already been included in the new Constitution.

44 See Article 3 of the draft Constitution.

45 See Article 4 of the 2014 Constitution.

46 See Article 25 of the Draft Constitution of the Union and Article 40 of the 2014 Constitution.

47 See Article 24 of the Draft Constitution of the Union and Article 38 of the 2014 Constitution.

48 See Article 29 of the Draft Constitution of the Union and Article 39 and 42 of the 2014 Constitution.

49 See al-Nuri Mazid, al-Dostur w al-Hoquq al-Iqtisadiya w al-Ijtimaiya, Qira'at fi Dostur aj-Jomhuriya ath-Thaniya, Aamal Moltaqa Hawl al-Dostur al-Jadid lil Jomhuriya at-Tunisiya Ayam 8 - 9 w 10 Maris 2014, Manshourat Madrasat ad-Doctura bi Koliyat Sfax, Mujamaa al-Atrash li Nashr wa Tawzii al-Kitab al-Mokhtas, 2017, p. 67 et seq.

50 See Article 31 et seq. of the draft Constitution of the Union.

51 See Article 88 et seq. of the draft Constitution of the Union.

52 See Article 110 et seq. of the draft Constitution of the Union, Title 9, entitled Decentralization and Local Democracy.

In short, the Tunisian Constitution was written in a participatory democratic framework, allowing the Union to participate in the proposal of several constitutional provisions that were even related to the political system. This participatory approach by the Assembly members in Tunisia is what makes the 2014 Constitution a democratic Constitution and a guarantor of constitutional and social stability, because it stems from the will of the society that feels it has contributed to its writing⁵³.

But it seems that the role played by the Union had some negative aspects and did not have the required efficiency at several levels:

First, there are rights of an economic nature that were not included in the draft Constitution of the Union, and there is no claim that they should be enshrined in the 2014 Constitution, despite their importance. We are talking about the freedom of industry and commerce, which falls within the broader concept of freedom of professional activity. This is in addition to its turning a blind eye to another principle that is closely related to the freedom of professional activity, that of the prohibition of forced or compulsory labor. This principle is one of the fundamental rights in the field of labor and has been singled out by the International Labor Organization (ILO) through two conventions ratified by Tunisia since the early years of independence, namely Convention No. 29 and Convention No. 105. This issue may be raised acutely in practice, as the debate over a draft law imposing mandatory work for specialists in marginalized areas has already been raised. Accordingly, the principle referred to was supposed to be constitutionalized in order to prevent the issuance of legal texts that collide with it⁵⁴.

53 See Michele Brandt, Jill Cottrell, Yash Ghai and Anthony Regan, *Constitution-making and reform: Options for the process*, Enterprise, Lebanon, 2012, p. 25 et seq.

54 See al-Nuri Mazid, *al-Dostur w al-Hoquq al-Iqtisadiya w al-Ijtimaiya*, previous article, p. 74.

Secondly, the Union did not propose sufficient guarantees to activate the provisions of the Constitution on the ground, as the Constitutional Court proposed by the Union, which was stipulated in the Constitution, has not been established since the Constitution was issued in 2014 to date. Many economic and social rights remain mere ink on paper⁵⁵, such as the right to work, health or development⁵⁶.

Third, perhaps some of the proposals of the Union did not take into account the current reality, the political scene and the party map in Tunisia. The proposed political system, despite the fact that it was based on the hypothesis of seeking to limit the authority of the executive apparatus of the state, we note that an undeclared crisis looms between the heads of power, namely the President and the Prime Minister⁵⁷. This is in addition to the overlap that appears between their respective jurisdictions, and the matter is complicated by the absence of a Constitutional Court, which has the jurisdiction to resolve the conflicts of jurisdiction between them⁵⁸.

On the basis of this, the question may be raised as to whether the current political system is the best system for the Republic of Tunisia at the present time, especially since many people have

55 See Ahmad Mufid, *Dirasa Muqaria Hawl al-Ahkam ad-Dosturiya al-Ma'aniya bi Himayat al-Hoquq al-Ijtimaiya w al-Iqtisadiya al-Asasiya fi al-Mintaqa al-Arabiya*, al-Kitab as-Sanawi lil Munadhama al-Arabiya lil Qanun ad-Dosturi 2015 - 2016, 2017, p. 215.

56 The high rates of unemployment, health centers and hospitals have not developed in terms of number and nor services. What is even worse, Tunisia is currently experiencing a crisis in medicines and patients find problems in obtaining many types of medicines, regional disparities are still present and many internal regions suffer from Marginalization. See the report of the Tunisian Forum on Economic and Social Rights of 2017, entitled "Hawl al-Hoquq al-Iqtisadiya w al-Ijtimaiya w ath-Thaqafiya, Sab'u Sanawat Baad ath-Thawra".

57 www.jeuneafrique.com/mag/602760/politique/tunisie-bce-beji-caid-essebsi-youssef-chahed-la-guerre-froide/

<http://www.bbc.com/arabic/interactivity-44862948>

58 See Article 101 of the Constitution.

been calling for the amendment of the constitutional Articles on this system.

Fourthly, the Union was not sufficiently careful about the quality of the constitutional text, especially with respect to the preamble. The method of writing it, as stated in the draft Constitution of the Union, and as it was adopted by the Constituent Assembly, seems to be hybridized on the basis that all the paragraphs included in the preamble are built on the causative object mode - a mode that does not serve the function of the preamble as a declaration of principles and an establishment of a set of obligations on which the social contract is based and the rights and freedoms are founded, which made it closer to the method of explaining the reasons (take great pride in, an expression of, in the light of...). This is contrary to what we find in many comparative Constitutions that use affirmative sentences such as the Constitution of Morocco (the Kingdom of Morocco, continues to affirm) or uses acts in the present tense such as the Constitution of Turkey (adheres, recognizes...) or South Africa (recognizes, respects, believes...)⁵⁹.

Moreover, the Union did not seize the opportunity of being involved in the constituent process, as it should have, and did not express its position or make its observations regarding such a preamble, which has many problems and raises many issues with regard to its interpretation and application⁶⁰. Although the Assembly members were inspired by the preface of the draft Constitution of the Union, unlike this preface, the 2014 Constitution was very long and more structural than legal, and

59 Wafa Zaafran al-Andolsi, *Qira'a fi Tawtiyat Dostur 27 janfi 2014*, ad-Dasatir al-Arabiya aj-Jadida: Tunis, am-Magh'rib, Misr, Moltaqa Duwali Munadham fi 28 Fifi w 1 Maris 2014 bi Tunis Min Wihdat al-Bah'th fi al-Qanun ad-Duwali, al-Mahakim ad-Duwaliya w al-Qanun ad-Dosturi al-muqarin, 2015, p. 37 et seq.

60 See Naji Bakoush, at-Taqrir al-Ibtidai, *Qira'at fi Dostur aj-Jomhuriya ath-Thaniya*, precious article, p. 24.

was dominated by the broad and hollow expressions in many sections and places (advocating the oppressed everywhere, the general human civil gain, seeking leadership...). This is accompanied by the absence of a clear sequencing of ideas at times (the tendency to repeat and the continuous reference back to some ideas and the absence of legal ties between these ideas, such as moving from talking about the right of peoples to self-determination and liberation movements to talk about the environment and the will of the people to be the manufacturers of their history)⁶¹. This is in spite of the fact that the Constitution considers the preamble as an integral part of it⁶² and stipulates that its provisions are interpreted as a harmonious unit⁶³.

Additionally, dwelling on the people's adherence to human values and the principles of universal human rights in the preamble suggests that there is a differential ordering of human rights, some of which are lofty, whereas others are not. This runs contrary to the provisions of international conventions that all human rights are universal, indivisible, interdependent and interrelated⁶⁴.

Fifth, the political consensus that the Union called for and made sure to achieve through the national dialogue⁶⁵ at times had a

61 Wafa Zafran al-Andolsi, *Qira'a fi Tawtiyat Dostur 27 janfi 2014*, precious article, p. 36 et seq.

62 Article 145.

63 Article 146.

64 *Amaliyat Siyaghat ad-Dostur fi Tunis, at-Taqrir an-Niha'i, 2011 - 2014*, Carter Centre, p. 97.

65 The establishment of the Consensus Committee of the Constituent Assembly took place after the publication of the first version of the draft Constitution, which received considerable societal opposition. Within the framework of the national dialogue, a committee was established to connect and coordinate between the national dialogue and the Constituent Assembly. This committee was to examine the points of disagreement before the Committee of Consensus between the parliamentary blocs to accelerate the achievement of consensus on the Constitution. Hatem Murad, *al-Hiwar al-Watani fi Tunis*, op. Cit., p. 37.

negative impact on the text of the Constitution, and has resulted in ambivalence in its provisions, thus posing a real challenge in relation to the problems of interpretation and application of the text that may be challenged by the judge or legislator⁶⁶.

For example, during the drafting of the Constitution, the debate intensified over how to strike a balance between the Arab-Islamic identity of the majority of the Tunisian people and the desired civil character of the state. The consensus states in Article 1 that Islam was the religion of the state, and confirms in Article 2 the civil character of the State; it even prevents that these two Articles should be subject to any amendment. Many representatives of civil society viewed the definition of the state as civil and Muslim at the same time as contradictory and considered that preventing the amendment of these Articles could create a conflict between two fractions in the future⁶⁷. This brings about other problematic questions such as: is Islam a source of legislation in Tunisian law? Is this in line with the concept of a civil state? What is the meaning of the latter concept, which is usually used as a counter-concept or an antithesis of the concept of a military state? Does it mean a secular state that is the opposite of a theocratic one? Or does this concept have a special meaning in the Tunisian Constitution?⁶⁸

Article 6 of the Constitution was also consensual, stating that “The state is the guardian of religion. It guarantees freedom of conscience and belief, the free exercise of religious practices and the neutrality of mosques and places of worship from all partisan instrumentalization. The state undertakes to disseminate the values of moderation and tolerance and the protection

66 Wafa Zaafran al-Andolsi, *Qira’a fi Tawtiyat Dostur 27 janfi 2014*, precious article, p. 38.

67 *Amaliyat Siyaghat ad-Dostur fi Tunis*, op. Cit., p. 98.

68 Wafa Zaafran al-Andolsi, *Qira’a fi Tawtiyat Dostur 27 janfi 2014*, precious article, p. 37.

of the sacred, and the prohibition of all violations thereof. It undertakes equally to prohibit and fight against calls for Takfir and the incitement of violence and hatred.” The application of this text may result in conflicts, perhaps in the future, as the State guarantees freedom of conscience on the one hand, but the ambiguity of the expression of the protection of the sacred on the other may permit or limit this freedom when combined with freedom of expression under the name of the protection of the sacred.⁶⁹

Based on this section, in which we presented to the limited efficiency of the role played by the Union in the Constitution-building, we can pass on to the second section concerning the recommendations that will be directed to the target audience, the aforementioned Union.

Towards the search for a more effective role for the Union in the Constitution-building

What role can the Tunisian General Labor Union play in the constitutional process now without falling into repeating the faux pas it committed before?

This question will be answered by first exhibiting the role of the Union in pushing for a perfected constitutional process, and secondly by shedding light on the role of the Union in pushing for effective constitutional reform.

+ The role of the Union in pushing towards a perfected constitutional process.

It is clear that the constitutional process at the present time is an incomplete one. Therefore, care must be taken to complete it. In order to achieve this, a political consensus, which can be

⁶⁹ Amaliyat Siyaghat ad-Dostur fi Tunis, op. Cit., p. 98.

achieved mostly through a return to national dialogue, must be reached.

* Priority should be given to completing the process.

In fact, it is impossible to talk about a constitutional process that becomes complete once the Constitution is ratified. The constitutional process does not consist of hollow provisions that are included in the Constitution document and then placed on the shelves. The most important thing is to implement these provisions and put them to the test of reality. In this regard, it is preferable for the Union to play an essential role by providing it with sufficient care to complete the imperfect constitutional process. In addition, in line with the legacy of the Union in the struggle to build a new Constitution that would correspond to the aspirations of the people, it is important that the Union abandon its passive and silent relationship with the application of the Constitution-building on the ground, and be above all proactive in indicating that there is no room to talk about the democratic transition and achievement of the objectives of the revolution as long as many provisions of the Constitution remain on paper, and then to have the leading role in the claim to activate these provisions supported by the fact that they are partners in the building, on the one hand, and that the Constitution, on the other, establishes a “republican, democratic and participatory system”⁷⁰, which gives them even a constitutional legitimacy to play such a role.

In order to achieve efficiency in carrying out this task, it is better for the Union to take the following steps:

First, it is important to diagnose the current situation through the use of constitutional experts from within and outside the

⁷⁰ Constitution Preamble.

Union to shed light on what has not been activated from the provisions of the Constitution and identify the obstacles that prevent that and find possible solutions to this dilemma.

The provisions of the Constitution that are not in force within the orbit of provisions concerning the adoption of legal texts that are compatible with the text of the Constitution, provisions relating to the real and actual activation of the system of rights and freedoms, which are still, in a large part, deficient, especially those that have an economic or social nature, and provisions relating to the establishment of bodies, including judicial, which is essentially the Constitutional Court, which has not been yet established yet, as provided for by Article 118 of the Constitution (the Financial Judiciary also requires intervention because the Constitution speaks in Article 117 of the Court of Audit, whereas the structure currently existing is the Department of Accounting. As for the Administrative Judiciary, administrative courts of appeal and administrative courts of first instance also were not established as provided for in Article 116. Moreover, in addition to the existence of the districts of appeal at the level of the capital, only the status of the blocks of regional districts of first instance of the Administrative Judiciary is mentioned). These include a body of independent constitutional nature, dealt with in Article 6 of the Constitution, namely the Commission for Sustainable Development and the Rights of Future Generations, which have not yet been established, the Good Governance and Anti-Corruption Commission and the Audio-Visual Communication Commission, both of which have not been established permanently because the two existing bodies are in interim (the National Anti-Corruption Body and the Independent High Authority for Audiovisual Communication).

Secondly, it is better to issue a national statement in which the Union will present the conclusions of the study regarding its

unconstitutional provisions, and in which the decision makers should accelerate the completion of the constitutional process and hold them accountable.

Thirdly, it is better to activate the basic structures of the organization operating from regional unions as they are essential for raising awareness of the importance of completing the constituent process, which will affect their legal status and rights, and prepare them to defend it if necessary.

Fourth, it is efficient to hold press conferences and work to be in the media to uncover the unconstitutional and ineffective constitutional provisions and to draw public opinion by raising awareness of the dangers of the constitutional process if not completed.

Fifth, it is better to coordinate with the various components of civil society, political parties and forces vives to identify ways to pressure decision-makers to make the completion of the constitutional process their priority.

In the end, if this happens, it will be efficient to move on to a second level to seek consensus by returning to dialogue.

* The need to reach a consensus through a return to dialogue.

As the national dialogue experiment launched by the Union succeeded in removing politicians from the bottleneck by helping them to reach consensus on the constitutional document, the national dialogue could also be a locomotive for consensus on the completion of the constituent process. Experiences have shown that transition often succeeds and democracy flourishes when administered by dialogue⁷¹.

⁷¹ For example, there was a resort to dialogue in Kenya, in 2008, Sudan in 2014, Senegal in 2009, Yemen in 2014 or Libya in 2013, 2014 and 2015. Hatem Murad, *al-Hiwar al-Watani fi Tunis*, op. Cit., p. 13.

In fact, Tunisia has not yet passed this interim period as long as the entire constitutional system is not complete, considering that some of the interim provisions stipulated by the Constitution still govern us, perhaps the most important of which are relating to the Constitutional Judiciary⁷².

This idea could be a starting point for the Union to convince its traditional partners, the Tunisian Order of Lawyers, the Tunisian Human Rights League and the Confederation of Industry and Trade, to return to the national dialogue quartet. It can accordingly launch a national dialogue initiative, which will bring together political parties to agree on ways to complete the constituent process.

It is important that the Union, being the dialogue moderator, provides the necessary conditions for the success of this dialogue, which perhaps consist in these points:

- It is best not to set preconditions and to expand the base of the parties and organizations participating in the dialogue especially that now is an opportune moment for as many parties as possible to join – given that we are in an election year. It is in the interest of the parties to appear before the public as responsible parties that are keen to complete the constituent process.
- It is good to keep the Union at the same distance from different political and partisan parties.
- It is important that the Union leaders oversee the dialogue with balance and flexibility and avoid nervous and emotional reactions

72 In Title 10 (Transitional Provisions), The Constitution stipulates that the Title related to the Constitutional Court will enter into force upon the completion of the appointment of the members of the first structure of the Constitutional Court, which has not yet happened. It also stipulated by these provisions that it establishes an interim body entrusted with monitoring the constitutionality of the draft laws until the establishment of the Constitutional Court, and it is known that this body still exists.

that negatively affect the course of dialogue and consensus, even if the process at times falters or if some parties show lack of commitment or seriousness.

- It is important that the Union plays the role of host dialogue, and seeks only to narrow the divergencies in the views without pressure or threat to preserve its neutrality.

- It is important that the motive of dialogue should be the national interest, and equally important to avoid any external or foreign influence because this may be a reason to question the integrity of the dialogue.

- It is desirable that from the first sessions of the dialogue, politicians should agree on a list of priorities which should determine urgent issues and other issues could be deferred. Urgent issues could be related to the permanent establishment of the Constitutional Court⁷³ and the independent constitutional bodies. Issues related to the completion of the legal texts that come in application of the Constitution and the activation of the remaining rights and freedoms that the 2014 Constitution contained can be deferred and applied incrementally because it takes time to achieve them; a time limit for that should be set. It is important that all these issues be included in a roadmap for the parties involved in the dialogue, and the EU undertakes to follow up on them because it is likely that some of the terms of the agreement will be put on hold until after the 2019 elections.

Moreover, if there is an agreement on the application of the provisions of the Constitution on the ground, the Union can then move to another issue related to Constitution-building, which is reviewing and reforming of this process of Constitution building.

⁷³ See Omar Ataout,, al-Mahakim al-Dosturiya Baad ath-Thawrat al-Arabiya, As-sifa wa al-Maslaha wa al-Wilaya al-Qadhiya, Dirasa Muqarna, al-Kitab as-Sanawi lil Munadhama al-Arabiya lil Qanun ad-Dosturi 2015-2016, 2017, p. 67.

+ The role of the Union in pushing for an efficiency constitutional amendment.

If the Union can play an effective role in pushing for a constitutional amendment in the future, it would be more appropriate for the amendment to undergo two phases: a first stage in which a public opinion supporting the amendment must be consolidated, and a second phase in which mechanisms are sought to ensure that the amendment is achieved.

*** Mobilize public opinion to support the amendment.**

It is good to recall that during the drafting of the 2014 Constitution, the Union submitted proposals to the Constituent Assembly, such as the proposal on constitutionalizing social dialogue. The proposal did not receive the attention of the Assembly members at the time, nor did it seek to find the possible modes for the adoption of that proposal and did not highlight the importance of its inclusion in the Constitution. Therefore, it is better for the success of any constitutional amendment to begin by mobilizing public opinion in support of the amendment. This issue is very important in the process of amending the Constitution because it enables the decision makers to be convinced, in the first place, and those under the auspices of the Union and the general public, in the second place, the usefulness of the amendment to be efficient and popular.

It would be more appropriate in this context for the Union to explain and determine the reasons for resorting to a constitutional amendment proposal.

It is also important for the Union to have a specific strategy to explain the reasons for focusing on exclusively the core issues, which are relevant to the current situation without raising issues that are of no use, even though they pose problems at the level

of the text (issues of compatibility such as the issue of the state's civil character and Islam). Raising this particular issue may trigger partisan strife, which is later transferred to the society as a whole).

More precisely, it may be more appropriate to focus on the crises the country is experiencing at all levels, be it political, economic or social and possible constitutional solutions to overcome them.

In order to diagnose the current crisis, it is important first to state that there is a political crisis caused by the system of government enshrined in the 2014 Constitution, which is the modified parliamentary system that resulted in fragmentation of the authorities and the absence of political stability following the succession of government reshuffles in a short time. But also, because of this system, a crisis loomed between the two heads of the executive power, since the contriving of the political system created alongside the legislative authority, an executive authority with two heads, the President and the Prime Minister, and gave each of them powers. The presidency was not an honorary presidency, as is the rule in the parliamentary system. The most prominent problem is that the powers between the two were not distributed in a balanced and clear enough manner.⁷⁴

Secondly, it is useful for the Union to show the impact of this political crisis on the economic and social conditions as it has increased the deepening economic and social crisis that has afflicted the country since the revolution, and thus we are facing a second crisis of an economic and social nature. Even if this crisis did not have a direct cause existing in the constitutional text, it hindered the access to most of the economic and social rights enshrined in the Constitution.

⁷⁴ Amine Mahfoudh, *Musahama fi Dirasat al-Intiqal al-Dimoqrati fi Tunis, Matbaat at-Tasfir af-Fani, Sfax, Tunisia, 2016, p. 83.*

In all cases, how can constitutional amendment contribute to resolving these crises?

It is important that the Union affirms that the most efficient solution to overcome these two crises is the constitutional solution. The solution is to modify the political system in the direction of entrenching a purely presidential system for the simple reason that the parliamentary system in place in ancient democracies is not in line with a young democracy, such as the one in Tunisia or with the Tunisian party scene.

It is important for the Union to reflect on the thought that the reformed parliamentary system was entrenched in Tunisia in the 2014 Constitution because the president was very dominant in the political scene before the revolution, which led to his despotism. Some people claim that the political system that existed during the dictatorship is a presidential system because the President of the Republic was the center of all authorities and held sway over them⁷⁵. Accordingly, the attitude was to reduce the powers of the President of the Republic in the new constitution. In this particular case it is worthwhile for the Union to show that the problem under the former regime did not stem from the nature of the presidential system, as stipulated in the 1959 Constitution in its first version, but from the deviation of this system to a presidential system that opens the door to the president's despotism as a result of the several constitutional amendments to the aforementioned Constitution⁷⁶. It is therefore possible to entrench the presidential system in the current Constitution and to establish sufficient guarantees to democratize the exercise of power by the President of the Republic, in particular through

75 Mouna Kraiem Dridi, *Le chef de l'Etat dans la nouvelle constitution tunisienne*, in *Les nouvelles constitutions arabes : Tunisie, Maroc, Egypte*, Colloque international organisé les 28 février et 1er mars 2014 à Tunis, Simpact, 2015, p.97.

76 Hassan Tariq, *Dosturaniyat ma Baad Infijarat 2011*, *Qira'a fi Tajarib al-Maghrib wa Tunis wa Mis'r*, op. Cit., p. 231.

the control of the exercise of that authority and its responsibility in the case of deviation.

The constitutional solution, on the other hand, is the establishment of a national economic and social dialogue institution, which is constitutionally open to many components of civil society, and its inclusion within constitutional bodies⁷⁷.

It is important for the Union to show that this institution can serve as a framework for opening a serious dialogue on economic and social problems and finding solutions for them. It can generally provide a participatory process to conceptualize and develop public policies in the economic and social fields and even monitor their achievement. It is better to point out that the idea of institutionalizing the national dialogue has already been presented to the Constituent Assembly and has been widely accepted by many political parties, although it is being acted upon, which could facilitate the idea of institutionalizing economic and social dialogue⁷⁸.

At large, in response to those who claim that the timing is not appropriate to amend the Constitution because some of its provisions have not yet put into effect, and because it is still a young Constitution. It is important for the Union to clarify that the amendment will only take place after the establishment of constitutional institutions, especially the Constitutional Court. Comparative experiences have shown that the lesson in the amendment is not the age of the Constitution, but the extent of the need for amendment or not. It can be pointed out that the American Constitution of 1781 defined 27 amendments, 10 of which were adopted two years after its entry into force⁷⁹.

77 There is a National Council for Social Dialogue established under the Act of July 24, 2017, but its role is limited in comparison to the role that can be played by the institution of economic and social dialogue, if any.

78 Hatem Mourad, *al-Hiwar al-Watani fi Tunis*, op. Cit., p. 100.

79 See an article entitled “*Khubara Yuakidun Nidham al-Hokm fi Tunis Hajin*”

In conclusion, if a general opinion is mobilized in favor of the idea of constitutional amendment, it is best for the Union to seek mechanisms to ensure that this amendment is achieved.

* Mechanisms to achieve the amendment.

First, it is important for the Union to formulate a good and highly professional constitutional text to facilitate its passage. The good constitutional text is the coherent text which does not raise problems and contradictions in the future in relation to the text that contains it and be consistent with its philosophy and words.

It would be more efficient for the Union to resort to an expanded circle of Tunisian experts in constitutional law, political science and economic and social experts, and foreign experts could also be consulted for comparative experiences in this field. They shall study the amendment in all its aspects and draft a text that meets the constitutional stakes. The more expanded this circle is, the better the quality of the constitutional text is.

Secondly, it is important that the Union try to obtain guarantees regarding the adoption of the proposed amendment by the decision makers, and also guarantees regarding its subsequent presentation to the Assembly of the Representatives of the People⁸⁰, in order to be ratified.

It is better the Union should work on this issue in the next few months after the mobilization of public opinion to support the proposal because we are on the threshold of legislative and presidential elections at the end of this year. This issue could be a trump electoral card, especially since the amendment cannot be

published on tunisie-telegraph.com on 15 - 03 - 2017, an interview with Professor Amin Mahfoudh and Professor Salsabeel Kelibi

80 Article 143 the Constitution and what comes after it.

made logical and realistic only after the elections. Furthermore, the Union must maintain its neutrality in the relationship with the political parties present on the scene, while keen to reach an agreement with them on the process of constitutional reform.

It is important that this agreement be drafted in writing⁸¹ and binding on those parties to implement it. But perhaps the question is about the legal value of this agreement, and then political partners, after mobilizing the support of the people, may later retreat from their commitment to adopting constitutional reform.

It is important to note here that this agreement remains an agreement of moral value and, yet, it has no value at the legal level. The future partners of the Union may retreat from the agreement after the rise of power, but this will appear to be difficult because the withdrawal will not be in their interest. The Labor Union has the power to defend the substance of the agreement in such a way that may confuse decision makers and disrupt the normal functioning of the state.

Conclusion

While the role played by the Tunisian General Labor Union in the Tunisian Constitution-building of 2014 is deficient and limited, this does not obscure that the Union was one of the most important societal movements that has contributed to the drafting of a Constitution that guarantees the basic elements of a democratic state, despite the fact that this Constitution is weak. It is hoped that the Union will overcome the stakes of the first experiment to have an effective and efficient role in completing the constituent process in reforming the current constitutional system.

81 See Michele Brandt, Jill Cottrell, Yash Ghai and Anthony Regan, *Constitution-making and reform: Options for the process*, op. Cit., P. 24 et seq.

The role of community movements in drafting Yemen United Constitution

Rawdha El Arika¹

Introduction

The drafting of constitutions faces many challenges during transitional periods which may be due to the ambiguity of the political reality characterizing this phase and the fact that the political trends are unclearly shaped, as well as the fear of the failure of the instant settlements related to the interests of conflicting parties², which the Yemeni experience has faced in drafting the constitution.

The Yemenis have struggled for the constitution extension since the 1940's. However the dominant feature of drafting these constitutions and constitutional statements is their non-social participation and the fact that they are limited to political and authoritarian forces and elites³.

1 Doctorate in Law, Faculty of Law and Political Science, Tunis

2 Essam Suleiman, the fundamental rights guarantees in the drafting of constitutions, Proceedings of the symposium held by the Lebanese Foundation for Permanent Civil Peace and the Conrad Adenauer Foundation at the Monroe Hotel, Beirut, 13-14 December 2013, Supervision by Antoine Mesreh and Rabea Qais, Publications of the Lebanese Foundation for Permanent Civil Peace, The Oriental Library, Beirut, 2014, p.

3 In the beginning of the sixties, the north of Yemen witnessed the revolution of 26 September in the north of Yemen, in which the constitution was promulgated in 1962. It was followed by three temporary constitutions: 1963/1965 and six constitutional decisions: 1968/1970 and two permanent constitutions: 1964/1970. In the former South State, before the integration into one state, the first constitution of the People's Democratic Republic of Yemen was delayed until 1970, three years after the date of independence; it was amended in 1978. In the style of the Constituent Assembly, 1970, and the Supreme People's Assembly in the State of South Yemen prepared the Constitution of 1978 and then approved by the Supreme

On March 22nd, 1990, North Yemen (Yemen Arab Republic) was unified with its South (People's Democratic Republic of Yemen) in one Yemen (Republic of Yemen). The drafting of one country's constitution was done according to a consensus vision between both systems, and was ratified by both Consultative Councils of North Yemen and the Supreme People's Assembly of South Yemen. Then, it was introduced for consultation⁴ which required the unanimity of the majority of Yemenis, especially the governing parties in both parts (General People's Congress and Socialist Party), that handled the preparation and drafting⁵, except some opposition parties⁶ which refused its draft and content from the beginning⁷.

In September, 2000, a committee was established to protect the Constitution which included partisan and nonpartisan politicians, academicians, lawyers, intellectuals and others demanding a comprehensive radical constitutional reform by the drafting of a new constitution in which all social categories participated and all the people deliberated it and approved it in a referendum since the constitutional amendments which had taken place in the past had been made to the advantage of the predominant authority

People's Assembly, see Commander of the State of the Union of the State of Kuwait and the Constitutional State of Yemen, presented to a seminar organized by the Forum for Dialogue and Development of Freedoms, 24/2/2013, Sana'a.

4 Was submitted to the general popular referendum on November 30, 1990, but the opposition that the front of the draft constitution last referendum year full, and on 15/5/1991 was voted on the Constitution and obtained the proportion of 96.37% of the total number of those who participated in the referendum, which accounted for 73.61% Of the total number of registered voters, who accounted for 30% of the number of eligible voters, representing 44.21% of the total number of citizens. Rashid Al Haddad, Fifty years of conflict. The stages of the battle of the Constitution, 12/1/2015, <http://www.alwasat-ye.net/?ac=3&no=41392>.

5 The General People's Congress Party in the north, and the Yemeni Socialist Party in the south.

6 Most notably the Yemeni Rally for Reform

7 Balqees Ahmed Mansour, Political Parties and Democratic Transformation, Madbouli Library, Cairo 2004, p. 48.

which didn't represent the will of the people and their political and social power. According to the Yemenis, the constitution was not a real social contract, but rather a set of constitutions based on predominance and law of power. So its unpopularity increased due to the imbalance of power, the predominance of the political elite and their control over all the country's institutions⁸.

A dialogue was held between political parties to agree on constitutional reforms, especially after the tense political situation, as it is indicated in the dialogue document of issues and disciplines assigned by the parties which participated in the parliament on 16/06/2007 and which aimed to reform thoroughly the election system and the laws of rights and freedoms –a dialogue which the parties' secretary generals and their assistants attended in Aden city on November 2nd, 2007 during a whole week and which ended with the amendment of the elections system. The Aden consultations report was the result of this meeting⁹.

The youth revolution began on February 2011, followed by many other events accompanied with changes on many scales; and the Constitution drafting was no longer handled by political leaders or just by the party in power. Everyone had to accept the modern reality embodied by democracy which gave the people the right to participate in decision-making and to draw the way of the future map by the drafting of a constitution which will guarantee these rights. Decision-making shouldn't be limited to parties and the authority in power, due to their failures through many past experiences at the level of Yemen and the present experiences at level of several countries, since the issue of the peo-

8 The Committee for the Protection of the Constitution «demands a new constitution, 9/10/2000 newspaper Al-Hayat, as amended the Constitution in 2001 to expand the powers of the Head of State, and extend the term of office to seven years, and extend the term of the House of Representatives to six years

9 The Yemeni Dialogue (2007-2011), the free encyclopedia Wikipedia.

ple's participation in constitution drafting couldn't be different; and the discussions started about ways to guarantee this participation and the procedures to organize it.

The Yemenis realized that the right of participation is an inherent fundamental right articulated in many international charters, such as the right to take part in public affairs (Article 25) of the International covenant on Civil and Political Rights), the minorities' right of autonomy (The United Nations Declarations of Minorities and Indigenous Peoples), the right of self-determination (United Nations Charter, International covenant on Civil and Political Rights).

The Yemeni people suffered from the deepening of divisions after the February revolution in 2011. The fact that the constitution drafting did not only consist of rules which organized the government structures but was a unique moment, an opportunity to built a consensus and a common sense of identity and values and an opportunity to solve the fundamental disagreements and healing of the accumulated wounds. And, in order to realize these objectives, the participation of decision-makers in constitution drafting was required to give this process more credibility and transparency to deal with the people's issues.

The revolution of Yemen differs from the other revolutions, whether in Tunisia or Egypt, in terms of a political settlement between the former regime and the revolution supporters. After the release of the Security Council's decision number 2014 and the transfer of authority under the Gulf Co-operation Council and the United Nations Organization, especially the five permanent member countries of the Security Council upon which both sides of the conflict agreed (General People's Congress which was the past predominant party and the opposition grouping behind what was called the Joint Meeting and some opposition

parties) and in which the United Nations undertook, with the support of five countries of the Security Council, the mission of the Gulf initiative which included two kinds of solutions:

- The emergency solution consists in the transfer of presidency from the president to his deputy and the formation of an efficient government.
- The long-term solution which is the preparation for the final solution via a national dialogue between the concerned groups to take part in the decision-making to put a clear vision to the future of the country and the drafting of a new constitution that meets the Yemeni people's aspirations and expectations and heals the wounds of the country after the revolution events¹⁰.

This long-term solution started with the organization of national dialogue sessions where long discussions between all parts of the civil society were held for the exchange of ideas aiming to reach an agreement to make each part discover what was hidden about the other¹¹.

Taking that into consideration, reasonable systems are the ones which use dialogue and communication with the community

10 The former President Ali Saleh was granted immunity from any traces of him and those who worked with him to submit his resignation to the Chamber of Deputies and his deputy / Abed Rabbo Mansour Hadi becomes the acting legitimate president, with the formation of a national consensus government of 50 per cent for each party. The new president calls for presidential elections within sixty days, with the organization of a national dialogue conference in which all political forces and actors participate in the country. After six months of «national dialogue» The agreement provides for the formation of a constitution drafting committee to submit a proposal within three months to a constitutional text that respects the principles adopted by the National Dialogue Conference. The draft will be submitted to the Yemeni people for a referendum, followed by a timetable for new parliamentary elections under the new constitution. The Government shall be formed at the request of the President of the Party with the largest number of votes to form.

11 Mohammed Abu Khalif, definition of dialogue, 8/6/2017.

movement and approach, and a policy to produce prosperity and stability, in order to avoid what happened with the dictatorship which resulted in nothing but oppression, internal conflicts and troubles which negatively influenced security and stability¹².

This document tries, through a combined approach to describe and analyze the role of the community movements and the way they take part in putting the basics for a Yemeni constitution, after the 2011 revolution. Starting from the National Dialogue Conference until the drafting of the constitution, it tries to analyze organized texts relating to Yemen's reality throughout the course of events, in the light of an analysis of published articles in newspapers and sites. Because of the unavailability of legal writing about this issue, which is considered as the most common research difficulty, concerning social participations via the official site of the National Dialogue and the flaws of the participation process. There is an attempt to see if the protest movements represented all social categories or a mere imaginary representation of some influential powers which were used to achieve their own agenda. Besides, it is meant to discuss the positive sides and shortcomings of this experience.

It is hoped that this document would represent a message to all interested people and to the ones who are working on the involvement of community movements in drafting constitutions, decision makers, politicians, civil society organizations and the seekers of constitution amendments. The issue of the document can be summed up in these questions:

¹²Ibrahim Al-Obaidi: The Concept of National Dialogue, 8/11/2016. .

What was the role of community movements in drafting the constitution? How to make the participation of community movements more effective?

This is what we're trying to answer through the presentation of the role given to the community movements in the political resolution, through the process of decision-making, either through the participation in the National Dialogue phase in which the community movements have been extended to a vast spectrum of the society. The national dialogue discussions came out with a document named "The National Dialogue Document" (**First Chapter**). The participation in the Constitution drafting phase which has a limited participation of community movements, according to the required sufficient number of those who have a specific experience in drafting to rely on this document, under the control of the National Commission to implement the National Dialogue Output and to give the people the final decision to establish it through a referendum. (**The second Chapter**).

Chapter One

The participation in the Dialogue

A republican decree was released by the President of the republic to form a technical commission for the preparation for the Dialogue Conference. The technical commission was formed by 25 members, and then the number rose to 31 members in order to prepare The National Dialogue Conference venue and to set the conference planning, its issues, its internal system and the choice of the parts which will participate in the dialogue¹³.

The National Dialogue was held on March 18th, 2013 in the governorate of the capital city Sanaa which is the phase of principle consultations aiming to build the trust between the dialogue parts. It was meant to discuss the issues of national relevance, to come out with a common view and set up solutions by taking into consideration the outputs of the country's events, needs and expectations expressed by the society in order to promote the sense of commitment and the connection with what already has been reached with parties and political powers and to set up solutions which will be included in the constitution's draft. These consultations, which took the form of meetings, were face- to face where the stakeholders responsible for all national issues hold discussions and with consultation with the people.

The dialogue lasted for more than ten months until it was completed on January, 25th, 2014 with the assignment of what's known as "National Dialogue Document" and "The Guarantees Document" to implement the articles included in the document.

So, what are the social categories which participated in the dialogue (First element)? And what was their role (Second element)?

¹³ President of the Republic Decree No. (30) for the year 2012, establishing the technical committee for the preparation and preparation of the comprehensive national dialogue conference and defining its functions and competencies.

First element

Participating categories

The fact that people have the right to govern themselves is the real meaning of participatory democracy instead of representative democracy because of the inability of the presence of every single individual from people during decision making which is replaced by the representation of community movements and which means entities taking, somehow, an organized shape as formal frameworks or structures such as political parties, groups, organizations, societies or movements with different attitudes and whose principle character is being free from government authority¹⁴. These civil entities are aware of the necessity of working together, especially with the absence of real democracy or its fragile and desperate¹⁵ existence to represent diverse categories of people, whether they are concerned with rights, culture, development, education or others. These community movements don't belong to only one lead, so everyone have a point of view about the country's issues, except for partisan stakeholders who agree on their individual or common points of view with the other parties, as part of particular. So, real involvement of civil society in political life is necessary because their ideas are closer to the people and more targeting the public interest by taking more sufficient techniques and methods such as conferences, meetings, protests and other methods to guarantee the access of society's demands and their transcription in the constitution¹⁶? And no one can deny their concrete role because of their power of pressure on political parties and their separation from the

14 Michel Brandt, Constitution, op. Cit., P. 358.

15 Charles Talley, Translation and Presentation of Rabih Wahba, Community Movements, Supreme Council of Culture, Cairo, First Edition, 2005, p.

16 Kamal bin Masoud, The role of national bodies in the constitution industry, paper on the fourth session on the participation of civil society in building the constitution, 27/11/2018 7.

authority as well as their positions which promote people's trust in their independent role to control the work of the authority, especially international organizations whose purposes are based on human values aiming to implement democracy, sponsoring human rights and contributing to forming the constitution, but not limited to giving suggestions only, and are more independent by suggesting perspectives and ideas free from political restrictions and associations, always working in the public interest .

Thus, the involvement of community movements is a necessity in decision making, leading to plant the sense of responsibility in the actors of the reconstruction and reconciliation process. Experiences have proved that exclusion of specific actors or their marginalization brings about disappointment and plant seeds of renewed violence. Constitution drafting is considered as the most important decision and the most crucial moment for the country. Once the major actors are excluded, peace is more likely to collapse, while involving them provides the constitution with a higher level of popular legitimacy¹⁷.

This is what many international experiences which believe in implementing democracy have worked on, and where the constitution is made with the participation of the public including political parties, religious communities, local ethnic groups, professionals, business organizations, trade unions, women, persons with special needs, strangers and young people that are aware of what ordinary people expect from the constitution. So, what happened in Yemen when it decided to follow that approach? Which parts or elements were involved in the dialogue, first? And, second, what are its mechanisms of choosing its members?

17 Michel Brandt, Jill Cottrell, Yash Gaye, Anthony Reagan, Constitution and Constitutional Reform, Entreprise, Lebanon, July 2012, Introduction.

First: its elements:

Public consultations has characterized the drafting of modern constitutions more than ever before, because a constitution stemming from an extended participative process is more balanced and has the potential to continue for a longer period of time; because it represents an agreement of widespread opinions at and meets people's demands. In addition, public participation adds a considerable legitimacy to the constitution and makes people feel that the constitution is their property¹⁸.

The National Dialogue was among the necessities of the phase, after the youth revolution against the rule that lasted for thirty three years, to stop oppression and restore hope, stop military campaigns and arrests, develop a clean political environment, strengthen the relation between parties in conflict and politicians as well as build up a constitution that guarantees rights and freedoms and brings security and stability. These were the most significant missions of the technical commission to prepare for The National Dialogue Conference to enable the Yemeni people to draw their future according to their expectations¹⁹ which are: to build a new nation based on equal citizenship, rule of law, peaceful alternation of power and the establishment of these principles in the draft of the new Yemeni Constitution as an effective step to embody the people's ownership of the authority and prosperity and the promotion of its effective contribution in the rule and the governance of affairs in different sectors.

18 The previous reference P87

19 In accordance with the first paragraph of Article 2 of the Presidential Decree No. (30) for the year 2012, the establishment of the technical committee to prepare and prepare for the comprehensive national dialogue conference and define its functions and competencies. The tasks of this committee are to take all the preparatory steps necessary for holding the dialogue conference

So, it was decided that the second anniversary of the Massacre of “Friday of Dignity²⁰” will be on 18/3/2013, a starting point date of the holding of the conference gathering all community forces in the national dialogue, which was defined in Article 18 of the Gulf Initiative. The principle parts/elements which planned to participate in the dialogue included the youth, the Southern Movement, the Houthis, most political parties, the representatives of civil society and women to guarantee the respect of everybody, the achievement of justice and the protection of human rights and fundamental freedoms.

Further to the information provided in the Gulf Initiative which gained its power from the release of the Security Council article number 2014 of the year 2011, to which all the parties were assigned. The decision on the commission composition defined the type of participating community elements that should be characterized by transparency, relying on their real ability to represent a vast spectrum of opinions, to make important decisions, establish peace and multi-party democracy, guaranty of human rights and good governance. In light of this, the technical commission for the preparation of the National Dialogue defined the participating parties which are²¹:

- 1- National Coalition (General People’s Congress and its alliance).
- 2- National Council (Joint Meeting Parties and their partners).
- 3- Political parties and other political actors.

20 On Friday, 18 March 2011, tens of thousands of demonstrators organized a demonstration called «Juma al Karama». Was one of the largest marches in the squares of the sit-in in the capital Sana’a. As the demonstrators finished Friday prayers, dozens of men in civilian clothes, armed with automatic weapons, gathered around the sit-in from the south and then opened fire on demonstrators, killing at least 50 protesters and wounding 200 others. .

21 The participating parties were appointed by the technical committee to prepare and prepare for the dialogue conference in accordance with the text of Article 1 of the decision establishing the Authority.

- 4- Youth movements.
- 5- Southern Movement.
- 6- Houthis
- 7- Civil society organizations.
- 8- Women representatives.

The categories which were excluded from participating in the Dialogue, for the first in the history, a whole participation in the process of decision making. For example 50% From the total number of participants, 50% were from the South and 50% from the North; and from the total number of the members, 30% were women, the Youth represented 20%; the participants reflected a vast spectrum of the social and political spheres. In addition to women, there were independent young people, political parties, representatives of Southern Movements, civil society organizations, the Houthis, the marginalized, immigrants, foreigners and others²².

The number of members of all listed categories has reached 565 (five hundred and sixty five) participants divided as the follows:

- A- Parties: General People's Congress and its alliance: 112 members²³, Socialist Party: 37 members, Nasserist Party: 30 members, Al Islah Party: 50 members, Al Rashad Union: 7 members, Justice and Construction Party: 7 members, and 20 members were divided equally between five parties for (Baath Party, Unionist Congregation, Federation of Popular Forces, National Council Party, and Al Haq Party).

22 The Assistant Secretary-General of the Union of Margins estimates that the number of marginalized persons is three million, in contrast to others who estimate their number at 800,000 and illiteracy rate among women 99% and among youth 85%. Al-Jumhuriyah Net, 14 June 2014. <http://www.ndc.ye/en-news.aspx?id=3473>.

23 Website of the Comprehensive National Dialogue Conference, <http://www.ndc.ye/>

- B- Political groups besides parties, the Southern Movement had 85 members, and the Houthis had 35 members²⁴
- C- Social Movements: Youth with 40 members, women with 40 members, civil society with 40 members.
- D- The President of the Republic appointed the remaining number of 62 members. All groups should adhere to the percentages set for women 30% and for youth 20%.

The members were distributed into committees and task forces²⁵, according to national issues to be discussed and elaborated with rules to ensure that they are written in the new constitution, and which are:

- 1- Working Group: Southern Case.
- 2- Working Group: Saada case.
- 3- Working Group: Issues with national dimension, national reconciliation and transitional justice.
- 4- Working Group: Building the State (Constitution: Principles and Foundations).
- 5- Working Group: Good Governance.
- 6- Working Group: the foundations for the establishment of the army and security and their role.
- 7- Working Group: the independence of bodies with privacy and special social and environmental issues.

24 The alliance includes the Democratic Nasserist Party, the National Democratic Front, the Democratic Nationalist Party, the Liberation Front, the Yemeni League, the National Socialist Party, the People's Popular Party, the People's Democratic Party, the People's Democratic Party, and the Social Green Party. Democratic Party of the Popular Forces - Baath Socialist National Party - Republican Party of the Popular Forces.

25 The southern movement is not a political party, but a popular movement in southern Yemen began to form the Association of retired military and security veterans, and demanded the ruling regime to equalize and restore the military and civilian demobilized, and since July 7, 2007 demanded the independence of southern Yemen.

- 8- Working Group: Rights and Freedoms.
- 9- Working Group: Development (comprehensive, integrated and sustainable).

All of the above-mentioned community groups participated in the dialogue within the various task forces. However, this participation was predominantly formal. It is ostensibly divided among the various political, societal and qualitative components, including women, youth, independents, etc. But, in fact it was subject to excessive quotas between the parties in power and opposition parties; the list of the President of the Republic did not allow him to invite other independent powers or community entities. It was said that the standards of effectiveness were adopted in this selection.

Second: mechanisms of its selection:

The task of the Preparatory Committee for the National Dialogue Conference was to identify individuals who had to enter the negotiation and dialogue stage, and whose number was restricted were restricted due to eligibility criteria, although the committee did not specify what that eligibility meant and allowed groups to nominate representatives.²⁶

The Committee identified the number of seats allocated to each party and allowed them the freedom to choose the persons they represent, while adhering to the specific proportions of the South, women and youth, given that the group is politically known, although their objectives were purely political. However, attempts to curtail their influence were rarely successful. It is rarely possible to establish a constitution without full participation of all stakeholders, because some of them control the

²⁶ Article (11) of Presidential Decree No. 10 of 2013 concerning the rules of procedure of the dialogue conference.

state and its institutions as well as the the process of drafting the constitution²⁷, and are considered the most important actors. yet not all parties participated²⁸. Seven political components were excluded from participating in the dialogue.

As for the mechanism of selection of women, youth and civil society candidates, the committee consisted of two committees responsible for their selection, one of them in the northern governorates and the other in the southern governorates. The committee issued a declaration to submit applications for participation within ten days, as long as they don't belong to any party and to contribute to the issues related to the category concerned. The youth were under²⁹ years of age and were active in the revolutionary arena. For civil society organizations, the committee nominated the most effective organizations in various fields, giving priority to federations, professional associations working at the level of the Republic. In brief, the final choice was up to the Commission. And for the social and political groups on the list of the President, the Commission raised other issues on some candidates and on the final decision of the president³⁰.

The participation of women was the result of the United Nations resolutions 2014 and 2015, which stipulated real participation of women in equal decision-making. The Preparatory Commission imposed on the political forces that women's participation should not be less than 30% when identifying the participating members, the forces did not comply with the specific terms in their lists³¹, and the proportion of women actually represented

27 Article 4 of Presidential Decree No. (30) of 2012 establishes the Technical Committee for the preparation and preparation of the National Dialogue Conference.

28 Mansheil, Constitution, op. Cit., P. 85.

29 Road Map towards National Dialogue, Carnegie Middle East Center, Beirut, 30/5/2014.

30 The National Dialogue Conference website, <http://www.ndc.ye>.

31 Nihal Awlaki, The Role of Women in Political Transformation in the Republic of Yemen, Challenges and Achievements, Working Paper for Women's Studies in

29.4% (166 members compared to 399 members of men). In spite of that, they were absent from the Presidency of the Conference except for a woman who held the position of vice-president. She was represented in the three independent components (women, youth, civil society), yet her role was distinctive, serious and effective. The principle of equal citizenship was recognized without discrimination, and all participants agreed to the principle³², except for Al-Rashad party with a reservation about discrimination on beliefs and sex³³.

The main part in the southern movement demanding the disengagement of the north and south (led by former Yemeni Vice President Ali Salem al-Beid) refused to participate in an absolute manner - a position adopted by most prominent figures in the federalist movement as a solution to the southern issue, because they believed that the preparations for dialogue were not correct and the withdrawal of the representative of the movement Mohammed Ali Ahmed and his group, President Hadi resorted to the maintenance of southern faces that represent mobility, and the outcome of the southern case and the paper of guarantees were enough to address the issue³⁴.

The mechanism of selection of the members was based on the fact that the majority of them represented the political class and the educated elite in the country, which may not reflect the majority of the population. It was enough for them to involve these

the Framework of the Consultative Meeting on Women in Politics in the Middle East and North Africa, 23-25 July 2015, Beirut.

32 But some of the outputs did not reach what is required for the weak coordination between women organizations of parties with other independents, and some are obeying to guide party leaders

33 Women and Political Empowerment, article published by MEO, 14/11/2018/ https://www.undp.org/content/dam/undp/library/gender/gender%20and%20governance/Arabic_PolitParties_full_Web.pdf

34 The end of the national dialogue in Yemen ... The beginning of wars, the newspaper of the beginnings, the seventh issue - winter 2014.

factors in addressing some issues and influential decision-making, with the involvement of some organizations that issued from Parties or entities, with the formal involvement of some organizations that defended the rights and interests of the public and which have a clear vision for the future of generations, both parties and civil society organizations³⁵.

The procedures and method of selection, whether in partisan or independent lists, were vague. They were conducted without prior consultation in wider public and local courts, They did so in order that everybody could not question the legitimacy of the representation of the people. No one knows how the number 565 or the majority of members were reached³⁶. And for example, from the Huthi groups who live in the same governorate of Saada, they were not involved in the dialogue. Likewise, some criticized the fact that, despite the large number of youth representatives, they did not grant any representation to the wounded revolutionaries and martyrs' families. Therefore, the outcome of the dialogue was overturned despite the establishment of the constitution, and the traditional centers of forces ensured their future interests, especially with the weakness of the role of the youth involved³⁷.

Despite the allocation of party forces to the members of the Dialogue Committee, these forces did not have any transparent and fair criteria for choosing the lists allocated to them within their constituencies. The selection process was even led by favoritism.

35 Some parties refused to participate in the process of national dialogue from the southern movement, because it considered it a northern issue neglecting the demands of the south, yet appointed other participants representing that category, see Middle East Report 125, p. 21, International Crisis Group, July 2012

36 Abu Asbaba, Summary of Decision Maker, Essay on Why the National Dialogue of Yemen in 2013 Failed to Prevent Conflict, published at Radboud University at 04.01.2011 <https://www.kpsrl.org/publication/lmadha-fshl-alhwar-alwtny-alyymny-alshaml-2013-fy-mn-alsra>.

37 The previous reference

The person in the party or group chose himself, his wife, sons, relatives and friends to be members of the dialogue committee. Some of them did not give it any importance and did not consider it as a conference whose works would result in the rescue of a country from the brink of war and destruction. Unfortunately, some regarded it as a gain to obtain the generous financial benefits allocated to them, especially as the members of the Conference received daily emoluments paid by the United Nations³⁸. All this affected the progress of the dialogue and slowed down its work. For some, everyday “dialogue” became profitable, and the temptation is great to make the discussions go longer³⁹.

Also, some of these members on those lists which could be called black lists, their attendance or absence was the same, they had little involvement in the activities and processes of dialogue and did not provide any substantial addition, because of the lack of capability, professionalism and experience; and many of them are a natural consequence of poor selection.

They were supposed to choose participants according to clear and transparent criteria, from educated and scientific elites, and political and social leaders and executives at local levels, from the local depth, and engage the economic actors as in the Tunisian experience, with increasing representation of marginalized women and their youth as well because 1 representative cannot represent 3 millions that well⁴⁰. The announcement to receive

38 Nelson Mandela criticized the move in the case of Burundi, where he once said: «The risk of negotiations that receive aid is in bonuses and the number of great experts. See François Frisunrush and Mohamed El Hassan Lebat: Yemen and missed opportunities.

39 François Frisunroch and Mohamed El Hassan Lebat: Yemen and missed opportunities, op. Cit. Members of the capital region receive \$ 100 a day, while members from other regions receive \$ 180, although they are said to have become a way to «dilute the dialogue» and be able to steer it toward solutions favored by outsiders.

40 The representative of the marginalized group said at the first session of the conference that he represents more than 3 million marginalized citizens and

applications was not published in all the media, so that all the categories of the people will be known and the opportunity will be available to all, because limiting the advertisement to specific and restricted sites is using the fact that it's absent from the majority of people who wants know about it. There were no objective criteria set by the choice of participants, whether from the organizations or the list of the president or others. So what were the criteria that were adopted for participation?

The second element

Criteria for participation

The different sides discussed the nine issues through the above mentioned committees, such as the southern issue, which escalated their demand to disengage the south from the north, and return to the situation before the unification in 1990. The Saada district, the original headquarters of the Houthis, and issues of national dimension such as national reconciliation and transitional justice , The question of state building, as well as good governance, discussing the bases of building the army and security, and dialogue on the independence of the bodies of privacy , as well as addressing the rights and freedoms, and finally the comprehensive and sustainable development, and the dialogue was to discuss and negotiate on those issues distributed between the committees, by providing each party vision of the solutions that are discussed and negotiated, to reach a consensus decision, which was done most cases. The dispute over the shape of the state and the introduction of federal form to resolve the issue of the South and Saada, postponed its resolution to after the dialogue, the formation of a committee to study solutions such as

attacked the technical committee for dialogue, denying them representation and denying political parties and civil organizations the inclusion of women, youth and the rest of the group. National Dialogue/Wikipedia

the commission charged with the study of the regional territories was done⁴¹.

But the discussion and dialogue on these issues had criteria, the wider involvement of community movements through openness to others (firstly) and in accordance with the principle of transparency (secondly)

First: openness to others:

Participation varied among the diversity of interlocutors, as well as hearing others – even in limited and symbolic form - who were not lucky in the dialogue, by dropping out of the field to hear input from the general public, and this has increased relative public participation.

It is the task of the task forces to conduct field visits and to listen to the views of the community groups and to make use of them on the topics of the discussion, in accordance with a fixed schedule, in coordination with the Presidency of the Conference, and to host experts and facilitators when needed in coordination with the Secretariat⁴².

41 The decisions of the plenary meeting shall be taken by consensus with the approval of at least 90% of the audience, provided that the total number of objectors shall not be one component. In case of incompatibility, the decision shall be submitted to the conciliation committee to bring together the different points of view, And if it is not possible to reconcile it with the majority of the three quarters of the audience, it will not be possible to return the order to the conciliation committee to make every effort to bring the views closer and to oblige the actors to agree. Conference, which is conducted by In order to achieve consensus on it, and make more effort and consultation with the components, and he can submit draft resolutions after consultation to resolve these differences, a meeting of heads of all components and events participating in the dialogue provided that they are authorized of their components and effectiveness written authorization.

42 In accordance with Article 19 of Presidential Decree No. 10 of 2013 concerning the Rules of Procedure for the Comprehensive National Dialogue Conference.

The task of these teams is also to consult more broadly with the organizations that took the field, as stipulated in Article (8) of the technical committee's decision, to encourage the initiatives of civil society organizations and citizens to arrange and conduct their own consultations or preparatory meetings in all governorates of And the Dialogue Conference is prepared to accept and consider the outcome of these consultations. With the right of every citizen to participate through community meetings and public forums, field visits and hearings by dialogue members, as well as meetings held by local civil society organizations in all governorates, or participation in the dialogue tents spread in the provincial capitals, and mobile among a number of directorates, and interact with them and ensure the success of tasks, and provides the site of the National Dialogue Conference (www.ndc.ye) and others Of the modern means of communication, such as e-mail and social networking platforms, opportunities for participation of all Yemenis, including expatriates, by presenting their visions in building a new Yemen, based on justice and equality, and through sending work papers, studies and proposals and perceptions on the issues of the conference, And the General Secretariat's mail, and telephone numbers available continuously⁴³.

The Community Participation Unit was established within the General Secretariat of the Dialogue Conference in order to achieve the principle of community participation in dialogue for every citizen, support and advocacy of citizens' issues, and improve the opportunity for groups of society who did not have the opportunity to participate in the Dialogue Conference which contributes to a better level of political and economic stability.

Civil society organizations participated in the survey of public opinion on the issues of the conference through the implementation of seminars, workshops and exploratory research at the

43 FAQ, National Dialogue Conference website www.ndc.ye/en-page.aspx?show.

community level, and produced reports or working papers summarizing the outcomes of these events and through the establishment of tent organizations to meet citizens Through the screens, and discuss the details, and these tents can be received representatives of the Secretariat of the dialogue, to answer people's questions about the conference and its topics⁴⁴, and between 11 May to 16 May 2013 was the field down to nine provinces, in addition to go to visit the ministries and Institutions. With all these measures taken, did the dialogue conference achieve transparency?

Second: Transparency:

Transparency means that all documents of the deliberations of the National Dialogue Conference shall be public and available to all, immediately available, and that public participation of all groups shall be encouraged and facilitated throughout the dialogue process⁴⁵. To which the rules of procedure of the Conference of the Parties agreed, that the work of the Conference should be documented as follows:

- 1- Visual recording of plenary proceedings including the opening ceremony.
- 2- Records of the proceedings of all the bodies of the Conference.
- 3- Collecting and archiving all conference documents, written, video, audio and electronic⁴⁶.

44 See the website of the National Dialogue Conference, where documents and forms of community participation, whether a monitoring project form, a community participation form or a civil society observer form <http://www.ndc.ye/en-page.aspx?show=72#>

45 In paragraph (c) of Article (3) of the Presidential Decree no (30) for the year 2012, the establishment of the technical committee to prepare for the conference.

46 As stipulated in Article (47) of the Rules of Procedure of the National Dialogue Conference.

With the need to inform the people of the work of the Conference and the level of progress in its work, except for the issues agreed upon in advance not to publish them⁴⁷.

In order to provide the greatest transparency on the reports of community participation, participants were allowed to track their participation and access to specialized teams. The Secretariat delivers the proposals and responses from the teams. The participants' statements are periodically posted on the Secretariat website. These media, through the restriction of posts from the site, we do not exceed one hundred thousand only, whether sent through the sites of mail and Tautir, and some messages via Facebook, including messages via the phone selected for participation, mostly directed by institutions and organizations do that maybe that they are directed to influence the Specific settings⁴⁸.

This shows that the effective participation of the people did not exist on the ground in the desired and expected manner, as a result of the reluctance of people to participate or to lose confidence in the political events that monopolized the scene and exaggerated the exploitation of its results and employment of its interests. Through the social networking sites and other sites mentioned above, although there are awareness paragraphs about the conference through the media, but did not contribute to the promotion of a culture of dialogue at the local level according to the required, as a result of limited awareness of the paragraphs and statements extracted, insufficient to support the involvement of citizens in dialogue.

47 Article 48 of the Rules of Procedure of the National Dialogue Conference shall not be published and published as agreed upon by the various bodies of the Conference, as it may not be in the public interest to indicate the differences at that stage.

48 - See the database on community participation, the website of the previously identified national dialogue conference <http://www.ndc.ye/>.

However, the formulation of the political and civil society components of the national dialogue document was the main pillar of Yemen's new constitution. It was the document that brought together the solutions to the issues discussed in the agenda of the conference. The articles were drafted in the form of draft articles in the federal yemeni constitution.

The second element

Participation in drafting

The document of the national dialogue that emerged from the participants, despite its importance as the main source for the drafting of the constitution, but remains a deficient document, does not live up to the required level in the drafting of constitutions. Therefore, the drafters of the constitution should make more efforts to analyze and re-examine the document and subject it to further discussion and discussion. Among all community activities, to decide on the basic constitutional issues, through the formation of the legal vision in the issues discussed in the dialogue, and writing those demands in the legal form appropriate to the development of any constitution⁴⁹. What constituents have drafted this draft (element 1) and what are the initial stages of their preparation (element 2)

The first element

Composition of the formulation

The constitution is usually drafted by experts who develop constitutional ideas and rules in a specific, precise and clear legal language that can be interpreted by legislators, jurists and natural and legal persons. The ideas are framed in a structured docu-

⁴⁹ Michel, Constitution, op. Cit., P. 356.

ment, often called the draft constitution. How were The drafters of the Federal Constitution selected ? (firstly) and what criteria are set for their selection ? (secondly).

First: Composition of the Drafting Committee:

There are many options that States take when forming the committees concerned with drafting the constitution. At the top of these options is the democratic choice of electing a constitutional drafting committee representing all the different sectors of the population. It is composed of specialized experts and independents⁵⁰. The distinction of political parties, but it is characterized by the awareness of the people of the problems faced, and the sense of citizenship for everyone⁵¹.

However, the formation of the Federal Constitution Drafting Committee in Yemen did not take this democratic option, which we can say was not available, to the nature of the exceptional and transitional period in which Yemen lived. The members of the Drafting Committee of the Federal Constitution of Yemen were appointed by a presidential decree among the members who participated in the national dialogue process and included various categories of community movements, including women and youth⁵².

50 Mamdouh Mabrouk, Formulation of Constitutions and Democratic Transformation, 16/11/2017, Time <https://www.alawan.org/2017/11/16/> The non-elected constitutional commission has no representative legitimacy. See Nargis Taher and Dina Ramadan, Drafting of the Constitution, June 2013, International Institute for Democracy and Elections, prepared in the Program for Supporting Democratic Construction in Libya, p.

51 Election of the founding members, International Foundation for Democracy and Elections, November 2012, p. 7.

52 As stipulated in Article 22 of the Gulf Initiative on 23/11/2011, where the steps of the exchange of power from the deposed president to his deputy formed a constitutional committee immediately after the end of the national dialogue conference within a maximum period of six months. Its task is to draft a new constitution within three months of its establishment , And the Committee to

As for the number of members of the Drafting Committee, the State Building Group decided at the dialogue conference that a committee for the drafting of the constitution should be composed of thirty members according to the standards of expertise and competence. However, the conciliation committee at the dialogue conference reduced the number by half, i.e. seventeen members. Then the Republican decree was issued to form the Drafting Committee⁵³.

The work program of the Drafting Committee has determined that the committee should initiate the drafting of the federal constitution from the decisions and recommendations of the national dialogue conference, taking into consideration the views of the national political forces and components. It is also decided to work under the direct supervision of the national authority responsible for monitoring the implementation of the outcomes of the national dialogue conference with the executive authorities without subordination to any person, party or any other entity⁵⁴.

One of the most prominent criticisms was that the committee drafting the constitution was not elected by the people. The

propose the necessary steps to discuss the draft constitution, and the referendum to ensure the participation of popular and transparent, as well as included the Gulf initiative.

53 Decree of the President of the Republic No. (27) for the year 2014 to form the Constitution Drafting Committee, on 8/3/2014. Article (1) Formation of the drafting committee of the Constitution of the following: Ismail Ahmed Minister W / Jaafar Abdullah Shouth Dr. / Left Mohammed Abdul Wali Dabbai d. Ahmed Zubin Attieh d. Abdul Rashid Abdul Hafiz Abdul Wassa Al-Qadi / Najeeb Abdul Rahman Shmeiri d. Abbas Mohammed Zaid d. Abdul Rahman Ahmed Hussein Al-Mukhtar Dr. Mohammed Al-Ameri Marwan Abdullah Abdul Wahab Numan Ahmed Omar Bmtraf d. Mohammed Abdul Malik Al Mutawakil launches Nehal Naji Ali Al Awlaki d. Moin Abdul Malik Saeed Jafar Saeed Salem Basaleh d. Saeed Brik Mubarak Al-Skuti Randa Mohammed Salim Ali Abdo, followed by the same date the presidential decision, which clarifies the mechanism of work of the Committee, Resolution No. 26 of 2014.

54 Presidential Decision to Form a Constitution Drafting Committee, Portal page, 9/3/2014, <https://www.albawaba.com/en>

president formed it through the grant⁵⁵, although the Gulf initiative on the transfer of power determined that the government was the constitutional committee to draft a new constitution and referendum, And transparent, which did not happen, but was the decision to nominate the members of the Committee by the President without any interference from the government, and the criticism that they follow the orders of the President of the Republic according to the texts following the decision of appointment, and take the observations of the oversight body, which was also appointed by him⁵⁶.

As long as the members of the Drafting Committee of the Federal Constitution have been appointed, contrary to the best democratic standards, because of the nature of the transition conditions in the country, what are the criteria on which this choice is based on?

Second: Criteria of the Drafting Committee:

The task of drafting the constitution may not be appropriate because it includes a large number of ordinary people without practical and scientific qualifications. It is important to choose professional writers who have the professional experience in drafting the constitutional texts in a simple and precise language, respecting the resolutions contained in the dialogue document, and what may be contrary to basic constitutional values.

55 Ashraf al-Falahi, jurists underestimate the feasibility of drafting a new constitution for Yemen, the news of the hour, date: 27-10-2014, The appointment of all members of the committee is incompatible with democracy. If some constitutions such as Afghanistan grant the president the right to appoint members of the constituent body, but with a small number, 25 out of 500 members, see the selection of members of the constituent body. , P. 7.

56 Constitution Drafting Committee, New Yemen Changing Towards the Worst, Aden Tomorrow, <http://adengad.net/news/96982/#ixzz5ZQBoFGL6k>

The republican decree⁵⁷ defines criteria for selecting members of the committee, taking into account the diversity of Yemeni society, with the representation of the south and women⁵⁸, and that the member is a Yemeni national with at least a university degree from a recognized university with at least 10 years of practical experience. Any of the specialized areas, which are recognized by honesty and integrity, is not sentenced to punishment for an offense against honor or honesty, unless he has been rehabilitated⁵⁹.

Then, the President of the Republic Decree No. (27) for the year 2014 was issued to form the constitution drafting committee of 17 members. For the first time in Yemen's modern history, Yemeni women participate in preparing the country's constitution. The representation of women in the constitution drafting committee⁶⁰ reached about 24% , Two women from the list of independent women, and two women from political parties and organizations⁶¹.

What is taken on the nature of the composition of the Drafting Committee, the failure to observe the criteria of competence and

57 Decree of the President of the Republic No. 26 of 2014 dated 8/3/2014 on the determination of the working mechanism of the Constitution Drafting Committee.

58 The decision, the criteria for the selection of members of the Committee in Article 3 paragraph A, «The new constitution drafting committee of (17) members to be named by a decision of the President of the Republic

59 As stipulated in the resolution, the conditions that must be met by the members of the Committee article 3 paragraph b «Requires a person who appoints a member of the Constitution Drafting Committee the following: 1. Must be a Yemeni nationality and full eligibility 2. Have a minimum university degree from a recognized university With experience of not less than ten years in any of the specialized areas. 3. To be recognized by honesty and integrity is not sentenced to punishment for a crime against the honor or the secretariat unless he has been rehabilitated.

60 The decision of appointing the Drafting Committee was issued on 7 Jumad I 1435H corresponding to 8/3/2014.

61 Nahal al-Awlaki, The role of women in political transformation in the Republic of Yemen, 6/9/2015.

experience, has been absent from specialists in public finance, economics and administrative and political sciences, although full of lawmakers with 12 out of 17 members⁶² and Some members are not specialized because of their parties. Which was supposed to include legal specialists and university professors, without being prevented from vaccinating members of political parties, which was confirmed by Ahmed Zubin Atieh, a member of the Committee, where he said, “The decision took into account the various political and technical aspects, especially as Yemen is governed by political consensus and can not Omission of this dimension in the selection of members of the Committee, whatever their nature”⁶³. If political quotas are inevitable, and there is no room for independent competencies, the political components are required at the very best of their specialized competencies, away from the logic of favoritism and within the same political components.

Yemeni forces and parties expressed their opposition to what they called “exclusion and marginalization” from their representation in the constitution drafting committee. Their objection focused on the non-balanced representation of the components of the National Dialogue Conference, the exclusion of the representatives of the youth of the revolution and even the political parties. Raises fears that members will remain loyal to the parties they represent. The GPC and Yemeni Reform parties are the most representative in the committee, compared to other parties. The Socialist Party is represented by one member and with it the Southern Movement⁶⁴, which shows that the Committee has

62 Abdo Ayes, criticism of Yemen to form the Constitution Drafting Committee, Al-Jazeera page, 16/3/2014.

63 Ahmed Al-Sabahi, Challenges of the Drafting Committee of the Yemeni Constitution, Al-Bayan Magazine, 16/3/2014

64 Ashraf Al-Falahi debate about the formation of the Constitution Drafting Committee, 0 2/5/2014 The Constitution Drafting Committee in Yemen strengthens presidential control even though it is based on the federal system.

been allocated politically and regionally (representing the South) and gender (representation of women), which has been reflected and overshadowed by the drafting mechanisms of the Federal Constitution.

The second element:

Drafting mechanism

The Constitution and the referendum should be drafted within a period that does not exceed one year from the date of the designation of members of the Committee (a. 6). The committee drafts the constitution based on the National Dialogue Document. (I) The draft shall be subject to amendment, deletion or addition after the Committee examines the report of the National Authority for the Supervision regarding the Implementation of the outputs of the National Dialogue and the collection of citizens' observations before presenting it to referendum (II).

First: Drafting the constitution:

The duty of the Constitution Drafting Committee is to work for the benefit of the Yemeni people and their aspirations, independently from the executive authorities. The Committee shall not be subject to any instructions from any party or person (a. 5)

In accordance with their mechanism of drafting the Constitution, their decisions shall be taken consensually. If this was not possible, the decision is taken by a majority of at least three-quarters of the members of the Committee (a.15). However, If the matter could not be solved, it should be referred to the National Authority for the Control of the Implementation of the Dialogue Conference outcome (a.16), which has the power to resolve any dispute (a.16).

Under the specific working rules of the Drafting Committee mentioned above, the Committee began to sort out the outputs of the national dialogue. Three groups were formed to begin the process of drafting the constitution. Each group would review and formulate the same topic and submit it to the plenary meeting of the committee for discussion and preliminary approval⁶⁵. The Committee began by debating and approving the preliminary drafting of constitutional articles on political, economic, cultural and social foundations, rights and freedoms, independent bodies, the army, the police and the General Intelligence, and discussing and approving the articles on federal and regional lists of competencies at the state and local levels⁶⁶.

After spending 10 months in the formation of the draft of the new constitution, which consists of 446 articles, divided into 10 sections and 13 chapters, it included the general principles set by the Dialogue Conference and the right of future political participation, as required by representative, associative and deliberative democracy (a. 8). The most important part of the draft is the transformation of Yemen into a federal state consisting of six provinces, four in the north and two in the south. This was rejected by political forces including the Socialist Party, the Southern Movement, and the Houthi Group⁶⁷. The copy was

65 Constitution drafting committee form three groups to start the initial drafting of the Constitution, Yemen News, 23/4/2014, <https://www.news-yemen.net/>

66 Drafting Committee of the Yemeni Constitution begins discussion, Morocco newspaper, 18/9/2014, Some critics have criticized the frequent travel abroad by members of the Commission, because with the era of the ICT revolution, federal experience can be viewed without the need or need to travel, especially as it is a drafting committee, not a preparation committee. The regional outsider and his agents have a share of political decision-making, including the constitution industry according to their size, see Ashraf al-Falahi, op. Cit. <https://www.almaghribtoday.net/>

67 In 2009, the Joint Meeting and its partners reached the «Vision for National Salvation Project» document, which presented two options for decentralization: the introduction of a federal state, or a simple state framework, and the establishment of a full-fledged local government based on large regions. The difference is the

handed over to the National Authority for Supervision of the implementation of the National Dialogue Conference outputs on 17/1/2015⁶⁸.

The Drafting Committee is not legally empowered to make the final decision to draft the constitution, so that the participation of the social movements in dialogue is not in vain, as the draft is subject to amendment or deletion and addition by the National Authority to monitor the implementation of the national dialogue outputs, to determine the working mechanism of the Constitution Drafting Committee. Upon the completion of the draft constitution, the Chairman of the Committee shall submit a certified copy to the President of the Republic and a copy to the National Monitoring Body for the implementation of the Dialogue Conference outputs for consideration and report. The draft is also presented to the public for comments with a short introduction and explanations. (a. 28).

In order to reflect community participation, the Committee is required to consider the comments made by the citizens during the public consultation period or contained in the Authority's report, to make the appropriate amendments to the draft in a period determined by the Drafting Committee after consultation with the National Authority⁶⁹.

number of regions and their borders, with the political and social parties agreeing to establish a federal state. For more detail, see Mohammed al-Makhlafi, *The Federal Option in Yemen: A Road to Permanent Peace*, 19/9/2018 <http://www.shorouknews.com/columns/The-world-thinks>. And see Abdo Ayyash, *criticism of Yemen to form the Constitution Drafting Committee*, Al Jazeera, 16/3/2014 <https://www.aljazeera.net/news/reportsandinterviews>

68 The National Authority for Monitoring the Implementation of Dialogue Outputs receives the draft constitution, 17/1/2015, <http://www.ndc.ye/ar-Default.aspx>

69 Yemeni Constitution Drafting Committee completes draft constitution, 01 January 2015 <https://www.masrawy.com/?Nav-logo>

A member of the Committee stated that most members have no conviction of the right of women to the gains they made at the dialogue conference, particularly with regard to political participation, quotas, criminalization of the marriage of minors, full equality between men and women and other rights. The debate is delayed about these issues until finding the appropriate constitutional formulas for the translation of those rights, Especially because of the fact that most members of the Committee belong to religious and traditional schools of thought, and they lack confidence in women, their ability to work and creativity, especially in the political sphere, some members mock of the women's quota, considering it a discriminatory measure that contradicts with the culture of Yemeni society⁷⁰.

All of these shortcomings contributed significantly to the decline of advocacy within the Drafting Committee for many pressing and weak issues, particularly those of women, minorities and some human right issues, which forced itself into the final drafting of the federal constitution.

Second: Final Drafting:

The draft constitution has to be finalized then submitted to the National Monitoring Panel for the implementation of the dialogue outputs to report thereon.

It then launches a public consultation campaign for citizens to comment on, in order to consider the submitted comments, then to prepare the final draft of the Constitution, in accordance with the results of the consultations and the report of the Authority (a. 32), then transmit it to the President of the Republic to take the necessary legal actions in case of disagreement (a. 34) (33),

⁷⁰ Nahal al-Awlaki, Women and Democratic Transition in Yemen, 6/9/2015, <http://www.nazra.org/node/424>

which is a period that allows the continuation of the community dialogue to reflect the pros and cons of the draft before submitting it to the referendum⁷¹. This process happens by relying on the capacity and the possibility of civil society organizations to contribute to the drafting of the Constitution and presenting the perspectives and proposals⁷² of the Drafting Committee, and educating the citizens to give their proposals. Through meetings and follow-up activities, visions and studies⁷³ are carried out by community entities⁷⁴.

Unfortunately, all these stages have already been interrupted because of the war. However, we will present what was planned,

71 An excellent period to overcome the shortcomings of some experiences such as Egypt, which was between the period of drafting and the referendum is not enough to identify the advantages and disadvantages of a draft, see Mohamed Taha Ali and Hawthorne, the controversy of the Constitution and the transitional period in Egypt, the Arab Center for Research and Policy Studies, Beirut for the first edition, November 2014

72 Boshra Al Ameri, Civil Society is able to contribute seriously to the drafting of the Constitution, a panel discussion organized by the Information Center, 10/7/2014, <https://www.alayyam.info/news/5TBYD35N-1779CJ>, the Center for Information and Training Rights To discuss the constitutional reforms, as well as to gather the outputs and vision of civil society on the constitutional reforms and to issue them in a book as a document and submit them to the Constitution Drafting Committee for inclusion in drafting the next constitution.

73 The Center for Human Rights Information and Training has followed up the activities of civil society over the last two years, compiling them, reformulating them as a vision of the civil society of the Constitution, and issuing a book to the General Secretariat for National Dialogue. National Dialogue Conference .. (Abdullah Ghalib, a panel discussion on the role of civil society in the drafting of the Constitution, 7/12/2014, <https://www.yemeres.com/algomhoriah/2204271>

74 The Yemeni Network for Democracy and Elections handed over to the Constitutional Drafting Committee a legal study of the constitutional outcomes, including legal observations on the constitutional outputs that contradict each other and the legal treatment of them, while dealing with some of the principles that should be included in the constitution and not included in the outputs of the dialogue with a statement of shortcomings. Including the recommendations and observations of the participants and their delivery to the Secretariat (see article entitled Constitution Study by the Constitution Drafting Committee) The intention of the constitutional outputs, Civil Society Forum, 21/8/2014, <http://www.csfyemen.org/news.php?id=122>

in accordance with the preparations that were made, especially as the monitoring body for the implementation of the national dialogue outputs had begun its work.

The National Authority for Monitoring the Implementation of the National Dialogue outputs was composed of 82 members, taking into consideration the representation of the political and social components and events participating in the national dialogue conference and in the previously specified percentages, which are 50%,30% and 20%⁷⁵ to South, women, and youth, respectively. Parties, community organizations, youth and women, with 23 seats, represented the aim to raise the level of community participation and contribution to monitor the implementation of the guarantees of dialogue⁷⁶ outcomes.

Some people criticized the formation because it did not adhere to what the conditions of membership in the document of guarantees stated, foremost of which is ensuring not to represent the members of the House of Representatives in the membership of the National Authority⁷⁷, because some of its members hold a government position alongside the membership of the Authority.⁷⁸

75 President of the Republic Decree No. (30) for the year 2014 establishing the National Authority for Monitoring the Implementation of the Outcome of the Comprehensive National Dialogue Conference. The National Authority for Monitoring the Implementation of the National Dialogue outputs was established to supervise and follow up the implementation of the dialogue outputs, president and 82 members

76 The political forces differed about the number of members of the Commission, among those who believe that half of the 565 participants in the dialogue, and another group that sees less than that, until the decision was made to form 82 members. See article on forming a national monitoring body 24 14|2014 <https://ar.haberler.com>

77 Reject violations and imbalances in the internal regulations of the National Monitoring Agency, Yemen Press, 15/1/2015, <http://www.yemenipress.net>

78 Hope and skepticism, the homeland, 29/8/2014, <https://www.alwatanvoice.com/arabic/index.html>.

The Authority had to launch a public consultation campaign to explain the draft constitution and to collect its observations from citizens (a. 29), and to deliver a report on the draft constitution to the Drafting Committee⁷⁹. The Drafting Committee would review the draft constitution, (a.32). If it is in line with the outcomes of the national dialogue, it would be delivered to the President of the Republic to take the necessary constitutional procedures, but if it does not correspond with the outcomes of the dialogue, the Authority should identify the issues that need further review by the Committee that will eventually deliver the reviewed copy, and the President of the Republic will take the necessary constitutional procedures.

In case the members of the Authority do not agree on the draft constitution, the final draft of the constitution or any part of it, and there wasn't a way to reach any agreement, the President of the Republic would be in charge of making a final binding decision (a. 34). All the issues and the points of disagreement are left to the President to deal with them, which goes against the principle of democracy⁸⁰.

On 11/8/2014, the President of the Republic was named President of the Authority , without reference to members and

⁷⁹ Public consultation campaign on the draft constitution, through the media and public events, to all their observations and arrange and present them to the Committee for the purpose of possible revision, as opposed to organizing awareness campaigns later on the final draft of the constitution to be submitted to the people for a referendum, according to the provisions of articles (29, 30 and 31) President of the Republic No. 26 of 2014 on determining the mechanism of work of the Constitution Drafting Committee. The consultation campaign will be launched within a period determined by the Committee and the Commission and the presence of their members to assist in explaining the contents of the draft constitution to citizens through the media and through participation in mass events Throughout the country, and the Commission shall submit its report within a time to be determined by the Drafting Committee after consultation with it.

⁸⁰ Hope and skepticism, the homeland, 29/8/2014, <https://www.alwatanvoice.com/arabic/index.html>

without legal basis. The first meeting was held on 13/8/2014, in which three committees were formed. The first was to prepare the committee's work list, the second to follow up the completion of its work, and the third to prepare the national alignment project and the code of honor⁸¹. The second meeting was held on 2/12/2014, which was devoted to reviewing the achievements of the National Working Group and the Internal Regulations Working Group, in addition to the work program of the Authority for the coming period⁸². However, the war hindered the democratic process and all the legal steps and stages that had to be taken to reach the adoption of the draft constitution.

Conclusion

The national dialogue was an opportunity for the participation of many social divisions to set the foundations of the constitution, unlike the previous times that witnessed the tyranny of political power and the complete authority over the process of writing the constitution. Although the experience of the national dialogue has witnessed many weaknesses and deficiencies, mainly due to the difficult and intricate situation of the country on the one hand, and the poor interaction of political parties with these circumstances on the other hand. However, trying to achieve the greatest private gains at the expense of the basic needs of the nation was the worst thing. Everyone paid the price of this cruelty, and the public is still the biggest loser. These shortcomings began from the method of choosing the dialogue conference members by republican decisions and the method of selecting members without the actual involvement of all social

81 Adel Al-Ahmadi, confusion is powerful , <http://www.alararaby.co.uk/politics/2d0217b4-264e-4acf-8f9c-3e14d513a01e> The draft constitution was later received by the Drafting Committee on 17/1/2015, while 24 / 04/2014, see <http://www.ndc.ye/en-news.aspx?id=4031>

82 See the press release <http://www.sahafah24.net/show5816.html>

layers at a local level including all political, social, institutional, vocational, gender, geographic, cultural, religious and any other human, civil and community diversity. In addition to the lack of transparency rules and clear selection rules regarding the qualifications, experience, and skills. Moreover, the way of candidating for independents has limited advertising and was confined to the political coalitions in force and based on inequity and courtesy. In addition to the complexity of issues under discussion, it was better to discuss important national issues in closed halls, after building confidence between the interlocutors and creating a peaceful environment between the competing forces, while reducing the number of interlocutors because the extended number is increasing differences in the negotiations.

It is useful to mention the recommendations drawn from criticizing the national dialogue and writing the federal constitution, in order to avoid them in any future dialogue or any process of creating the constitution draft, which is inevitable. It is also important to deal with the crucial stages in which the political process stopped, and which was close to ending so that Yemen would be able to survive from the grip of the unjust war in which it fell.

After the process of handing over the draft constitution without its final approval, it was expected that there would be a pivotal and important role, because the origin of community participation comes at this stage with the citizens' opinions, which hopefully will be achieved after the realization of peace and coexistence and the end of the war. , Which requires many efforts from different parties:

1- For the official authorities, they are supposed to respect and comply with the law and regulations in full transparency and impartiality, far from inequity, courtesy plus personal relation.

Only law can create the way to build a state of justice and law enforcement, and restore trust to the public so that we can talk about a real role and a real partnership with all community movements.

2- As for the political forces that drive the people to pay the price of their mistakes, the first thing they should do is to respect the law and transparency at the level of their parties, so that these parties become able to adapt and coexist with the reality that proved that tyranny, at the level of the ruling authority or of parties, only leads to further chaos and falsification of democratic and associative concepts.

3- The media and civil society organizations are responsible on expanding public awareness campaigns on the draft constitution through all means of information, organizing conferences, seminars, lectures and public gatherings locally, analyzing the draft and explaining it in pamphlets and brochures to the public to further understanding of the principles of democracy and human rights, and ensuring their effective participation through the observations to be submitted to the Committee, before the referendum stage.

4- Civil society organizations should hold meetings with activists and interested parties in order to present opinions on the draft constitution, aiming to support the drafting committee of the constitution through proposals by the supervisory board. As well as to hold further discussions sessions of all political and civil divisions for a further in-depth discussion of the text of the draft constitution and to submit necessary proposals and alternatives to the emerging facts in the political arena.

5- The Constitution Drafting Committee should complete the other stages more transparently, by recording discussion sessions and examining the observations resulting from the public con-

sultations, or in the case of the Committee's consultation with the Supervisory Authority on the implementation of the outputs of the national dialogue. And to open sessions for consultation and discussion with the organizations and the interested parties to listen to the proposals on the provisions of the draft constitution, which was not agreed upon and does not correspond with the national dialogue document, to be a solution from a associative reality, and then leave the final decision to the President in the case of the absence of a constituent body, as a last resort.

6- Sensitize the public with all its social components on the importance of participating in the activities or referendum on the final draft of the constitution, while ensuring that it is done with integrity and efficiency to overcome the main points of disagreement, especially the issue of the region, and to solve the southern issue, which demands to engage all southern citizens in order to decide upon that issue without leaving it to govern one category, and to prevent the possibility of any future threatening political tensions.

Civil society in Algeria and the challenges of power: Reality and challenges

Dr. Mabrouk Sahli

Introduction:

The civil society is one of the most widely used concepts after the workers' uprising of the Solidarity Union in Poland in 1980, together with the ecclesiastical movement, which gradually created a social movement that produced waves of political changes that ended the socialist ideological alignment of the Eastern bloc.

Many researchers have been interested in the civil society in Algeria since the events of October 1988 to monitor and analyze this phenomenon in terms of its causes, mechanisms and the evaluation of its outputs. In the midst of this talk, the importance of the concept of "civil society" in Algeria began as an important indicator in the process of successful democratic transformation. Moreover, the existence of this civil society is considered an essential guarantee for the continuation and consolidation of democracy and the promotion of its practice in view of the functions it performs in exerting pressure and developing general rules that assist the government in serving the citizens and achieving the public interest in various economic, social and political fields.

The objectives of the Policy Paper:

This paper aims at influencing decision makers and legislators through:

- Monitoring and analyzing the structure of civil society in Algeria;
- Determining the legal status of civil society in Algerian laws and legislation.
- Analysis of the most important challenges (legal, political, economic, cultural and social) that limit the effectiveness and mobility of civil society in Algeria;
- Making recommendations regarding mechanisms for activating civil society in Algeria.

The problematic of the policy paper: Based on the above, in view of the social, economic and political developments witnessed by Algerian society in recent years, the question that the policy paper seeks to answer is of great importance is the reality of civil society in Algeria and the most important challenges that limit its effectiveness.

The methodological framework: The study relied on the analytical approach and the methodology of case study, as well as the institutional approach which focuses on the study of the institution from several angles, including the purpose of the establishment of the institution and the institution's buildings, and the constructive approach to the career of Gabriel Almond who sees that each building has a function to perform.

Study Plan: To answer the problem we have adopted the following plan:

The first topic: Analysis of civil society structure in Algeria

The second topic: obstacles to the empowerment of civil society in Algeria

The third topic: ways to liberate civil society in Algeria

Conclusion

The first topic: Analysis of the civil society structure in Algeria

Civil society in Algeria has a special constitutional status. The 2016 Constitution states: “the right to establish political parties is recognized and guaranteed...¹”. The right to form associations is guaranteed, the state encourages the flourishing of the collective movement and the organic law defines the conditions and modalities for the establishment of associations.²

For the freedom of opinion and expression, four full articles have been devoted to the recognition and protection of this right; so that it is absolutely forbidden that there are any acts, institutions or laws in the State that affect or threaten this right through the following articles: Article 32, Article 42 “ **No prejudice to the sanctity of freedom of belief and the inviolability of freedom of opinion** “, article 53 and article 114³.

The 2016 constitution not only created the Collective Movement but also provided for the membership of civil society in constitutional advisory bodies, including:

- **The economic and Social Council:** The Council consists of two hundred (200) members distributed as follows⁴:

Eighty (80) members, entitled Economic and Social Sectors,

Fifty (50) members, entitled Civil Society,

Forty (40) members entitled Qualified Persons are designated for personal consideration,

Thirty (30) members entitled State departments and institutions.

1 Popular Democratic Republic of Algeria, Constitution of 2016.

2 Ibid.

3 Ibid.

4 Economic and Social Council, Composition of the Council, http://www.cnes.dz/en/?page_id=1541

Members shall be appointed for a term of three (3) year, renewable only once.

The variety of similar categories mentioned above must contain at least one third (1/3) of women.

In terms of the distribution of civil society representatives, they are distributed according to their areas of interest, as follows:

8. Representatives of associations of persons with special needs,
6. Representatives of associations of a social and humanitarian nature,
5. Representatives of associations of an economic nature,
- 5 representatives of associations active in the field of environmental conservation and sustainable development,
 - 5 representatives of women's associations,
 - 5 representatives of youth associations,
 - 4 representatives of student associations,
4. Representatives of associations of a scientific and cultural nature,
4. Representatives of sports associations,
 - 4 representatives of child and family welfare associations.
- **The Supreme Council for Youth:** The Council consists of 172 members divided by 96 members representing youth, two (2) for each state equally man and woman, and 24 members, representatives of youth associations and organizations of national nature, including 30% of women.⁵

⁵ Presidential Decree No. 17-142 dated on 21 Rajab 1438, corresponding to 18 April 2017, defining the composition, organization and conduct of the Higher Council for Youth.

- **The National Council for Human Rights:** The National Council for Human Rights consists of 38 members chosen by the President of the Republic, the Speaker of the two chambers of Parliament and members selected from associations, active in the field of human rights, trade unions, professional organizations and others.⁶

The structure of civil society organizations in Algeria can be divided into:

1. Trade unions: In Algeria, trade union organizations constitute one of the most important components of civil society. All Algerian constitutions issued since independence have guaranteed the exercise of trade union rights as a basic human right. Algeria has about 65 union organizations, according to the Algerian Minister of Labor, including the General Union of Algerian Workers (a union organization affiliated with the Authority), as well as the rest of the organizations which consider themselves independent trade unions. Most of them are represented in the services sector with employees such as education (16 trade unions).

After the fact that Article 23 of the Constitution of 23 February 1989 states: “the right to trade unions is recognized by all citizens”⁷ and after the enactment of Law No. 14-90 dated 2 June 1990 on the exercise of the right of association. Article 2 states: “to a single profession or sector of activity, there are trade union organizations to defend their material and moral interests.”⁸

6 Presidential Decree No. 17-76 dated 15 Jumada I 1438, corresponding to 12 February 2017, defining the composition of the National Council for Human Rights.

7 Popular Democratic Republic of Algeria, Constitution of February 23, 1989.

8 Popular Democratic Republic of Algeria, Official Gazette issued, Law No. 90-14 of 9 November 1410, corresponding to June 2, 1990, concerning the exercise of the trade union right, No. 23, p. 765.

Article 3 of the same Act stipulates that: “workers, on the one hand, and employers, on the other hand, are entitled to trade union organizations or to engage freely and voluntarily in existing trade union organizations provided that they comply with the applicable legislation and the fundamental laws of these trade union organizations⁹.”

In order to ensure that the transition from the State’s functioning of the labor force to a contractual and competitive process, the law is based on a set of principles: non-interference by the State, freedom of expression of employees and workers and flexibility in the conduct of labor forces. The role of the union also includes participation in social dialogue and collective agreements of the institution and the organization and conduct of strikes through holding and organizing meetings of workers, writing and sending strike notices, and organizing workers in protest movements.¹⁰

However, trade unions in Algeria suffer from many obstacles that prevent the performance of the role entrusted to them, including¹¹:

- Lack of internal cohesion and lack of coordination and harmony between local structures, given the tensions and internal conflicts resulting from different visions and aspirations of different groups and bodies.
- The absence of relations and the absence of continuous contacts between trade union bodies. The strengthening of the tendency towards centralization of organization and rigor in respect of hierarchy in the transfer of information has become a distinctive

9 Ibid.

10 Zubairi Hussain, Labor and Syndicate Movement and the Search for Social Justice in Algeria, Institute of Politics, American University, Beirut, February 2017, p14.

11 Leila Botmine, The Process of Bureaucratic Transformation in Trade Union Organization, Humanity Magazine, <https://journals.openedition.org/insaniyat/8888#text>

feature of the organization; so, in cases where communication was found, it was not sufficient, for simple workers know little about what is happening in the halls of the syndicate and the establishment because of the ineffective channels of communication. In addition to the leaders' fear at the higher levels of face-to-face relations with the labor base, this made the branch look like a structure without spirit.

- Centralized decision where critical decisions in the lives of workers and the organization are taken at the top of the organizational hierarchy of local structures without opening the field to the lower levels.

- Non-representation of trade union leaders of the labor base due to several factors including:

- The affiliation of leaders to areas, professional paths and levels of skills different from the rule.

- Leaders reach leadership positions through informal, non-democratic electoral processes through which official rules are bypassed and recourse to the informal relations system is applied, where measures of regionalism, favoritism, relational capital, nepotism... play a large role and make leaders a distinct category; and, at the same time lead to the formation of trade union bureaucracy.

- Lack of the skills required by the majority of local leaders to represent the workers and manage the organization effectively, because of the lack of training and forums that enable the leaders and trade union representatives to acquire the expertise and skills necessary to represent the broad base and maintain their interests, which led to resort to methods other than official in dealing with hardware and external parties. As well as in the conduct of negotiations and the representation of workers, this

opened the way for the pattern of bureaucratic governance, and led to the formation of a class or a distinct minority of trade union frameworks because of the ownership of the capital of the relational. And this led to the strengthening of the chances of expatriate trade union leaders because of their acceptance of the value system that forms the basis for such practices and relationships and the ensuing results, including:

- Integration within the existing institutional system and adopting the same bureaucratic practices of external parties.
- Respond to specific criteria by the same parties that deal with them.
- Eliminate the possibility of democratic governance of trade union structures. Especially that it has become clear that the establishment of conflicts, which constitute a fundamental phenomenon in labor relations, falls within the strategy of trade unionism, which means the transfer of trade union tires to a group of specialized personnel in specific tasks and functions and occupy centers and stable and permanent positions in the pyramid organization. Thus, the regulations that the manifestations of respect are observed are overstated, and strongly demonstrate informal methods that determine the relationships and interactions within the different categories of the organization.

- Although there are many legal provisions that allow trade unions to participate in the social dialogue, only the economic and social arena represent three basic social dialogue actors: the government, the employers, and the General Federation of Algerian Workers (affiliated with the regime) show the union monopoly of this latter organization, although there are many trade union organizations in all sectors.¹²

¹² Zubairi Hussein, op. Cit., P. 14.

- Associations: The beginning of the emergence of associations in Algeria, according to the modern concept of these organizations was following the promulgation of the French law of 1901, which determines how to establish, run and dissolve associations. After independence, the associations remained in accordance with the previous law until 1970, where the first Algerian legislation was issued in this Subject, followed by Act 1987¹³.

With the deterioration of the political, economic and social conditions of the country at the beginning of the second half of the 1980s and the outbreak of the events of October 1988, the decision maker reconsidered the model of community management through the preparation of a new constitution in 1989, which states:

Article 39: Freedom of expression, association and assembly shall be guaranteed to the citizen.

Article 40: The right to establish associations of a political nature is recognized.

And the issuance of legal texts regulating civil society, including Law No. 90-31 of 17 Jumada I 1411 of December 4, 1990 whose Article 1 stipulates that: this law defines the forms of organization, organization and work-an agreement is subject to applicable laws and meets natural or legal persons on a contractual and non-profitable basis. They also share their knowledge and means for a specific or unspecified period in order to promote activities of a professional, social, scientific, religious, educational, cultural and sporting nature in particular. The goal of the Assembly must be precisely defined and its name should be identical.

13 Mahmoud Bouzna, *The Collective Movement in Algeria: Its Origination and the Nature of its Development and its Contribution to Security and Development*, No. 17, June 2002, p134.

This law introduced several radical amendments to the legislation on associations. The main features of this law are as follows¹⁴ :

- The right to establish associations in various fields of life (social, cultural, economic, professional, recreational...)
- The lifting of various obstacles and administrative obstacles, where there are only a few simple obligations that must be respected.
- Extend the procedures of incorporation and set the legal period to study the file from the authorities of the party concerned.
- Define the legal rules to protect the principle of the establishment of associations such as the right to appeal and dissolve the associations which has become the prerogative of the judiciary and not the administrative.

Through this definition, we can also include within civil societies the following:

2-1 Human rights associations: Since the emergence of the Collective Movement in Algeria, the rights of different groups (women, children with disabilities, consumers...) have been achieved in practice, even in varying degrees; and human rights have affected all areas of public and private life. This fact has been confirmed by the multiplicity of national non-governmental institutions interested in human rights issues, the most important of which have emerged as deteriorating situations, and have taken the defense of human rights as their weapon¹⁵, most important of which include:

-The Algerian Association for the Defense of Human Rights

14 Ibid., Pp. 134-135.

15 (Nadia Khalifa), Mechanisms for the Protection of Human Rights in the Algerian Legal System: A Case Study of Some Political Rights, Thesis for PhD in legal Sciences, Batna University, 2009-2010, p59.

- The Algerian Association for Human Rights
- The Association for the Promotion of Citizenship and Human Rights
- El Nour Association for Human Rights
- The Observatory of exclusion and inequality
- The Committee of missing persons in Algeria
- The National Association of Missing Families

Despite the existence of civil society organizations dealing with human rights in Algeria, their performance in general remains weak due to their strong involvement with the state, its deviation from the objectives for which it was founded, the divisions and the material and financial ambitions of its members, which made it lose dominance according to Antoni Gramsci. Instead, the State exercised the function of domination and control together and there was no longer a sharing of roles as assumed.¹⁶

2-2 Voluntary associations: The number of associations in Algeria was estimated to 108940 according to a report prepared by the Algerian Ministry of the Interior¹⁷. In recent years, there has also been a number of voluntary associations independent of the Authority in their appearance and formation, including the Organization of the Sons of the Mujahideen, the National Organization of Mujahideen and the Sons of Martyrs Organization. These associations are headed by well-known political figures that have occupied or still occupy governmental functions such as the National Organization of Mujahideen

16 - Ghadban Mabrouk, Nadia's successor, the Civil Society and its role in the promotion and protection of the human rights, with application to Algeria, *Al-Bahar Magazine for Academic Studies*, No. 5, March 2015. P29.

17 Democratic Republic of Algeria, Ministry of the Interior and local communities, number of associations in Algeria
<http://www.interieur.gov.dz/images/pdf/listeassossociation-en.pdf>

founded immediately after independence, “Ali Kafi” former President of the Republic until 1996.¹⁸

Since the values of tolerance, acceptance of diversity and difference and the consequent peaceful management of differences and divisions are at the heart of civil culture and one of the main pillars upon which civil society is based, such organizations belonging to Algerian civil society lack these standards, as evidenced by the coups d'état in these organizations which represented an obstacle to their growth and development, on the one hand, and their inability to work away from the state's tutelage. This dependence appears especially in the field of finance and media support.¹⁹

2-3 - Feminist movements: As soon as the history of women's movements in Algeria is mentioned, three basic phases emerge in the historical process of Algerian feminism. The first stage was the immediate aftermath of the liberation war, which lasted until the early 1980s. The second phase was the immediate aftermath of the October 1988 demonstrations. This stage continued until the early 1990s. It can be said that at this stage, on the basis that the stage was characterized by ongoing debate on the issue, whether from the radicals or conservatives.

The third phase of the history of the feminist movement is the one that followed the black decade of contemporary Algerian history. This stage allowed women to extract some of the demands: the right to live in the case of divorce, the possibility of polygamy without the consent of the previous wife, Muhammad by a presidential decree except Islamic law remained as the primary source of legislation.²⁰

18 Hisham Abdel Karim, *The Civil Society and its Role in the Political Development in Algeria 1989-1999*, Memorandum for the Master's Degree in Political Sciences, University of Algiers, 2006, p. 138.

19 Ibid.

20 - Quihl Farouk, *Feminist Movements in Algeria after Independence*, *Journal of*

The Ministry of the Interior also counts more than 300 women's associations and some women's organizations have left their mark on the constitutional amendment of 2008. Article 3 states: "the State shall promote the political rights of women by expanding their representation in the elected councils. This article, "and the steps to expand the chances of representation of women in the elected councils to promote their political rights, through the ratification of Organic Law No. 12-03 of 18 Safar 1433, corresponding to 12 January 2012, which determines how to expand the chances of representation of women in the elected councils according to the following:

- The number of women in each list should not be less than one or more of the political parties, according to the percentages specified below and according to the number of seats contested:

- The seats must be distributed among the lists according to the number of votes obtained by each list. The percentages allocated to candidates shall be allocated according to the order of their names in the winning lists and each list shall be rejected. The law approved incentives for parties in the form of special financial assistance from the State and elections in the municipal, state and municipal assemblies.

This law does not aim at the mere registration of women on electoral lists - which in itself does not constitute a sufficient guarantee of their actual representation in the elected councils - but also requires the inclusion of a number of women in the electoral lists for the parties and parties. To expand the chances of women's representation in elected councils, given the pattern of voting adopted by the legislator, unless their order in such lists is appropriate. The result of these measures was the victory of 146

women in the legislative elections on 10 May 2012, the significant impact on raising the representation of women in the National People's Assembly to 31%, where the number of female deputies after the elections of May 10, 2012, rose to 146 women, making Algeria rank first Arab country and 28th internationally²¹. The most important feminist organizations include, but are not limited to the National Union of Algerian Women, the National Association for the Promotion and Protection of Women, the President of the Women's Association, the Women's Association, and the Algerian Observatory for Women

Despite the efforts made by the State and civil society organizations to improve the situation of women in Algeria, there are still many cultural, traditional, legal, social and economic constraints that prevent the real empowerment of women in Algeria.

2.4 The Employers' Forum (FCE): An economic association established by business leaders in October 2000 to help build entrepreneurship in the national economy and promote the interests of Algerian companies. The employers' forum is open to Algerian private companies, foreign companies subject to Algerian law and public companies.

The forum is headed by Mr. Ali Haddad, 4,000 business leaders representing more than 7,000 companies. FCE member companies have a global turnover of more than 4000 billion dinars and employ more than 400,000 employees.

Many member companies are leaders in their industry. The main sectors covered (18 out of 22 listed in the national classification) include agro-food industries, building materials, electrical and

21 - Belkacem Ben Znine, Algerian Women and Change: A Study on the Role and Performance of Public Policies, Humanity Magazine, <https://journals.openedition.org/insaniyat/13678>

electronic industries, mechanical industries, pharmaceuticals, paper and packaging, wood and public works.²²

The employers' forum in Algeria enjoys a high status among decision-makers. Most observers in Algeria agree that the approach of Prime Minister Abdel Meguid to the red zone through his interest in business owners has caused his swift dismissal, although he has not spent more than 80 days in office. The employers' forum also pressed the legislature not to approve a provision on a wealth tax in the 2018 Finance Act as previously decided.

The second topic: the challenges of empowering the civil society in Algeria

Among the challenges facing civil society organizations in Algeria are the nature of existing institutions and the current ideas in the prevailing ideological configuration as well as the widespread political culture, all of which are crucially influential attractors. On the one hand, and on the other hand, we note that the general features of political life and the movements of the actors in their actual movements contribute to the process of curbing the effectiveness and disabling of civil society.

If we want to examine the overall levels of these obstacles, we can summarize them in three dimensions that are still absent: the political dimension, the legal dimension, and the socio-cultural dimension.

First: the Political dimension: we note that many civil society organizations do not trust governmental institutions, which raises questions about whether these areas complement each other or whether they are in competition and raise other issues.

22 - The Forum of Business Executives (FCE), Presentation, <http://www.fce.dz/presentation/>

Is it possible to ensure coverage in a better way if the vibrant civil society organizations have been selected to participate in government processes? Or that participation simply means that civil society organizations and leaders will be harassed? Does inclusion apply best by opposition groups in civil society organizations which do not have the responsibility to implement, so that they can be held accountable by the governing bodies without prejudice or bias? The answers to these questions are not straightforward. Indeed, it is certain that civil society groups are necessary to play roles such as the “guard dog” to scrutinize and exert pressure on government organs. This undoubtedly applies to the media. If all civil society organizations are firmly opposed, it will be impossible to include the perspectives adopted by civil society organizations in the governing bodies in any constructive way. The nature of the participation of civil society organizations is likely to depend on the honesty with which the governing bodies are committed to responding to the views of the organizations.²³

The state also controls and regulates the entire social fabric by means of comprehensive administrative control that simultaneously prevents any attempt, by outside forces, to entice society. It prevents the formation of independent structures for vertical mobilization that can go beyond state control. That situation is expressed by the Statism of the community. These characteristics cannot be seen as the product of self-power in the state; on the contrary, it may be due to the weakness of the state. This makes the civil society organizations avoid the state, or stand behind them. The State is financially funded and plans its functions.²⁴

23 United Nations, *Engaging the Civil Society in Improving Local Governance*, Governing Council of the United Nations of the Human Settlements Program, Twentieth Session, Nairobi, 4-8 April 2005, p11.

24 For more information, see: Ghassan Salama and Giacomo Loushiani, and others, *Nation and State and Integration into the Arab World*, p1, Center for Arab Unity Studies, Institute of International Affairs, Italy, 1989.

In economic terms, the state exercises economic intervention in the Arab world, and has reduced the possibility of crystallizing civil society organizations independence from the state, politically, financially and administratively. The economic system constructed by the Qatari state did not allow the real and effective growth of civil society institutions away from the state, which intervened in every small and large project, but in the process of building the civil society organizations themselves, which assumes that the state does not intervene in the process of its emergence. The state here tried to circumvent the concept, in conjunction with withdrawing itself from economic activities in favor of economic figures that were related to the state, allowing it to use state institutions for their own purposes.²⁵

Second: the legal dimension: If most of the legislation grants individuals and groups equal rights or similar, it is necessary to know that the actual application of the laws and regulations and the obligations of this application disrupted the effect of these constitutions; the same authority does not respect these constitutions through their practices and civil society organizations do not insist too much and do not struggle to do so. These constitutions have remained a dead letter; the freedom of individuals or their right to expression is absent or almost absent²⁶.

In other words, when we address the issue of civil society organizations based on the legal thought and its position within the society in its entirety, the obstacles that impede the emergence of civil society organizations are revealed. This is manifested in several indicators: The state in our society has a wide network

25 - Fawaz Tarabulsi, Commentary on: The Arab World and Alternative Integration Projects. Proceedings of the Third Scientific Conference of the Arab Society for Economic Research, Center for Arab Unity Studies, Beirut, 1997, p105.

26 Fahima Charfeddine the Arab reality and the impediments of forming the civil society, the Arab Future, Issue 278, April 2002, and download it from the website of the civilized dialogue on the following link:

<http://www.m.ahewar.org/s.asp?aid=30028&r=0>

of laws that makes it responsible, because the state does not leave any of the areas of its activities without intervening under different slogans, and the political system has not yet reached the concept of modern legal state and democratic philosophy as a method of the rule of governance in the State and society; and the weakness of judicial institutions is the best expression of the status of civil society organizations in Algeria²⁷.

Law No. 06-12 of 12 January on associations also reflected the state's domination of civil society organizations. This can be illustrated by the analysis of the following articles²⁸:

1- In accordance with this law, the prior consent of the authorities is no longer sufficient to set up associations. The establishment of associations is no longer subject to the advertising system, which is a simple notification of the establishment of the association, but is conditional upon the prior consent of the authorities, which are supposed to «hand over the receipt of registration as a consent» or «make a decision to refuse registration» (art. 8). While this new legislation codifies widely spread practices in administrations, it also strengthens the authority of the administrative authorities and will not allow for an independent and fair organization of associations.

Moreover, the controversial article 45 of Law 31-90, which provides for the imprisonment of “anyone who heads an unauthorized association”, poses a threat to activists in associations that have not been able to obtain legal recognition from the authorities. Besides, in Article 46 of the new law, sanctions apply not only to representatives of «illegal» associations, but also to associations «that have not yet registered or whose activities have been suspended or have been disbanded.»

²⁷ Hisham Abdel Karim, op. Cit., P. 226.

²⁸ - Euro-Mediterranean Rights, Memorandum - Law Analysis 06-12 of 12 January on Associations, <https://euromedrights.org/publication>

2- Law No. 06-12 provides that: “no association shall be denied access to funds received from foreign organizations or foreign non-governmental organizations, except those resulting from legally established cooperative relations.” This funding shall be subject to the prior approval of the competent authority. (Art. 30)

Thus, this new legislation will deprive associations of vital sources of funding for their continued employment. Moreover, by imposing the framework of agreements or so-called «partnerships», the authorities will obtain a new means of imposing additional control over the resources of the Assemblies, their activities and partners, and thus intervene in their internal affairs and direct their work.

Funding, for foreign associations, has also been targeted where the law provides that funds can be «subject to a specified ceiling» (art. 67).

Article 19 also addresses the obligations that associations should give to the authorities, at the end of each plenary session, from the beginning of their meetings and their annual literary and financial reports to the competent public authority which imposes greater control over the activities of the Assembly. Societies are sentenced to a fine by refusing to provide such information as provided for in article 20.

3. With regard to the suspension or dissolution of associations, the new procedures have strengthened the control of the collective field where the activities of the Assembly may be suspended “in case of interference in the internal affairs of the State or prejudice to national sovereignty” (art. 39), to play a role in analyzing, criticizing and supporting the State in the conduct of its public policy, which is a prerequisite for the functioning of any democracy in the world, and article 43 provides that the

Assembly may be dissolved if it receives foreign funding or practices other than those specified in its Basic Law. It is possible that the administrative authorities may arbitrarily interpret the real meaning of this broad law.

Worse still, the same article states that the dissolution of the association can be claimed by parties whose interests conflict with the association, suggesting that associations supported or established by the state can resort to justice to prevent independent associations from practicing their activities.

With regard to the suspension of the activities of the Assemblies, the new law gives up a very important legal gain. While the intervention of the judge since 1990 was necessary to suspend the activities of the associations, Law 60-12 waved this gain, since an administrative decision was sufficient to suspend the activities of associations which may not comply with the laws, without specifying these laws as stipulated in Article 41.

3 - Cultural - Social Dimension: Most scholars agree to the societal movements in Algeria that the prevailing cultural variable is the main reason for the obstruction of social movements. Perhaps, the most important characteristic of this aspect of the cultural crisis is the imbalance in the values and norms that govern its existence, including a set of relationships of an institutional nature, subject to rules that enjoy the relative agreement of individuals and groups. This imbalance is particularly acute in the absence of a frame of reference that is an acceptable basis for the crystallization of action models, patterns of behavior and relationships, while at the same time a criterion for evaluating those models and actual patterns versus an ideal value model. These issues appear more clearly through practice in the “degradation of labor values, performance, effectiveness,

efficiency, etc.”²⁹, which are fundamental values of an effective civil society.

It is important to emphasize the importance of the socio-cultural aspect, which is, in a large part, linked to the inability of society to achieve the transition from a traditional position characterized by the control of social structures based on the bonds of primary belonging in isolation from interaction with the ocean and the challenges and pressures imposed by a diverse and renewed cultural center. (Professional, educational and ideological) related to the role and place of individuals and groups in the economic structure and their positions in political, social and cultural spheres³⁰.

It also reflects the failure of social institutions and their inability to perform their role and function effectively, including the family, the school and the system of training and education in general, as well as the civil society organizations which have been characterized by a state of extreme disorder and imbalance due to the depth of the changes which the society know, as well as by subjecting them to the priorities of political maneuvering and use in a machiavellian manner by the Authority.³¹

As long as these institutions contribute significantly to the production and preservation of the value system, the turmoil it

29 Ayachi Onsour, *Sociology of the current crisis in Algeria*, this text was published for the first time in the *Journal of the Future Arab*, No. 191 January 1995, pp. 83-94. And later published as a chapter in the book *Sociology of democracy and rebellion in Algeria*, Dar Alamin for publication and distribution, Cairo 1999, and this article is downloaded from the following website:

http://www.academia.edu/8966140/%D8%B3%D9%88%D8%B3%D9%8A%D9%88%D9%84%D9%88%D8%AC%D9%8A%D8%A7_%D8%A7%D9%84%D8%A3%D8%B2%D9%85%D9%80%D9%80%D8%A9_%D8%A7%D9%84%D8%B1%D8%A7%D9%87%D9%86%D9%80%D9%80%D8%A9_%D9%81%D9%8A_%D8%A7%D9%84%D8%AC%D8%B2%D8%A7%D8%A6%D9%80%D9%80%D8%B1

30 Ayashi Onsour, *ibid*

31 *Ibid*.

experiences has profoundly affected the balance of society, leading to the loss of reference frameworks that shape the patterns of action and the patterns of relationships that govern them.³²

The most important problems related to the role of civil society organizations are the weakness of democratic building in many of the Algerian civil society organizations and institutions, which are witnessing a decline in their democratic structure and the lack of democratic process in their agencies³³. These institutions also witness internal conflicts, Lack of transparency within them and lack of characteristics of good governance.

The third topic: ways to liberate the civil society in Algeria

The existence of civil society institutions, like other various institutions, are subject to their own rules and mechanisms, on the one hand, and are meant to be effective and effective, which require certain conditions that must be met on the other. The most important of these requirements are:

I. LEGAL AND POLITICAL FRAMEWORK The legal-political framework includes legal and political principles and rules that allow the activation of civil society and the necessary guarantees for its movement and activities:

- Amending the constitution to ensure the establishment of the principle of separation of powers and the adoption of one of the two systems (either the presidential system according to the American model; or parliamentary system according to the British model), and clarify the boundaries between the authorities.

32 Ibid.

33 Nidal Galaita, Thaer Abu Aoun, Rami Sharafi, The Role of Civil Society Organizations in Promoting Political Participation of Palestinian Youth, Palestinian Center for Policy Research and Strategic Studies, Palestine, 2018, p8.

- the confirmation of the independence of the judiciary from the executive branch by amending article 92 of the Constitution of 2016, paragraph 4, which states that the first president of the Supreme Court. And article 173 provides that the President of the Republic shall preside over the Supreme Council of Magistracy.

- Amend the constitutional provisions so as not to violate freedoms, dissolve the legislature or freeze the constitution, or declare emergency or special laws or threaten it. In particular, the following articles of the Constitution of 2016: article 96, article 142, article 143, article 144, and article 147.

Amend the legal rules governing and regulating the formation of civil society institutions, including the following articles of law number 06-12: Article 80, Article 19, Article 20, Article 29, Article 30, Article 39, Article 41, Article 43, Article 46, Article 47, Article 67.

Second - Cultural framework: the civil society is not only active in the existence of organizational structures that are officially independent of public authorities. These structures have no value in themselves, unless promoted by a culture that emphasizes the need for the authorities to restrict certain aspects of their dealings with citizens while respecting their right to Organization, assembly, thinking and change, and not only the knowledge of such rights, but also the knowledge of adherence to moral values and patterns of behavior coordinated with them. Some of the writings refer to all these elements under the name of civil culture.³⁴

In other words, community movements cannot be effective without a cultural framework that helps to consolidate the values and principles of democratic practice.

34 Ahmed Shokr Subeihi, *The Future of Civil Society in the Arab World*, First Edition, Center for Arab Unity Studies, Beirut, October 2000, pp. 223-224.

The existence of civil society is first and foremost the culture of any structure linked to the system of values, especially the values of individual autonomy, personal freedom and the pattern of human relations. On the other hand, there is a close connection between institutions, on the one hand, and the prevailing mentality in society on the other, because institutions are established in a particular social and cultural environment and cannot function in a complete manner unless they are compatible with the mentality of the individuals and groups living in this center. In other words, in societies with different sectors of development, the institution can represent the most developed sector of society and affect other less developed sectors.³⁵

Third: the economic and social framework: a reasonable degree of economic and social development is intended as a necessary basis for the generation of civil society organizations. To date, civil society is attributed to the countries of advanced industrialized Western capitalism, and on this basis it is not difficult for political observers to notice that democratic systems have been established in those countries that succeeded earlier in controlling the process of civilization, technology, science and productivity, or, in one word, modernity³⁶.

The existence of a level of freedom for the private sector allows for a developed and independent civil society, where institutions such as trade unions and professional organizations themselves and political bodies are able to function more independently and effectively. Understanding the distorted forms of societal movements by understanding this logic and looking at it in its proper context is to begin with the socio-economic approach or concept, meaning that the detained socio-economic development can only create a fully-detained civil society.

35 Ibid., P. 224

36 Ibid., P. 229

What is needed is an economic system based on a greater role for the private sector and individual initiatives that allow individuals to satisfy their basic needs away from the state, whose involvement in the economic sphere should be limited to certain regulations for private activities and some projects and industries that the private sector cannot do because of the State intervention in various aspects of economic and social activity. This reduces the possibility of existence of a civil society independent of the State³⁷.

These processes depend on the depth of the changes that occur in the methods of organization and management, especially in the structures of public administration, financial institutions and state agencies that are relevant to the process of economic growth, whether in the production, distribution or marketing stages. The urgent need today is to end bureaucratic governance and to give the initiative to economic agents to carry out their role within the framework of a specific policy based mainly on the standards of efficiency and effectiveness imposed by competition in the international market. It is based on clear and precise rules that define the status and role of each, Economic institutions, both public and private, as well as workers 'and employers' organizations³⁸.

Moreover, economic development offers great opportunities for many independent voluntary social organizations, which not only sometimes exercise an informal supervisory role over the performance of the government, but also encourage political participation, and strive to create a public opinion with an appropriate degree of political awareness and skills needed for a democratic system of governance. "He gave this perception an African dimension in his book "The Third Wave

37 Ibid., P. 231

38 Ayashi component, op. Cit.

of Democracy”, where he said that the follow-up of democratic transformations in the world from 1974 to 1990 showed that the regions that witnessed such transformations have been achieved and concluded, that poverty is an obstacle to democratic development and that the promotion of democracy depends on improving the level of economic development, and that the obstacles to development also stand in the way of democracy. Southeast Asian countries such as South Korea and Taiwan indicate that economic liberalization precedes political openness, and the experiences of the Eastern European countries after the collapse of their communist regimes show that the two go together, and the experience of the Third World in its gradual transition to democracy proves that there are no pre-conditions for this turning, and then do not get up to search for causes that lead to democracy, whether economic or social, cultural and psychological or linked to external factors, the construction of the law of democratic transformation³⁹.

Conclusion: This study attempted to analyze the structure of the civil society organizations in Algeria and to identify the most important obstacles and challenges that limit their effectiveness and efficiency. The study also attempted to make recommendations regarding the mechanisms for activating and empowering civil society organizations. Based on the above, and according to it, the results of the study can be summarized as follows:

- Civil society organizations in Algeria include a group of institutions characterized by “institutional stalemate” - their inability to cope with the problems of modernization and its crises.

39 Ammar Ali Hassan, Democracy and Development . Exchange benefits not inevitable link

<http://www.ahram.org.eg/Archive/2003/7/12/FILE9.HTM>

- many civil society organizations lack internal democracy, both in terms of positions and functions or at the level of decision-making, which opens the way for internal divisions and conflicts.

- The dominance of the authority over the movements and activities of the civil society organizations, through the imposition of legal, political and administrative restrictions like the intervention of the Authority in legal and administrative ways in the affairs of trade unions in order to impose their control over them. And also what is related to some of the governmental restrictions imposed on associations, whether related to the conditions of its formation or the identification of areas of work or the exercise or financing of its activities. In addition to the different degrees of cooperation between the Authority and civil society organizations with different degrees of loyalty, cooperation is increasing between the government and the organizations that contribute to supporting them, while the tension between the government and the organizations that oppose them is increasing.

- Many indicators witness the slow maturity of civil society because of the economic situation, which does not produce through its own mechanisms enough structures and institutions that give the civil character and make political democracy a choice that imposes itself, not only through the desires and struggles of the people.

Civil society organizations have contributed significantly to the constitutional and legal reform process, especially the human rights organizations that have had a significant impact on this level.

Did the Role of the Kurdish Committees in Drafting and Amending the Iraqi 2005 Constitution reduce the tension between the Central and Regional Governments? A Comparative study with the Province of Quebec-Canada

Meryem Jaafar.

Introduction

The emergence of the Kurdish region as a constitutional reality in the 2005 constitution, together with loopholes and open formulations, led to disagreements on many issues related to federalism¹, water and wealth distribution, conflict of interests and intersection of powers and authorities between the federal government and the Kurdish Government. Political leaders tried to keep things as they were because they were the result of a previous political compromise. However, the tension started to increase and affect the socio-economic reality in Iraq until it reached a peak in 2017. On September 25th, 2017, the previous president of the region Mas'ud Barzani headed a popular referendum to determine the fate of Iraqi Kurds in separating and establishing an independent state to achieve the Kurdish Dream. Away from the attitude of the international law towards the establishment of this state, the referendum was broadly rejected by the central government and the neighboring countries, mainly Turkey, Iran and Syria, where there are Kurdish minorities. They feared the spread of the Kurdish influence.

1 Kneni, L.M., Hsin, H. & Mafreji, M. *Administrative borders of the Kurdish region: A historical study (1921-2012)*, p.359

Despite the fact that this referendum was not the first, it was the first referendum held by the regional power and it was ratified by the regional parliament. In 2005, some social movements and popular committees held a referendum, but it was not given a real importance; however, the last referendum resulted in renewing the conflicts between the central and the regional governments. Then, the federal government imposed sanctions on the region which extended no-fly and closure of territories, in addition to other three-year sanctions for breaching the constitution. Moreover, fearing the extension of the Kurdish Dream in establishing a Kurdish state to its lands, the neighboring countries adopted a strong attitude. The tension between the political leaders who at the beginning agreed on the Kurdish provisions to complete the constitutional process in 2005 increased as well, and the unity between the Shiites and Kurds in the constitution-writing process turned to an opposition due to the last referendum in the region. The Shiites and Kurds supposed that by holding the referendum the region breached the unity and sanctum of the Iraqi lands. The Constitutional Court also perceived the referendum to be a breach of the constitution.

Research methodology

This paper aims to evaluate the role of the Kurds in drafting the 2005 Constitution as a condition to enter politics and the role of the committee appointed to provide the Iraqi parliament with constitutional amendments. It also seeks to shed light on how much effective the role of committees in putting pressure to make gradual constitutional amendments to meet the requirements of the transitional stage and to support the rule of law, federalism, distribution of wealth and protection of rights and liberties. This is done by comparing the Kurdish region with the province of Quebec in Canada and the region of Catalonia in Spain with

regards to the right of self-determination. In both the province of Quebec and the region of Catalonia, a referendum was held, and this referendum, in turn, created also a constitutional crisis and pushed the Constitutional Court to intervene. Meanwhile, I will deal with the constitutional articles hindering any amendment process. Moreover, the articles related to the region and federalism will be evaluated to know the problems and the possibilities of solving them.

This paper will provide alternative recommendations for the constitutional amendments as a solution to the current Iraqi crisis not only between the central government and the region but also at the national level, by suggesting the national dialogue and agreements as alternatives to the constitutional amendments and the possibility of considering them as futuristic gradual amendments in case of success.

The first part of the paper deals with the Iraqi constitution-writing committees and the legal problems and analyses, while the second part is a comparative study with two countries where minorities call for separation. The last part provides solutions and recommendations to the targeted groups, including political parties, international organizations which have a direct relationship with Iraq's affairs, such as United Nations Assistance Mission for Iraq (henceforth, UNAMI).

Constitution Drafting Committee and the Constitutional Gains of the Kurds

The committees concerned with the writing of the relevant constitution are divided into two major types. The first is the central authority, and it is responsible for drafting the constitution of the new state or a constitution in place of the old one. This authority is not chosen by the constitution itself,

as it is an independent body by following the political ideology or philosophy for drafting the constitution. The constitutional authority could be an individual or a group of individuals elected by citizens or it could be the citizens themselves². The second one is the derivative authority, and it is chosen by itself and guided by the constitution itself,³ in terms of its formation and function. Though the constitutional experience in Iraq in 2005 was surrounded by many challenges and unstable political and security conditions, the committee concerned with drafting the constitution was an important constitutional authority, elected because of a total change in the political system and in the constitutional and legal bases. This new constitution drafting committee was elected after exerting pressure by the religious institutions embodied in Mr. Ali Sistani on the civil authority at that time embodied in the United States. Mr. Ali Sistani demanded that the Iraqi people could choose the constitutional committee representing them through direct elections⁴. The committee included all the members of Iraqi people in a way that represented the estimated population in that time with the coalitions mentioned below:

28 members from the United Iraqi Alliance

15 members from the Kurdish Alliance

8 members representing the Iraqi List

1 member from the Communist Party

1 member from the Turkmen Front

2 Awras legal forum, ending and reforming constitution, November 25, 2009. Retrieved from <http://sciencesjuridiques.ahlamontada.net/t550-topic> accessed on 6th Jan 2019

3 Awras legal forum. Ending and reforming constitution. November 25, 2009, Retrieved from <http://sciencesjuridiques.ahlamontada.net/t550-topic> accessed on January 6, 2019.

4 Aboud Khafaji, A, A. What is not known about the role of referentiality in Iraq: The Iraqi constitution as a model, January 18, 2018

Member from the Rafidain List

15 members from Sunni Arabs ⁵

With regard to the political and sectarian reality in Iraq, the constitution was written in a relatively short period. At the behest of the civil authority represented in the USA to quickly cede the power to the Iraqi government that should be formed according to a written constitution that identifies the form, powers, functions, rights and responsibilities of this government, the constitution was written under political compromise, which might not succeed in shedding the light on the national interest and the unity of the Iraqi lands.

Meanwhile, the Shiites and Kurdish blocs concentrated at reviving the legacy of oppression and adopted the idea of Iraq post -Saddem Hussein, with regard to the federal distribution of powers and wealth between the regions and their decentralization them in a central government to avoid bringing back the past and despotism. However, the Sunni wanted a one central government that follows the decentralization method. They feared the division of the country based on the Kurdish and Shiite conception, which could lead to a civil war between the regions⁶. The issues of federalism and regions remained broadly and largely at issue between the political parties, and this affected the constitution-writing process itself. The committee then was granted three additional days to agree on the unresolved issues, and this led to the creation of a constitutional draft without compromise between the parties⁷. Though the deadline expired,

5 Abdulati, M. The condition of writing the Iraqi constitution. Retrieved from <https://www.aljazeera.net/specialfiles/pages/dfcb101d-1cf5-45e3-8175-970d5b7434ce>. Accessed on 13 Jan 2019.

6 Abdulati, M. The condition of writing the Iraqi constitution. Retrieved from <https://www.aljazeera.net/specialfiles/pages/dfcb101d-1cf5-45e3-8175-970d5b7434ce> accessed on 13 Jan 2019.

7 Abdulati, M. The condition of writing the Iraqi constitution. Retrieved

the possibility for adding extra amendments was not impossible, as amendments were made in the last moments before voting on the constitution, especially in relation to the Iraqi identity. Other amendments, related to water and the position of the Prime Minister, were made.⁸

The constitution was subject to suspension had the national assembly not achieved national consensus by forming a committee of 55 members and including 27 members (consultants) from the opposition forces of the elections to write the constitution draft. It was agreed that the constitution-writing process should be harmonic, so that in some districts the Sunni accepted and adopted the constitution to make the constitutional process valid⁹. The political forces in the United Iraqi Alliance and the Kurdish Alliance and the Iraqi-Sunni Accordance Front led by the Iraqi Islamic Party reached an agreement that allowed the parliament to amend the constitution after four months from the parliamentary elections in December 2005. This was to calm down Sunni anger towards the constitution and to meet to their demands in order to urge them to adopt the constitution and vote by “yes”, because gaining the Sunni support for the constitution was important¹⁰.

On the one hand, taking into consideration the Kurdish demands was obligatory to achieve the political balance and guarantee their existence in the political process. In an interview with

from <https://www.aljazeera.net/specialfiles/pages/dfcb101d-1cf5-45e3-8175-970d5b7434ce> accessed on 13 Jan 2019.

8 Abdulati, M.A. The condition of writing the Iraqi constitution,. Retrieved from <https://www.aljazeera.net/specialfiles/pages/dfcb101d-1cf5-45e3-8175-970d5b7434ce> accessed on 13 Jan 2019.

9 Mahmud, M.A. (2010). Amending the constitution: The enforceable Iraqi constitution of 2005. 1st ed. Baghdad. P.85

10 Mahmud, M.A. (2010). Amending the constitution: The enforceable Iraqi constitution of 2005. 1st ed. Baghdad. P.86

Aljazeera on August 4th, 2003, Mas'ud Barzani emphasized that the Kurds were challenged to build the Iraqi state, and that they were no longer fighting in Kurdi mountains, but they make part of the political process. He added that building the new Iraq should be based on the voluntary union between the two major ethnic groups and the Kurds through the elected parliament. He also added that this relationship should be based on federalism¹¹. As such, the Kurds effectively participated in writing the constitution and forming the successive Iraqi governments.

Concerning the achievements of the Kurds, they succeeded in obtaining constitutional guarantees at the cultural, economic, political and legal levels in the Iraqi constitution. Though the Kurds make up 15% of the Iraqis, Paragraph 1 of Article 4 considers the Kurdish language as the state's second official language, and it is enjoined by the principle of equality. However, Paragraph 4 of the same article considers the Turkmen and other languages the official languages in administrative units in which they constitute density of population. In this article, what was meant by density of population was not explained. The Kurds also succeeded in obtaining gains for Shiite Kurd militias, as such Article 9-B retains Badr and Peshmerga Organizations among the formations of the military forces especially that the police, security forces and guard of the region fall under the powers of the regions. This represented a danger that could lead an unlimited and decentralized authority, and this is what is emphasized by Article 121 of the Iraqi constitution, as the region has the powers to form its own security forces¹². Article 117 of the Constitution, upon coming into force, recognizes the region of Kurdistan. According to Article 120, the region of Kurdistan establishes for itself a constitution that defines the structure of powers of the

11 Aljazeera. The meeting of the day. Mes'ud Barzani and the measures of preparing the Iraqi constitution.

12 The enforceable Iraqi constitution of 2005

region, its authorities, and the mechanisms for exercising such authorities. Article 121 guarantees the rule of the regional law over the federal law in case of contradiction between the federal and the regional law if it does not intervene in the exclusive authorities of the federal power. In addition, Articles 111 and 112 include the economic rights and the joint powers between the federal and the Kurdish government and Article 115 deals with legal rights.

It has become a tradition for the President to be Kurdish, and though his executive role is weak, his political and moral role is big. According to Article 67 of the constitution, the president carries out important responsibilities. The region exercised the policy of accomplished facts, as the Peshmerga forces and the Labor Party dominated the lands and included them to the region during the battles of the Iraqi forces, Peshmerga and the Labor Party against the Islamic State (henceforth, IS) in Al Mawsil. Only in the referendum of September 2017, did the Iraqi forces restitute the lands¹³.

The legislative elections of September 2005 were a turning point in the political scene of Iraq, and the large participation of the Kurdish and Shiite was clear, something that affected the legislative and executive powers. The Kurdish and Shiite obtained the majority of seats. However, the partial participation of Sunni Arabs and its repercussions on the writing of the Iraqi 2005 constitution¹⁴ was also clear. Meanwhile, there was both agreement and disagreement, between Shiites and Kurds, on the constitutional articles that are considered now an obstacle

13 Annabaa Information Network. Writing the constitution and dismantling Iraq. Galbraith, P. The end of Iraq (2nd part). Retrieved from <https://annabaa.org/arabic/authorsarticles/12991>

14 Abdulati, M. The condition of writing the Iraqi constitution. Retrieved from <https://www.aljazeera.net/specialfiles/pages/dfcb101d-1cf5-45e3-8175-970d5b7434ce> Accessed on 13 Jan 2019.

before any try to amend the constitution, especially in relation to the broad powers given to the regions. This resulted in a rigid constitution, something that did not go with a young modern democratic state, especially that the democratic change accompanying the big changes in the political structure and the demands for rights and liberties. Moving, then, towards a gradual amendment of the constitution reduces the dangers of the political confrontations that could extend to Iraqi streets that are sometimes considered an advantageous environment to respond to the sectarian violence. The constitutional committee resulting from the national Iraqi committee for drafting the constitution was blamed for amending the paragraphs of the Iraqi constitution draft before one day from the referendum on October 15th, 2005¹⁵. The weak constitutional mentality of the new political class and the domination of the principle of retaliatory mentality were the biggest challenges before the constitution-writing process. The Kurds and Shiites were trying to reduce the central domination fearing dictatorship, possession of powers and return to the woes of the past. The new political class lacks a mature national or political project for the post-occupation era, and this is what made it difficult to write the constitution¹⁶. It was also observed that the non-specialized political mind dominates the constitution drafting committee. They were specialists in constitutional law, as they were political and religious figures who were not experienced in the constitutional field. The constitutional texts were characterized by their distance from the legal drafting and its proximity to the spiritual texts¹⁷. The

15 Collage of Law University of Babylon, The Constitutional Law, Reform the Iraqi Constitution of 2005, lecture No 37 <http://www.uobabylon.edu.iq/uobColeges/lecture.aspx?fid=7&lcid=7879> accessed on 5th of Jan 2019.

16 Annabaa Information Network. Attitudes and Ideas. Saleh, B.H. The enforceable Iraqi constitution of 2005: the challenges and the opportunities for amendments (Article 1-2-3). Retrieved from <https://annabaa.org/arabic/studies/16216>

17 Annabaa Information Network. Attitudes and Ideas. Saleh, B.H. The enforceable

Kurds were more experienced, as their constitutional articles were clear, and they took into consideration the interests of the Kurds separately from the other districts. This was considered an achievement in itself for Kurds for the clarity of the political ideas and project post 2003.

The Kurds were able to give the priority and sovereignty to the region of Kurdistan at the expense of the federal powers, as the union between the center and the region of Kurdistan is semi-federal and not federal. This is moving around federalism itself. The disputed regions created in itself a separate land for the region¹⁸.

This weak political and constitutional situation, on the one hand, and the unstable security situation, on the other hand, had a big impact on the Iraqi society by distrusting the political operation and the overall institutions. In 2014 and at the beginning of the IS crisis accompanied by a decrease in the will of the Iraqi military and the withdrawal from the military sites, it became clear that and this led to the dissolution of big and active parts in Iraq by IS. To overcome the security destruction, the religious reference in Iraq intervened and declared competent fighting to support the military forces and protect the national security and its sacred matters. Even the region of Kurdistan was not able to face the IS alone without the assistance of internal and external forces. External parts either under the request of the Iraqi government or under the protection of its national security that could be influenced by the expansion of terrorism intervened to support the efforts to counter terrorism and the expansion of IS in Iraq.

Iraqi constitution of 2005: the challenges and the opportunities for amendments (Article 1-2-3). Retrieved from <https://annabaa.org/arabic/studies/16216>

18 Annabaa Information Network. Attitudes and Ideas. Saleh, B.H. The enforceable Iraqi constitution of 2005: the challenges and the opportunities for amendments (Article 1-2-3). Retrieved from <https://annabaa.org/arabic/studies/16216>

The Constitutional Amendment Committee

The constitutional amendments are a legal and political necessity to update the socio-economic changes in the country, mainly in the presence of constitutional and democratic changes, in addition to calls for civil, political and socio-economic rights expressed by the documents and conventions of international human rights. Hence, the constitution could not be totally rigid.

Oppositions to the constitution followed by political compromises on the amendment of the constitution after 4 months from the election of December 2005 aimed to organize the elections and form the parliament in accordance with the Paragraph 1 of Article 142¹⁹. This follows under the exclusive amendment.

Article 142 stipulated that the mechanisms of constitution amendment are:

- 1- At the beginning of its work, the Council of Representatives shall form a committee from its members to represent the principal components of the Iraqi society. The mission of this committee was to provide the Council of Representatives, within a period not exceeding four months, with a report containing recommendations of the necessary amendments that could be made to the Constitution. The committee shall be dissolved after deciding on the proposals. The parliament; then, has the right to accept the whole amendment or part of it or enter amendment on such proposals. A meeting then will be held by the Council to vote upon these proposals with agreement of the majority (50+1). When the approval of the Council of representatives is obtained, a referendum shall be made²⁰. The Council met for the first time on March

¹⁹ The enforceable Iraqi constitution of 2005. Al Manara . Article 142 Paragraph 1

²⁰ The enforceable Iraqi constitution of 2005 Article 142

16, 2006, and it formed the first committee to consider the internal regulation of the Council. In accordance with the old Constitution, a temporal committee was formed to provide, in a period not exceeding four months, the Council with a report including a recommendation for the necessary amendments that could be made. Under the following conditions, the report shall be presented:

- a. The amendments shall be presented to the Council of representatives all at once for a vote upon them.
- b. These amendments shall be deemed approved only with the agreement of the absolute majority of the members, with not less than 138 votes for each amendment.
- c. The amended articles shall be presented to a public referendum within two months from the date of their approval in the Council of Representatives.
- d. The referendum on the amended Articles shall be successful if approved by the majority of the voters, and if not rejected by two-thirds of the voters in three districts or more.

After validating the provisions of Article 142, the amendment of the constitution shall be applied, as stipulated by the Constitution. However, many problems which are the following arise: what happens if four months pass without forming the constitutional amendment committee? Will the period be extended and the Article amended? Or will the deadline come to an end and the amendment fails? Since the temporary committee cannot be formed at the beginning of the work of the Council, its formation requires the approval of the internal regulation of the Council of Representatives first. Extending the period of constitutional amendment shall be under the request of both the Presidency Council and Council of Ministers or five of

the Council of Representatives. Two thirds of the Council of Representatives shall approve the amendment of the working period of the amendment committee; however, the amendment of the amendment committee requires an absolute majority besides the approval of the citizens in a public referendum and the validation of the Presidency Council within 7 days.

Despite all these questions, after the election, execution of this Article was delayed by all the political parts that saw that any amendment could agitate many political sensibilities and controversies. With regards to the fact that the parliament formed this committee to consider the Iraqi constitution and that the work in this committee requires agreement between the political blocs on the proposed amendments before providing them to the Council of Representatives, the parties in force impeded reaching an agreement over the Articles to be amended in the 2005 Constitution. Disputes remained and the committee was not able to submit a draft of proposals in the deadline on May 15th, 2005. This was postponed to May 23rd, 2007; after lodging a report, on May 22nd, 2007, to the Council of Will and declared that finding a solution to the moot point was still far away and it demanded the postponement of its mission to another deadline²¹. The committee's return represented the return of the political parties that agreed in 2005 on the exclusive amendment and annexed Article 142 to satisfy the Sunni and guarantee their participation political life. All the members withdrew and expressed that time was not appropriate and that reaching political agreement was difficult. It also highlights that the constitutional process should be flexible and meets the dominant political reality and its challenges. The Iraqi constitution highlighted the ordinary manner for amending it and it stipulated that the

21 Annabaa Information Network. Attitudes and Ideas. Saleh, B.H. The enforceable Iraqi constitution of 2005: the challenges and the opportunities for amendments (Article 1-2-3). Retrieved from <https://annabaa.org/arabic/studies/16216>

amendment of the constitution should go through two election terms according to Article 126 of the Iraqi Constitution. This is not an easy process with regards to the fact the Iraqi constitution is considered as a rigid constitution, as called in the constitutional jurisprudence, because of how difficult amendment process is²². Article 126 stipulated that:

First: both the President of the Republic (The Presidency Council) and the Council of the Ministers, or one-fifth of the Council of Representatives members may propose to amend the Constitution. The conditions of the amendment are stipulated in the first, second and third paragraphs.

Second: the fundamental principles mentioned in Section One and the rights and liberties mentioned in Section Two of the Constitution may not be amended except after two successive electoral terms and based on the approval of two-thirds of the members of the Council of Representatives, the approval of the people in a public referendum, and the ratification by the President of the Republic (The Presidency Council) within seven days.

Third: other articles not stipulated in the second paragraph of this Article may not be amended, except after the approval of two-thirds of the members of the Council of Representatives, the approval of the people in a general referendum, and the ratification by the President of the Republic, within seven days.

Fourth: the amendment of the Constitution that reduces the powers of the regions that are not within the exclusive powers of the federal authorities cannot be made only if approved by the legislative authority in the relevant region of the and the majority of people in a public referendum. It should be noted, in case the amendment is not ratified, the President of the Republic

22 The enforceable Iraqi constitution of 2005 Article 126

shall ratify it after the expiration of the period stipulated in paragraphs 2 and 3.

Working with this ordinary way forms the basis of the amendment of the constitution. After recommending the amendments to be made in accordance with the work of the temporal committee working in the ordinary manner will be done again.

In the constitutional amendment of the New Iraq, there was the concept of veto:

1 the majority of the amendment committee: this means that if the majority of committee members, that annexed the recommendations and proposals to the Council of Representatives, do not accept the proposal, and the majority of 27 members (10% from the big blocs and each member from the entities and parliamentary blocs in the Council of Representatives); then, it will not be accepted.

13 members=10% from the United Iraqi Alliance 130

5 members=10% from the Kurdi Alliance 53

3 members=10% from the Iraqi Accordance Front 44

2 members=10% from the Iraqi List 25

1 member=10% from Dialogue Font

The Islamic Union as a parliamentary entity =1 member

Eushwari as a parliamentary entity =1 member

Turkmens including the Alliance members

Any recommendation or proposal shall be presented at once within the propositions and recommendations to the Council of Representatives²³ if it does not get at least the approval of

23 Mahmud, M.A. (2010). Amending the constitution: The enforceable Iraqi constitution of 2005. 1st ed. Baghdad. P.104

the majority of the voices of the original committee. Then, they shall get 138 voices of the total number of the members of the parliament, and presented to voters under the condition that it will not be rejected by two-third of voters in three districts²⁴.

According to the constitutional period Abadis' government and its basis was responsible for constitutional amendments, in accordance with the constitutional period after two election terms, in 2015. However, the challenges faced by the committee with the political conflict and IS's crisis. This forced the government to face other priorities, which are the liberation of all the Iraqi lands. The constitutional amendments include the regions and their powers, and any amendment that does not contain the fundamental principles of the constitutional amendments does not represent the people.

The efforts that the UNAMI tried to adopt to start the constitutional amendment process in 2015 were congruent with the constitutional times; however, they failed. That was because the exception of the constitutional schedules was not possible but obligatory for the absence of the national, legal and administrative elements to make any constitutional amendment because of ISSIIE's domination over large parts of the Iraqi lands and forcing its system and this was what exposed the sovereignty of Iraq to danger. IS was dominating about 10 million people in Syria and Iraq, and any amendment was for one part at the expense of the other, notably that the state was not able to dominate all the regions until 2017.

The efforts of UNAMI were typically a waste of time and resources because any trial to amend the constitution was not open to any political and public approval, after trust between the Iraqis and the Iraqi government was unsettled in its capacity to

²⁴ The same source.p.104

protect the unity of the nation and its people and the sovereignty of its lands and to fix the role of the regional committees and to support it in fighting IS and liberating the lands to ensure security and stability that were extremely delicate with the increase in IS attacks and intensification of battle in the dominated regions, in addition to attacks on the regions that were outside the IS domination.

The delicacy of the national agreement and security together with UNAMI initiative and the war against IS in 2015 could have led to a new political conflict which would disturb the political leaders and negatively affect the battle field. UNAMI, security and national as an international organization for the assistance of Iraq should have evaluated the political reality in the transitional period by consultants for their experience in writing and drafting constitutions before starting such a project that intrinsically reduced the trust in experience and the role of the UNAMI.

Obstacles to the constitutional amendments

There were objections to the constitutional amendments at the political level:

The United Iraqi alliance made up of 7 Shiite parties refused any amendment on federalism and distribution of wealth and anything opposing their rights as the majority of the Iraqi people²⁵.

The attitude of the Kurdish Alliance was clear. Any temporal or permanent amendment reducing the rights of the Kurdish people shall not pass to the parliament notably those impairing

25 Mahmud, M.A. (2010). Amending the constitution: The enforceable Iraqi constitution of 2005. 1st ed. Baghdad. P.105

the fundamentals such as federalism, application of Article 140 to the normalization of the situations in Kurkuk, destitution of the occupied regions deducted from the Kurdish territories and the powers of the region, the distribution of wealth and attitude towards Pechmergua forces and the assumption of sovereign posts²⁶.

The Iraqi Alliance Front that represents the Sunni and made up of three parties did not give trust to this constitution except for adding Article 142 that allowed the constitutional amendment after two election terms because the constitution does not serve the national interest and it has loopholes and shortcomings and poor drafting, and this is what require the total consideration of the constitution to meet the requirements of all the Iraqi people.

Other Sunni forces expressed their total rejection of this constitution and considered that the participation of the Alliance Front in the political process was a dissent from the perspectives of the political Sunni forces²⁷.

Article 142 deals with the ordinary amendment, while Article 126 addresses with the ordinary amendment in the Iraqi constitution where it expresses the formal and objective amendments. Regardless of the constitutional dissent falling under the Constitution Drafting Committee according to Article 142 which providing the Council of Representatives with a proposal of constitutional amendment within a period no more than four months and that the reports of this committee came later and asking for delaying the constitutional amendment, the fourth paragraph of Article 126 prohibits any constitutional

26 Mahmud, M.A. (2010). Amending the constitution: The enforceable Iraqi constitution of 2005. 1st ed. Baghdad. P.105

27 Mahmud, M.A. (2010). Amending the constitution: The enforceable Iraqi constitution of 2005. 1st ed. Baghdad. P.106

amendment not matching the powers of the regions unrelated to the federal powers and this is what creates a new crisis with the region of Kurdistan and that the regional legislative power and the majority of the voters shall agree on any amendment.

The second paragraph of Article 126 dealt with the temporal blocking which means that the articles related to rights and liberties cannot be impaired, in case of amendment, only after two election terms. The committee should have followed this basis in the constitutional amendment process. Despite the fact that some movements to amend the constitution in 2018 followed the duration stipulated in the Iraqi constitution, the IS crisis and its domination over large areas of the nation and the religious fatwa in collective jihad made one major principle, which is the national agreement and public readiness absent. That required unifying the efforts to recover domination over the whole Iraqi lands and to liberate them. The IS, the terrorist group, occupied large parts of Iraqi lands, and the government had to liberate all the lands before starting the constitutional amendment that required a public referendum on sensitive issues that may be related to rights and freedoms. For this, the current political reality does not allow for making constitutional amendments but rather national dialogues that are to open to realization.

Similarities between the Constitutional Spanish Court decision about the secession of Catalonia and the Constitutional Canadian Court decision about the independence of the province of Quebec with the region of Kurdistan

The region of Catalonia in Spain is similar to the region of Kurdistan. Though Catalonia has its own political representation and parliament, Spain witnessed an acute political and constitutional crisis on October, 2017 after a referendum on

independence and secession from Spain by the Catalan parliament in Spain. The Catalan parliament passed two laws on September 7th, 2017; the first one is related to the secession and self-determination in Spain and the second addresses the transitional law after moving to new Catalan Republic. By contrast, the Spanish government reacted decisively by remanding the leaders promoting and supporting the separation in custody and pressed criminal charges of rebellion and sedition against them. Others fled the country. Spain applied for an arrest warrant from the United Nations and it was firstly rejected, and it re-applied for it again and it was partially rejected.²⁸

It is observed that the constitutional Spanish court had a clear role, as it suspended the referendum law on Catalan self-determination and the decree of regional Catalan government through which it called for the referendum²⁹. The Spanish government strictly implemented Article 155 of the Spanish constitution on the region of Catalonia. This Article stipulated the imposition of direct control of the central government over the region of Catalonia and suspending self-governance³⁰.

28 Aljazeera. The stages of the Spanish crisis after the referendum. Retrieved from <https://www.aljazeera.net/encyclopedia/events/2017/10/29/%D9%85%D8%AD%D8%B7%D8%A7%D8%AA-%D8%A7%D9%84%D8%A3%D8%B2%D9%85%D8%A9-%D8%A7%D9%84%D8%A5%D8%B3%D8%A8%D8%A7%D9%86%D9%8A%D8%A9-%D8%A8%D8%B9%D8%AF-%D8%A7%D8%B3%D8%AA%D9%81%D8%AA%D8%A7%D8%A1-%D9%83%D8%AA%D8%A7%D9%84%D9%88%D9%86%D9%8A%D8%A7>

29 Aljazeera. The Constitutional Court suspends the referendum on the secession of Catalonia September 07, 2017. Retrieved from <https://www.aljazeera.net/news/international/2017/9/7/%D8%A7%D9%84%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D9%84%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%D9%8A%D8%A9-%D8%AA%D9%88%D9%82%D9%81-%D8%A7%D8%B3%D8%AA%D9%81%D8%AA%D8%A7%D8%A1-%D8%A7%D9%86%D9%81%D8%B5%D8%A7%D9%84-%D9%83%D8%AA%D8%A7%D9%84%D9%88%D9%86%D9%8A%D8%A7>

30 Arabic. The Spanish Constitutional Court suspends the interim declaration

Moreover, the Catalan president was removed and the Catalan parliament, that adopted the declaration of independence and set the date of parliamentary elections, was dissolved³¹. This situation is similar to the region of Kurdistan, as the Catalonians called for the secession to guarantee the Catalan rights and identity. In an attempt to avoid the division and increased conflicts, federalism was considered the best solution with an orientation towards constitutional amendments to achieve the demands³². The increasing resentment among the Catalonians fueled demonstrations/protests against the prevailing situation. They asked for the federalism as a solution to satisfy Catalonians and their demands for self-governance and constitutional amendments that ensure the Catalan identity³³. Out of this

of independence for Catalonia October 31, 2017. Retried from <https://arabic.sputniknews.com/world/201710311027109091-%D8%A7%D9%84%D9%85%D8%AD%D9%83%D9%85%D8%A9%D8%A7%D9%84%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%D9%8A%D8%A9%D8%A7%D9%84%D8%A5%D8%B3%D8%A8%D8%A7%D9%86%D9%8A%D8%A9%D8%AA%D8%B9%D9%84%D9%82%D8%A5%D8%B9%D9%84%D8%A7%D9%86%D8%A7%D8%B3%D8%AA%D9%82%D9%84%D8%A7%D9%84%D9%83%D8%AA%D8%A7%D9%84%D9%88%D9%86%D9%8A%D8%A7%D9%85%D8%A4%D9%82%D8%AA%D8%A7/>

31 Arabic. The Spanish Constitutional Court suspends the interim declaration of independence for Catalonia October 31, 2017. Retried from <https://arabic.sputniknews.com/world/201710311027109091-%D8%A7%D9%84%D9%85%D8%AD%D9%83%D9%85%D8%A9%D8%A7%D9%84%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%D9%8A%D8%A9%D8%A7%D9%84%D8%A5%D8%B3%D8%A8%D8%A7%D9%86%D9%8A%D8%A9%D8%AA%D8%B9%D9%84%D9%82%D8%A5%D8%B9%D9%84%D8%A7%D9%86%D8%A7%D8%B3%D8%AA%D9%82%D9%84%D8%A7%D9%84%D9%83%D8%AA%D8%A7%D9%84%D9%88%D9%86%D9%8A%D8%A7%D9%85%D8%A4%D9%82%D8%AA%D8%A7/>

32 David, M. Spanish: election in Catalonia 2015 and the debate on independence, Constitutional Law, P.L162, Jan 2016, E.C.L, P 163

33 Comella, V. F. The Spanish Constitution court Confronts Catalonia's Right to Decide(Comment on the Judgment 42/2014) constitutional Law, 2016, E.C.L Westlaw.

some opinions existed; however, those leading the referendum should assume the legal responsibility resulting from any illegal referendum held without guarantees in any democratic country. In addition, experts in the international law emphasized that Catalonia does not meet the requirements to call for the right of self-determination according to the international law³⁴.

The political crisis in Catalonia is similar to that in Kurdistan, as though both parts enjoy a legal, political, economic and cultural representation, a unilateral referendum and call for secession was held. This was what led to a constitutional crisis in both countries. In addition, the Spanish Constitutional Court suspended both the Catalan transitional law and the results of the referendum and took the right measures against pro-referendum supporters and executors. The parliament was salvaged as well, and there was call snap elections and this measure is considered stricter than the one taken by the Constitutional Court in Iraq.

With regards to the province of Quebec, it is observed that the role of the rule of law and democracy are strengthened. The court saw that the province of Quebec meets the rights and representation in the state and the separation is taken into consideration in case of continuous racism and there was no hope for rescue and that the Province of Quebec is under occupation and these conditions are not met in Quebec, then all the rights and freedoms, in addition to cultural rights, are present and that it is part of Canada and not under an occupation system. In addition, the court saw that the separation could jeopardize the principles of democracy, participation and rule of law in a country where the parties agreed on the participation under the federal system, but at the same time the concepts of democracy

34 IACL-AIDC Blog, One Year After the(Symbolic) Unilateral Declaration of Independence in Catalonia: Some Facts and Figures, ArgeliaQueral, University of Barcelona, November 30, 2018

are not based on ignoring the opinions of the people in Quebec. However, there will be negotiations regarding those who have the right to negotiate by making constitutional amendments in the future, concerning the unilateral separation of Quebec that is unconstitutional according to the Canadian Constitution³⁵.

The response of the constitutional courts in Spain and Canada is similar to that of the federal court in Iraq which saw the separation to be illegal in Kurdistan. The Spanish constitution went on to say that Spain is one nation and for this reason, it cannot be divided; and the Iraqi constitution confirms the unity of Iraqi people and land in Article 1 of the Constitution. The federal court explained this Article on November 6th, 2017 by stating that the Iraqi constitution does not permit any component of its federal system to separate (Article 116). The Federal Supreme Court in Iraq affirmed that the referendum is a violation of Article 116 of the constitution and confirmed its illegality and annulled all the outcomes resulting from it³⁶.

The success of the Kurds has led to continuous crises with the central government, and it is sometimes called an explosive time bomb at any time notably when there is a crisis between the regional and central government. Separatism comes to the surface whenever there is a political crisis and this, in turn, jeopardizes the rule of law and the constitutionality of the law and enters the country in two new conflicts, especially that the Iraqis fuel rapidly.

35 Judgement of the supreme Court of Canada, Reference re-secession Quebec, 20/8/1998, case number 25506, Constitutional Law court, Report (1998) 2 SCR217.

36 The Supreme Federal Court. 89-91-92-93 federations.2017. Impeachment of unconstitutionality of the current referendum in the region of Kurdistan pp.2-3. Septembre 25, 2017

Recommendations

Alternatives to constitutional amendments

The constitution-writing process takes normally years to be appropriate for the environment to be applied in. With regards to the Iraqi situation, Article 61 from the Law of Administration for the State of Iraq for the Transitional Period/Transitional Administrative Constitution of 2004 stipulated that the constitution should be written by no more than August 15th, 2005.³⁷ That was the result of the U.S. occupation and chaos ruling the country as a result of toppling the Iraqi state by dropping its official institutions namely the military ones. The result was a rigid constitution and a convulsive political reality that is open to regional and sectarian outrage.

The best solutions to respond to the young democratic change in Iraq today are not the constitutional amendments. There are two solutions which are:

1. the national dialogue to make gradual constitutional amendments to respond to the changing reality and the requirements of democracy and;
2. The enforcement of the law of democracy and identification and framing the specialization of the federal regions which would ensure the equality between the Iraqi people, according to the constitution.

The national dialogue represents the solution to get rid of the definition of the Iraqi constitution. Since Iraq is a federal state, the court then stands silent about the form of this federalism. Though this silence gives a space to organize it with laws according

37 Annabaa Information Network. Attitudes and Ideas. Saleh, B.H. The enforceable Iraqi constitution of 2005: the challenges and the opportunities for amendments (Article 1-2-3).

the requirements of reality, the weak national consensus created another crisis.

From its establishment, the Iraqi state has been a simple state. Imposing the alternative of the complex federal state at the expense of the simple state without identifying its federal form by Article 1 of the current constitution by responding to the Kurds' desire to accept the entrance to political life without the agreement of all Arab parties, has made federalism a source of conflict and argument till today³⁸. This situation aggravated the crisis, and the concept of federalism has become the synonym of separation not for Kurds whose leaders call for it in each political crisis or in case of not obtaining their rights. Calls for separation reached three southern districts which said that they would form a region in case their demands are not met. This indicates that the absence of cultural, administrative and legal awareness about the concept of federalism and its formation³⁹.

The will to make constitutional amendments requires political will and a national consensus between the political parties to reach a complete national dialogue. The need for a regional and international support, then, emerges to fulfill the national dialogue project with participation of all the Iraqi parties to sit on the table of dialogue to find solutions to the remaining crises and the amendments to be made after 15 years from changing the political system to meet the political, social and economic reality of the country and to achieve the rights and responsibilities accompanying the democratic change.

38 Annabaa Information Network. Attitudes and Ideas. Saleh, B.H. The enforceable Iraqi constitution of 2005: the challenges and the opportunities for amendments (Article 1-2-3).

39 Mahmud, M.A. (2010). Amending the constitution: The enforceable Iraqi constitution of 2005. 1st ed. Baghdad. P.86

What Iraq needs today is training people who are able to deal with the federal system, as Iraq, since its establishment is a simple state and the federal change requires legal bases and administrative systems to deal with the modern federal reality⁴⁰. The partial success achieved by the region of Kurdistan came after a long civil war and later a partial independence from the central government in the 90s; and this led to the conceptualization of the notion of federalism or the internal administrative authorities, in addition to the support of the United States to create a safe territory for the Kurds in the 90s. The complex state as an alternative to the simple state has not been effective even in the region of Kurdistan, as federalism relied on represents a danger from time to time. It is not stable because of the problems between the regions and the central government, on the one hand, and the dissatisfaction of the Kurds and their refusal of the politics of the regional government, on the other hand⁴¹.

With regards to federalism, it is possible to resort to lots of alternatives which are:

- There should be committees and national dialogues that identify the specializations of the federal authorities. This alternative; however, could create other issues in the future and this should enter within the fact that the amendments update the socio-economic situation of the state; and these are rigid agreements but open to research and development;
- There should also be an identification of the specializations and authorities of the governorates to reduce the function, intervention or entrance in complexities of legal and

40 Mahmud, M.A. (2010). Amending the constitution: The enforceable Iraqi constitution of 2005. 1st ed. Baghdad. P.88

41 Annabaa Information Network. Attitudes and Ideas. Saleh, B.H. The enforceable Iraqi constitution of 2005: The challenges and the opportunities for amendments (Article 1-2-3).

constitutional justifications between the region and the central government;

- The identification of the authorities of both the federal power and the central government reduces the dangers of dictatorship, especially that the Kurds and Shiites carry the fears from dictatorship from the past.

With regard to the distribution of natural resources, the latter are not the ownership of the region, and the central government manages them because they are the ownership of the Iraqi people and the coming generations and that the natural resources are not limited to oil and gas but include manufacture and other resources. Although one of the major principles of the constitution is to draw the future of the state, how the Iraqi constitution draws this future is not clear. Hence, all this ambiguity should be discussed within national dialogues and agreements that update today's development and the transitional stage change.

With regards to the temporal and unbiased blocking in the Iraqi constitution stipulated in Article 126 of the 2005 Constitution, the fundamental principles in Section 1 and the rights and liberties in Section 2 may not be amended except after two successive electoral terms (after eight years from the execution of the constitution) and this condition is no more present because eight years have passed. In addition, any amendment of the constitutional articles that could take away from the powers of the regions that do not fall under the exclusive powers of the federal authorities cannot be made except after the approval of the legislative power in the concerned region and the approval of the majority of its citizens in a general referendum⁴². This

42 The Iraqi: The professional Academic Magazines. Kasem, I. The amendment of the Iraqi constitution of 2005. Vol31/2012, p.17

paragraph makes it almost impossible to amend the constitution as the approval of the legislative power with an absolute majority on reducing the powers of the regions is difficult to obtain⁴³.

The Federation Council stipulated that Articles 48 and 65 should be enforced⁴⁴. The constitutional court insisted on the need for the legislative institutions to include in the decision 72 federations under the request of the parliament as explained in Articles 65 and 173. The constitutional court insists that these two articles complement each other with the issue of a law that regulates the Federation Council, its formation, its membership conditions and its competencies⁴⁵. The preparation for this council occurs through dialogues and discussions between all the concerned blocs, as it represents the complementary wing of the Parliamentary Council. The constitutional court instated that the federation council should be preceded by a preparation stage⁴⁶.

- Guaranteeing the peaceful succession of power and protecting the sovereignty of the law by the independence of the judiciary and the equilibrium between the powers, in addition to clarifying the concept of constitution that came to strengthen the relation between the people and the state and not to oppress them. Citizenship is basically a relationship between the state and the individual and this leads to the preservation of the rule of the law and human rights.

43 The Iraqi: The professional Academic Magazines. Kasem, I. The amendment of the Iraqi constitution of 2005. Vol31/2012, p.17. Retrieved from <https://www.iasj.net/iasj?func=fulltext&aId=74215>

44 Samouk, I. *The Federation Council was wounded in the Iraqi Constitutional system*. August 26, 2018

45 The Iraqi Monitor. The Constitutional Court calls for the formation of the Federation Council. January 17, 2018

46 The Republic of Iraq. The Federal Supreme Court. Vol 72. The federation of 2012

- Relying on the national dialogues in which all the Iraqi people participate; and to prove its success, there could be future constitutional amendments.
- There should be a subjective and professional control of the constitutionality of the law.
- The last solution to overcome the current political crisis is the peaceful resort to political techniques through consultancies and dialogue between the political parties. With regards to the results of the elections, it is observed that no bloc achieved the majority that guaranteed its power in the parliament though the government was based on a political compromise. This means that the national dialogue is the best solution to handle the problem of federalism and the Kurdish crisis with regards to all that was achieved in the previous period, despite the faults that could be amended and corrected in the future.

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**Egyptian civil society as one of the founders
of the democratic change
The constitutional moment begins now**

Iman Mohamed Rashwan

Introduction:

Civil society does not have a standard definition in comparative political jurisprudence. Its concept and change have developed and evolved over time and ideologies. However, in this paper, we will define Civil Society as non-governmental, non-military and non-religious organizations carrying out a range of activities held to achieve specific goals, in a voluntary and independent manner¹.

When society decides on a constitutional change after a revolution against dictatorship, in order to achieve democratic transformation, it is possible to imagine several parties rushing to draft this new “constitution”¹. These parties can be divided into three main groups: the first group consists of bodies and parties that will be directly assigned to drafting the Constitution . The second group represents the original source of the Constitution authority which is embodied by people or individuals, whereas the third group consists of the bodies other than the ones listed in the first group, including civil society organizations. The latter will serve, on the one hand, as a link between the first and second groups during the process of Constitution drafting, and, on the other hand, between the different approaches that each group adopts separately. This

¹ Brandt Michelle and others, Constitution and constitutional reform : practical options (interpeace 2012) 78-79 .

role will reduce the usual shortcomings that are taken on by parliamentary democracy in general, namely the representation of the elected deputies who have social empowerment to achieve influential voices while the voices of minorities are not represented or marginalized², as a way to draft a comprehensive consensus constitution valid for all groups of society to ensure its sustainability and its application in the future, and thus achieve the goals of democratic change.

However, the dilemma facing the achievement of such a role is that dictatorships tend to restrict individual and social freedoms, including freedom of expression, freedom of assembly and freedom of association and block the way to any bodies such as civil society organizations, the formation or practice of political parties or any other public organizations that would threaten the adopted autocratic governance. Therefore, civil society, in such a situation, is often in a state of weakness and disintegration that does not allow them to perform their expected role³. However, how can civil society overcome this dilemma?

This policy paper presents the Egyptian case as an example of the role of civil society in the process of constitutional change within the scope of democratization after the revolution of January 25th, 2011. It examines the role of civil society following and after the events of the revolution, and presents the results of this analysis and sets out the suggested policies to deal with the dilemma faced by civil society itself. It has

2 Samir Daoud Selman The representation of the deputy to the voters under the parliamentary system (First Edition , National Center for Legal Publications 2015) For more information see :

3 Applied studies show how different models of autocratic governance, and the disparity between the duration and severity of different societies under these regimes, can lead to varying degrees of diminishing civil society influence and weakness in the role of democratization . For more information see : Michael Bernhard and Ekrem Karakoc, <Civil Society and the Legacies of Dictatorship> (2007) 59 World P 539.

been noticed that external factors influencing the work of civil society in Egypt, such as the tight legal and political framework before and after the revolution, are not the main obstacles to the dilemma. Rather, the internal policies adopted by civil society organizations themselves have influenced and still affect the role of civil society. Thus, we are suggesting a set of recommendations addressed to the Egyptian civil society itself to be taken into account while dealing with the current, expected and future constitutional changes.

The paper follows a qualitative approach to practical studies, a case study, using rational or logical selection methodology “Rational Choice”⁴ in order to analyze the sources of the issue and suggest solutions, as well as use realistic arguments drawn from the case study and similar situations. We first start by referring to the background of the status of Egyptian civil society and the way it deals with the constitutional reality before and after the revolution. Then, we display the policies adopted during that period and the policies suggested by other researchers.

Background:

First: the Egyptian civil society before, during, and after the 2011 revolution :

Based on the above-stated definition of civil society, this concept in Egypt includes a combination of civil mechanisms, trade and work unions, the Judges’ Club, business associations, commercial and industrial chambers, charities and human rights organizations, as well as any non-partisan, independent, non-profit, non-religious and non-military organization.

⁴ For more information about rational / logical selection theory and its applications to constitutional and political sciences, see: Dennis C Mueller, *Public Choice III* (Cambridge University Press 2003).

The history of Egyptian civil society dates back to the establishment of the modern state under the reign of Muhammad Ali in the 19th century, as it formed a diverse civil elite of Egyptians and foreigners that soon emerged from civil entities such as the Greek Association (which was the first civil society in Egypt in 1821) , the Bar Association formed in front of Common courts, non-profit organizations, as well as the first trade union made up for tobacco workers in 1899, and some feminist movements. The roles of civil society organizations from the national struggle against colonialism, the evangelization of religious movements, the performance of charitable activities, demanding the rights and freedoms of a particular community or citizens in general under repressive regimes⁵, have been of great importance in the history of Egypt.

Since the eighties, and as a result of the absence of the state, the Egyptian society has witnessed disruption in the presence of civil society organization. Most of these organizations focused on charitable activities and areas of health and social care. Business organizations flourished thanks to the openness to economic changes. Human rights organizations began to expand only by the end of the 1990s. The geographic distribution of these organizations did not meet the needs of different regions. In the third millennium, issues of human rights violations, political participation, demands for free and fair elections, fight against poverty and labor protests began to gain interest. Movements such as “Kifaya” emerged in 2004 and paved the path to the Youth Movement of April 6th, the National Assembly for Change, and “ We are all Khaled Said movement”, in addition to other movements that focused on the political and partisan life in Egypt fighting against the violations

5 Qandil, Amani , Civil society and state of Egypt from the 19th century until 2005 (First Edition, Mahrousa Center 2006).

of the system⁶. These movements participated in creating the atmosphere and pushing it towards the point of the January 25th revolution, 2011⁷. The electronic media adopted by these movements, especially in gathering people for the events of January, contributing to a qualitative change in the activities of civil society organizations⁸.

During the revolution and the transitional period, the activities undertaken by the Egyptian civil society organizations focused on protest movements and the legal and economic relief of the victims while the foreign organizations' orientations focused more on human rights activism, the organization of forums for the constitutional and political process, and the establishment of a number of research centers on issues related to democratic change⁹, over the transition period and the amendment of the Penal Code following the revolution of June 30, 2014, through 2016 which witnessed the issuance of the new law regulating the work of NGOs and institutions in Egypt. Besides, more focus has been put on community organizations in general and foreign organizations in particular¹⁰.

6 Dessouki, Sahar Ibrahim, 'The Future of Civil Society after the January 25 Revolution' (2014) 43-56 <http://arab-unity.net/up/uploads/files/unity-471651f856.pdf> >.

7 The pervious reference 55-56.

8 For further information see : Aljamusi, Jawaher , The virtual and the revolution : the role of the Internet in the emergence of an Arab civil society (First Edition , the Arab Center for Research and Policy Studies 2016).

9 Ibrahim 56-69

10 For more information on the evolution of the legal framework governing the civil work in Egypt See : Abdul Hamid (n 1).

Second: the role of Egyptian civil society organizations in constitutional changes:

To the best of the author's knowledge, there are no references that systematically address the role of civil society organizations in realizing constitutional changes in Egypt before the 2011 revolution, which means passing through all constitutions and constitutional amendments from the 1923 Constitution under the monarchy¹¹ and the amendments of the 1971 Constitution in 2007. The reason is, as we have already mentioned in the previous title, the limited overlap of Egyptian civil society with the general political situation in the country before the 2011 revolution. The Egyptian civil society is closely associated with the constitutional issues at those times. It was limited to some human rights organizations and women's organizations expressing their protests and demands in order to issue or activate some individual and political rights and freedoms such as ending the state of emergency, ensuring the integrity of elections, independence of the legal system by organizing press conferences whenever possible and within the limits available under successive political systems; and dealing with this rarely referred to the Constitution itself, but usually related to law and the procedure applied¹².

During the period starting from 2011 until the time of writing this paper, the manifestations of the overlap of Egyptian civil society with the constitutional changes can be listed as follows:

11 The Royal Order of November 27, 1824 is the first basic law in modern Egypt to govern the general policy of the state. See : < the history of the Egyptian Constitution < (SIS) <<http://www.sis.gov.eg/section/70/2128?lang=en> >.

12 For more information, see : Negad El-Borai, <Civil Society and Human Rights in Egypt Egyptian-Style Waltz 2004-2009> (United for Law , 2013) 36 <[http://www.ug-law.com/downloads/Civil Society and Human Rights in Egypt-eg.pdf](http://www.ug-law.com/downloads/Civil_Society_and_Human_Rights_in_Egypt-eg.pdf)>.

- Amendments of March 19th, 2011:

The overthrow of the 1971 Constitution was one of the demands of the protesters during the events of the revolution as it represented a cornerstone of the political system that they wished to overthrow. The sources do not show that civil society organizations took stand in this regard, but they took position regarding the constitutional amendments put forward by the military committee, which took over the affairs of the country after President Mubarak stepped aside and issued a subsequent constitutional declaration in February 2011, which declared in one of its articles the decision to overthrow the 1971 Constitution and the Council's intention to form a committee to amend some of its Articles and issue a constitutional declaration of the referendum to rule during the transitional period¹³. Accordingly, the Supreme Council of the Armed Forces (SCAF) decided to set up a Committee composed of legal and technical experts, in which civil society representatives were absent though¹⁴. The Committee amended a number of Articles of the former Constitution, which was put forward to the people's referendum later and issued a constitutional declaration after adding other articles¹⁵. There were disagreements about these constitutional amendments, and even though the civil society did not participate in drafting them, their reaction was divided into two viewpoints. The first step consisted of raising awareness movements, urging the population to participate and vote, explaining the amendments and campaigns to promote

13 Al Maarefa, 'Constitutional Declaration in Egypt 2011' <http://www.marefa.org/index.php/The_Declaration_The_Constitution_in_Egypt_2011>.

14 Adel Al-Darli Nashwa Al-Hofi Munir Adeeb Hani Al-Waziri, « Human » Chairman of the Committee to amend the Constitution and the selection of brothers among the members < Egyptian Today (2011) <<https://www.almasryalyoum.com/news/details/113986>>.

15 Al Maarefa (n 14).

or oppose these amendments¹⁶. The second step consisted in supporting or opposing the suggested amendments. The opposition was due to the rejection of the legitimacy of the 1971 Constitution, the lack of representation of the Committee appointed to the Egyptian people, the lack of discussion over the changes, and the objection to the way put forward for the transitional period which would accelerate the parliamentary elections before the adoption of a new Constitution. Those who supported the amendments, on the other hand, wished to accelerate the transition process, the handover of power to civilians and sending the armed forces back to barracks¹⁷. The efforts of civil society organizations during that period also focused on monitoring the integrity of the voting process¹⁸.

- Successive constitutional declarations :

The previous constitutional declaration was followed by four declarations amending and complementing the Constitution, in which the civil society did neither take part nor submit a referendum. The first of these declarations was on September 25th, 2011 issued by the Supreme Council of the Armed Forces to amend the ratio of individuals in the lists of the ruling of electoral system for the planned parliamentary elections, after most political forces opposed the electoral law,

16 Mahmoud Hussein, <Hours before starting the referendum on constitutional amendments.. SMS and banners in the streets between “ Yes “ and “ No “ .. and awareness campaigns calling citizens to participate and vote ‘ Al Youm Al Sabaa (2011) <<https://www.youm7.com/story/2011/3/19/Pre-Hours-From-Beginning-Referendum-On-Amendments-Constitutional-Ignition-War/> 372396>.

17 Hammam Sarhan , ‘ Constitutional Amendments in Egypt between Proponents, Opponents and Abstainers < (Swissinfo.ch , 2011) <<https://www.swissinfo.ch/ara/Amendments-constitutional-in-Egypt-between-supporters-and-opponents-and-abstainers/29744746>>.

18 Abdelhamid (n 1).

which had already approved the parity between the individual system and the lists system. The second is the declaration issued also by the Supreme Council of the Armed Forces on November 19th, 2011 and meant to regulate some rules governing the vote of Egyptians abroad. The third is the complementary constitutional declaration issued by the Supreme Council of the Armed Forces on June 17th, 2012, prior to the presidential elections to maintain more powers and competences for the Council in the face of the new president, as well as to counter the effects of dissolving the elected parliament under the ruling of the Supreme Constitutional Court. The latest is the decision issued by former President Mohamed Morsi to cancel the complementary constitutional declaration and expand some of the prerogatives granted to the President of the Republic¹⁹. As stated above, the role of the Egyptian civil society at that stage was limited to denouncing, protesting, issuing data, approving and recommending some issues, depending on the different tendencies of the components of the society at that time²⁰. The Judges' Club played a major role in opposing the declaration because of its direct engagement with the judiciary system.²¹

- 2012 Constitution:

The Constituent Assembly of the 2012 Constitution invited a number of civil society organizations and human

19 Al Maarefa (No. 14)

20 Ahmed Hassan, ' Association of Revolution Victims announces its participation in the demonstration of millions rejecting the constitutional declaration ' on Al Yawm Al Sabaa (2012) <<https://www.youm7.com/story/2012/6/19 / Association - Injury - Revolution - Announces - Participation - in - demonstration of millions - Refusal - Declaration - Constitution / 710343>>; Abdul Hamid (n 1); ' The Egyptian Constitution in the Interim Period < (Cairo Institute for Human Rights Studies)) <<https://cihrs.org / Constitution - Egyptian - in - period - transition />>.

21 'June Revolution Part II : Justice in the reign of Morsi <(Arab Institute for Studies , 2013) <<http://studies.alarabiya.net/ The Justice - in - the reign - Mursi - how - collapsed - state - law - Part - II >>.

rights organizations, in particular, to hold meetings with them regarding the drafting of the new Constitution in July 2012, shortly after former President Mohamed Morsi assumed power in June 2012²². The positions of these organizations from participation were divided as follows:

- * Some organizations decided to decline the invitation and boycotted the Assembly by not recognizing its legitimacy, as the Assembly shall be considered as invalid after dissolving the parliament that formed it; and given that President Mohamed Morsi at that time gave electoral promises to reshape it to represent all the Egyptian spectrum.
- * Other organizations accepted the invitation, but questioned the usefulness and intentions of these calls and meetings, as they were carried out by the Public Relations Committee of the Constituent Assembly and lacked clarity regarding the role and prospects of these organizations as well as the field of materials and topics under discussion²³.
- * In the midst of the process of the Constitution drafting and the leaked new drafts and new amendments to the suggested text of the Constitution, and after the issuance of the final draft and call for a referendum several statements came out from civil society organizations denouncing that the Constitution did not represent all Egyptians²⁴. Some organizations have also tried to explain the new constitution to help respondents determine their positions²⁵.

22 ‘ After the presence of its representatives to the Constituent Assembly hearing: Human rights organizations express their fear of the seriousness of the community dialogue on the post-revolutionary constitution ‘(Cairo Institute for Human Rights Studies , 2012) <<https://cihrs.org/Organizations-human-rights-show-fear-of-over-serious-a/>>.

23 The previous source

24 Mohamed Hajjaj , Hani Othman , ‘ Civil Society rejects the draft constitution and constituent formation and Morsi’s dialogue ‘ Al Yawm Al Sabaa (2012) <<https://www.youm7.com/story/2012/10/23/civil-reject-draft-the-Constitution-and-the-formation-the-founding-and-dialogue-Morsi/826025>>.

25 Abdelhamid(n 1).

There is no single source that combines the various drafts issued by the Constituent Assembly for the 2012 Constitution. The number of amendments made from the preliminary draft until the final draft, the issuance of last minute amendments without discussion among the members of the Assembly, with a large number of withdrawals and boycotts and, in some cases, misinterpretation of drafts, made it difficult to compare them. Therefore, we will try to make comparisons between the different versions of these drafts and their impact on the attitudes of civil society and their interaction, depending on the amount of resources available in this regard as follows:

First: topics on which civil society organizations submitted proposals at the beginning of the Constituent Assembly:

* One of the most important proposals include the emphasis on ensuring that the new Constitution guarantees freedom of the press, the media, the circulation of information and the avoidance of loose structures that would enable the restriction of freedoms and the lifting of administrative control²⁶. Initial drafts were suggested as follows: “guarantee of the freedom of press, printing, publishing and other media as well as banning censorship over any published materials.” The Syndicate of Journalists opposed such drafting, held its general assembly and withdrew their representative from the Constituent Assembly²⁷.

26 After the presence of its representatives to the Constituent Assembly hearing : Human rights organizations are concerned about the seriousness of the community dialogue in the post-revolution constitution '(n 23).

27 A member of the syndicate violated this decision with the consequent disciplinary consequences . See : Ghali, Mina , < Mamdouh Wali's Arrest: violated the decision of « Journalists » in the presence of a constituent Brotherhood constitution < Al Masry Al Youm (2016) <<https://www.almasryalyoum.com/news/details/877385> > .

The rejection of the statement was due to the fact that it did not meet the requirements set at the proposals of the union, that shed light on several points, including the prohibition of censorship on newspapers and media, the abolition of crimes of publication and the cancellation of penalties relating to freedom, independence of state-owned newspapers and media from all authorities political parties and the authority of the Ministry of Information and the Shura Council²⁸. However, the final text included a number of words and statements meant to restrict, cancel and confiscate newspapers by a Court order, which was not the case in the 1971 Constitution, as it is stipulated in Article 48 “freedom of the press, printing, publication and mass media shall be guaranteed”. The media shall be free and independent to serve the community and to express the different trends in public opinion, in accordance with the basic principles of the State and society, as well as to maintain rights, freedoms and public duties, respecting the sanctity of private lives of citizens and the requirements of national security. The closure or confiscation of media outlets is prohibited except with a court order. Control over the media shall be prohibited, with the exception of specific censorship that may be imposed “in times of war or public mobilization.” Moreover, the organizations criticized, the withdrawal of Article 12 that was in a previous draft after the official spokesman of the Muslim brotherhood and a member of the Constituent Assembly announced the rejection of that text. Some civil society organizations also criticized the recent text of the Constitution relating to the regulation of the media, including digital media, in Article 49, while guaranteeing its right to be established upon notification.

28 Amr Hassan, Mohammed Gouhary , « Al - Ahram « publishes the emergency general assembly of the Journalists < Syndicate resolutions rejecting the decisions of Morsi and the draft constitution < Al - Ahram (2012) <<http://gate.ahram.org.eg/News/276600.aspx> >.

* Reference to the issue of legal regulation in the Articles relating to peaceful demonstrations (Article 50), and the building of houses of worship (Article 43) which was recurrent and raised disapproval from such organizations ²⁹.

* One of the controversial principles and disagreements between what has been suggested and what has emerged from the Constitution are the Articles regulating freedom of association and trade union freedoms, even though these organizations stressed the need to respect them during the drafting stage³⁰. However, some human rights organizations expressed harsh criticism of the Constitution without clarifying what they were specifically opposed to. The claim was that these articles refer to the spirit of State security and the imposition of prior restrictions on civil action that even Mubarak's regime did not dare make³¹. However, with reference to Articles 51, 52, 53 and 54, regulating these issues, we can notice a prior reservation about these organizations with regard to the law in some aspects of their organization, with the exception of, first, a proposal suggested by a member of the April 6th Movement to add « political groups and Non-partisan movements » to the text of the suggested article in the early draft, which was issued in August 2012. Article 18 stipulates that “Citizens have the right to form associations and parties as soon as the notification is prescribed by the law and does not restrict the freedom of forming or belonging to them. Citizens have the right to organize public meetings, processions and peaceful demonstrations based on the notification regulated by law, and shall be considered

29 Previous reference

30 After the presence of its representatives to the Constituent Assembly session: human rights organizations are concerned about the seriousness of community dialogue on the post-revolution constitution '(n 23).

31 'After the presence of its representatives to the Constituent Assembly hearing: Human rights organizations express their concern about the seriousness of the community dialogue on the post-revolutionary constitution '(n 23).

as a legal entity and shall not be dissolved except by a judicial decision “ in order to provide legal guarantee for the formation of political movements that do not want partisan activity, that were not recognized by Egyptian law at that time³² . The final version of the Constitution was issued, in this regard, including Article 50 , which states « Citizens have the right to organize public meetings, processions and peaceful demonstrations based on the notification regulated by law, may act freely and shall be entitled to legal entity ..». We conclude that this suggestion was, somehow, taken into consideration. The second was the suggestion of the Journalists’ Syndicate to withdraw the dissolution of trade union by declaring their independence³³ , which was not reflected in the final draft of Article 52.

* Civil society organizations demanded ensuring equality between women and men, respect for Egypt’s accession to international treaties in that regard and the stipulation of such principles explicitly in the text of the Constitution³⁴ . However, in one of the early drafts issued in August 2012, Article36 stipulates that “the state must take all legislative and executive measures to entrench the principle of equality between women and men in the political, cultural and economic and social areas without prejudice to the provisions of Islamic law. The State must provide women with maternity and childhood free services and ensure social, economic, health protection as well as inheritance rights. The State must ensure the reconciliation of women’s duties and rights towards the family and their work in society. “This article raised sharp criticism from several parties

32 The constitution of the religious state in Egypt The new constitution restricts public freedoms, human rights and civil society A constitution that protects freedom is required’ (n 30).

33 Al Gouhary (no. 29)

34 After the presence of its representatives to the Constituent Assembly session: human rights organizations are concerned about the seriousness of community dialogue on the post-revolution constitution ‘(n 23).

and civil society organizations and political fronts, especially women's organizations, mainly due to the phrase "the provisions of Islamic law" which they deemed as a violation of the principles of equality. As the second article of the Egyptian Constitution stipulates «the principles» of Islamic Sharia as «the source» of the main legislation, leaving to the Supreme Constitutional Court the right of interpretation in this regard, it enshrines a different term, "the provisions". These provisions comprise vast boundaries and a long tradition of jurisprudence in different schools, making it problematic and disturbing, especially with regard to the issue of equality between men and women³⁵. This phrase disappeared in the final text of the Constitution and the Article on equality between men and women, in particular also disappeared.

* Indeed, the drafts that were issued before the final draft issued on October 14th, October 24th and November 11th included an article stipulating that "citizens are equal before the law in public rights and duties without discrimination on grounds of sex, origin, language or religion or belief, opinion or social status or disability". The article inserted in the final project under No. 33 states that "citizens are equal before the law in public rights and duties without discrimination"³⁶, thus, raising controversy and opposition about the secret of this recent change, which undoubtedly violates the principle of equality, not only between the sexes, but in absolute terms. The idea of equality shall always be a top priority for human rights organizations and civil society organizations.

35 ' Statement of political forces on Article 36 of the rights and freedoms '(Change, org, 2012) <[https:// www.change.org/p/ Statement - forces - political - rejected - Article -36- for - equality - of - door - rights - and freedoms - statement - forces - polit i cal - of - Article -36- of - door - rights - and freedoms](https://www.change.org/p/Statement-forces-political-rejected-Article-36-for-equality-of-door-rights-and-freedoms-statement-forces-political-of-Article-36-of-door-rights-and-freedoms)>. Al Amid (n 36).

36 Jabir Nassar, " The Hidden parties that Make the Constitution of Egypt ", who-changed the Texts of the Draft Constitution' Al Watan Newspaper (2012).

*These organizations also demanded the inclusion of the new Constitution to ensure the independence of the judiciary system from the executive authorities, and in particular, the Supreme Constitutional Court, by not interfering in its formation, and prohibit the powers of inspection of its members to the Supreme Judicial Council³⁷. However, the drafts issued on 14th and 24th of October included provisions authorizing the President of the Republic to appoint members and the President of the Court by a decision of his choice among a number of candidates without requiring the approval or even the opinion of the members of the General Assembly of the Court. The November 11th draft did not refer to the judiciary system; and the final version of the draft appeared under Article 176 and 233 in the Transitional Provisions section. The first Article was to determine the method of appointment without specifying it whereas the candidates can only issue the decision to appoint the President of the Republic. The second Article aimed at reducing the number of members of the Court without a convincing argument -a way to take revenge on the members at the time, as the court was the cause of the dissolution of the previous parliament, as previously illustrated³⁸.

* The right of a citizen to a fair trial has already been affirmed and has already been guaranteed by article 75 of the Constitution as well as the prohibition of military trials of civilians, which was not guaranteed by the Constitution as Article 198 stipulates that "... a civilian may be tried before military courts only for crimes that harm armed forces". This opens the door again to military trials of civilians for unknown reasons, determined by the laws without strict constitutional guarantees. The right to compensation for the errors of justice is also shown in a brief

37 After the presence of its representatives to the Constituent Assembly session: human rights organizations are concerned about the seriousness of community dialogue on the post-revolution constitution '(n 23).

38 Jaber Nassar , < Supreme Constitutional Court in the draft constitution between unwarranted hostility and unprecedented revenge < Al-Watan newspaper (2012)).

and general statement in article 35, which stipulates that “the law regulates the provisions of entitlement to compensation and performance of imprisonment... “. Finally, this Article puts restrictions on the declaration of the state of emergency and on the powers of the executive authority, and limits the justification for the imposition of parliamentary authority. Article 148, however, granted the President of the Republic broad prerogatives to declare the state of emergency and extend it by requiring the approval of the “majority” of the parliament, through a vague word which does not specify what is meant by “majority”. The interpretation of absolute majority was “50% + 1” rather than the supposed two-thirds majority; and this is likely to be such a dangerous matter. As for the organization of the situation, the law is entrusted with it.

* Focus on the economic and social rights that formed the core of the demands of the revolution of January 25th, especially those newly created rights and the rights that were missing in the 1971 Constitution such as the right to housing, water, land and food sovereignty, and guaranteeing the rights of minorities, women and people with special needs. The third section of the second chapter of the Constitution was devoted to economic and social rights³⁹, and many of its articles included the word “committed”, although some articles are too general or broad and do not carry the meaning of detailed obligation such as Article 68 regulating the right to housing and “adequate housing, clean water and healthy food, is guaranteed.” The State adopts a national housing plan based on social justice, the promotion of self-initiatives and housing cooperatives, and the regulation of the use of state lands for urban purposes. Likewise, the State also “preserves the rights of generations...”.

39 The previous reference

* These organizations also called for the independence of religious institutions from political bodies⁴⁰. However, one of the drafts issued in September 2012 gave al-Azhar a new role in the basic elements of the state. Al-Azhar shall be the final reference, as far as the interpretation of the principles of Islamic law is concerned. This initiative grants Al-Azhar a political role and makes it the highest institution in the hierarchy of the parliament which is supposed to be the democratically elected entity. A compromise has been reached in that regard in the final draft of the Constitution in Article 4 that stipulates that "... the opinion of the senior scholars of Al-Azhar Al-Sharif is taken into consideration in matters related to Islamic law...". Although this renders Al-Azhar's opinion not mandatory, it maintains its political and legislative role.

Second: some other reservations that are not related to the suggestions of civil society organizations included:

*A number of jurists objected to the negligence or neglect of the Constituent Assembly to the rights of workers and peasants. This objection came to the fore when the head of the Peasantry union left the Constituent Assembly. The impact of these objections on the final draft of the Constitution has not been reflected in the fact that the provisions of Articles 15, 16, 64 and 67 of the Constitution are too general and broad and have no direct obligations to the State towards these two communities nor address the problems they face⁴¹. Article 27 does not increase the representation of elected workers

40 Previous reference

41 Jaber Nassar, 'The miserable and humiliating situation of workers and peasants in the draft constitution' Al Watan newspaper (2012); 'At the Ibn Rushd Salon in Cairo Center: The Next Constitution is Short-Term and the Founding Committee Lost Its Legitimacy' (2012) <[https://cihrs.org/- Saloon-Ben-Rushd-Cairo-Maastricht-A />](https://cihrs.org/-Saloon-Ben-Rushd-Cairo-Maastricht-A/).

who were not adequately protected under the regime of Mubarak⁴².

*The articles on the powers of the President of the Republic mentioned in the November 2012 draft Constitution were also rejected. An extension of the powers of the President that had not been acknowledged until the 1971 Constitution has been noted. It also covered the authorities of the government, the Parliament and the judiciary authority and threatened the independence of the supervisory bodies. However, these articles (44 and 45) were adopted in the final project which was released on November 30th, 2012.

* Some organizations also objected to restricting the freedom to practice religious rites exclusively to the three monotheistic religions in Article 8 of one of August 2012 drafts which stated that “freedom of belief and practice of worship is guaranteed and the State ensures the freedom to establish places of worship for the practice of divine religions as defined by law in a manner that does not violate public order “,⁴³ However, article 43 contained almost the same content, with the exception of the deletion of the words” that does not violate public order”.

* These organizations also criticized the successive drafts of the Constitution accusing it of adopting a religious sectarianism. Article 220 of the draft constitution, published on the official website of the Constitution Committee on the drafting of the Egyptian Constitution, stipulates that “the principles of the Islamic Shari’a, including its comprehensive evidence and its fundamental and jurisprudential rules and sources relating to the application of Sharia and raising the concerns of non-Muslim

42 Nassar, ‘The miserable and humiliating situation of workers and peasants in the draft constitution’ (n 50).

43 Al Amid (no. 36)

minorities and liberal and secular forces.⁴⁴ . However, the article appeared in the final draft of the Constitution under No. 119.

* Finally, they criticized the lack of transparency and serious engagement with the proposals of civil society organizations, and the imbalance of representation in the Assembly between the communities and the absence of expert, ⁴⁵, reflecting the absolute evaluation of civil society organizations themselves to participate in the drafting of that Constitution.

- **2013 interim constitution:**

After the manifestations of June 30th, which called for the departure of President Mohamed Morsi and the amendment of the Constitution of 2012 and the participation of many civil forces, the armed forces responded to the demands of the demonstrators, and already been deposed former President Mohamed Morsi and the appointment of then President of the Supreme Constitutional Court Adly Mansour as interim president and abolish the 2012 Constitution, Road to the new transition.⁴⁶ . Interim President Adly Mansour issued a constitutional declaration regulating this stage, but he was criticized by various forces of civil society and political currents for not consulting these forces in drafting it and not

44 Constitutionalisation of the religious state in Egypt The new constitution restricts public freedoms, human rights and civil society Constitution is required to protect freedom, '(N 30); 'No for a Constitution that Reproduces Political and Religious Dominance Human rights organizations reject draft constitution' (Cairo Institute for Human Rights Studies, 2012).

45 'Constitutionalisation of the religious state in Egypt The new constitution restricts public freedoms, human rights and civil society Constitution is required to protect freedom, '(N 30)

46 Egypt: Rebel Movement Refuses New Constitutional Declaration (DW, 2013) <<https://www.dw.com/en/Egypt-Movement-Rebellion-Refusal-Declaration-Constitutional-New/a-16939043>>; 'The Salvation Front in Egypt rejects the Constitutional Declaration of the Interim President' (REUTERS, 2013) <<https://ara.reuters.com/article/topNews/idARACAE9B244R20130709>>.

guaranteeing some of the rights and demands that represented part of the objection to the 2012 Constitution⁴⁷.

- **2014 Constitution** ⁴⁸:

Article 28 and 29 of the Constitutional Declaration of July 8th, 2013 stipulates that: “a decision of the President of the Republic within a period not exceeding fifteen days from the date of the announcement shall be made up of a committee of experts comprising two members of the Supreme Constitutional Court and the Commission of Commissioners, two judges of the State Council, four judges of the State Council, four professors of constitutional law at Egyptian universities, the Supreme Councils of the Judiciary and the judiciary authority select their representatives, and the Supreme Council of Universities elects professors of constitutional law. The committee is entitled to suggest amendments to the 2012 constitution, which will be terminated within 30 days from the date of its formation. The decision issued by the committee shall determine the place of the meeting and the rules of organizing the work thereof.

The Committee provided for in the previous Article shall suggest the constitutional amendments to a committee of fifty members representing all sectors of the society, its sects and population groups, in particular parties, intellectuals, workers, peasants, members of trade unions, qualitative unions, national

47 ‘ Egypt: Rebel Movement Refuses New Constitutional Declaration (DW, 2013) <<https://www.dw.com/en/Egypt-Movement-Rebellion-Refusal-Declaration-Constitutional-New/a-16939043>>; ‘The Salvation Front in Egypt rejects the Constitutional Declaration of the Interim President’ (REUTERS, 2013) <<https://ara.reuters.com/article/topNews/idARACAE9B244R20130709>>.

48 For reference to the texts of the minutes of the work of the Committee of Ten and the Committee of the fiftieth and the drafts issued by them, which was a reference to this section see: ‘Constitutional Documents’ (Legal Publications) <<https://manshurat.org/taxonomy/term/1>>.

councils, Al Azhar, Egyptian churches, armed forces, the police and public figures. Including at least ten young men and women, each of whose representatives is nominated, and the Council of Ministers nominates public figures. The Committee shall finalize the final draft of the constitutional amendments within sixty days from the date on which the proposal is submitted to it, during which it undertakes to submit it to the community dialogue. The President of the Republic shall issue the necessary decisions to form the Committee and determine its place of residence. The Committee shall determine the rules governing its work and the procedures to ensure the community dialogue on amendments.

Accordingly, the participation of civil society in the process of drafting the 2014 Constitution has been guaranteed from the outset by virtue of the Articles of this Declaration. After the above mentioned candidates submitted their memberships, according to the criteria announced by the Presidency of the Republic, the President of the Republic issued a decision for the year 570 of 2013 to form the 50th Committee, which included 50 original members and 49 reserve members, including representatives of the January 30th revolution, Egypt writers' union, Arts' union, Fine Arts' union, Trade Unions, the Federation of Chambers of Commerce, the bar association, the board of engineers, union of journalists, the chambers of tourism, the Federation of Egyptian students, General Federation of Associations and NGOs.

In order to monitor the impact of civil society representatives both within and outside the Commission, we follow the impact of the proposals and reservations made before and during the first meetings of their work on the final version of the draft Constitution which was the referendum, according to the following table, taking the following observations in consideration:

1. First, by examining the minutes of those sessions, we found that the representatives of these bodies and communities made

discussions using the same methods available to other members of the committee as one of the framers of the constitution, not as one of the external parties of the committee, as was the case with the previous constitution (2012)⁴⁹. By the end of the Committee's work at its last meeting, the members of the Committee had agreed to vote on what had been formulated without declaring reservations or withdrawals, so that the final text was issued on behalf of the Committee and by some members giving up their personal preferences in favor of the public's preferences.

2. The most important conflicts that took place within the Committee and witnessed threats of withdrawal affected the representatives of sects, parties and religious bodies, not representatives of civil society.⁵⁰

3. As for the objections or statements published in the media, our research did not result in any of these from the civil society organizations during the work of the Committee, although some reservations and claims were raised prior to the commencement of their work⁵¹. These reservations and claims will be incorporated in the following table.

49 Amr Wali, 'The most prominent crises faced by the 50th Committee to amend the Constitution' (Masrawi, 2013) <https://www.masrawy.com/news/news_reports/details/2013/11/28/140352/ The most prominent crisis-faced - The Commission - the fiftieth - amendment - the Constitution>.

50 Hamdi Debash, Al-Nour: We are considering withdrawing from the "50 Committee" if it attacks the articles of the Shari'a 'Al-Masry Al-Youm (September 17, 2013) <<https://www.almasryalyoum.com/news/details/319693>>; Mustafa Suleiman, 'Bayadi denies the withdrawal of churches from the Committee of the 50 of the Constitution, reports of the withdrawal of representatives of churches in protest against the passage of the interpretation of Islamic law' Arabic (Cairo, 6 November 2013) <<https://www.alarabiya.net/en/arab-and-world/egypt/2013/11/06/Al-Bayadi-Denies-withdrawal-churches-from-the-50-constitution-committee>>.

51 "Amendments to the Constitution" »Waiting for the criteria of choosing the « Committee of the fiftieth »'Egyptian Today (30 July 2013) <<https://www.almasryalyoum.com/news/details/242997>>; 'Before the hours of the announcement of the names of the members of the fiftieth committee to amend the Constitution .. "Beblawy": we will prepare a constitution that expresses the entire people .. Youth rescue: the existence of a substance to withdraw confidence from the President revolutionary demand .. Al Yawm Al Sabaa (August 27, 2013) <https://www.youm7.com/story/2013/8/27/pre-hours-of-ad-names-members-committee-fiftieth-amendment-constitution/1223007>>.

4. The table will be divided into the initial proposal or reservation, on the one hand, then the extent to which it is applied, on the other hand. This range is expressed as “0/1/5.” (I) to be adopted, and (v) to be adopted with the amendment.???????

5. It should be borne in mind that some of these claims were subject to differences between representatives of civil society themselves, including but not limited to, at the point of whether the articles of the constitution should be concise or detailed, Ahmad Khairi, representative of the National Union of Workers, discussed details, while Dr. Mohamed Attia al-Fayoumi, representative of the Chambers of Commerce, Youth Revolution June 30th front to the position of neutrality of one or the other, except with regard to the material of social justice, which must be detailed to control the grip on the legislator who cannot compromise within the Constitution, while some members expressed their confusion between one or the other because of the advantages and disadvantages in both options, but demanded the determination of the chosen approach from the beginning. This simple example shows the reader what we mean by the impact of this difference and the resulting confusion in measuring the impact of civil society participation on the Constitution building contradictions.

6. The minutes of the last session included initiatives by some representatives of civil society to explain the agreed-upon Constitution to the public and raise the awareness of the elected officials about its content. However, no sources were available on whether this was actually done or not.

Claims	Extent of application
Stipulation of civil state	5. Preamble
Equality between men and women	1 / Article 11, 53
Representation of women in the House of Representatives	5. / Article 11 0.180
Formation of regional committees to listen to the people	There are no sources
Social Justice	1 / Article 8 , 27 , 38 , 78 , 177 , preamble
Decentralization	1 / sect. III, chap. II, sect
Balance of powers	1 / Article 5 , Part V (Regime)
Lift the substantive and procedural immunity from the President of the Republic	1 / Article 159
Commitment to international standards in human rights	5. Preamble
Mandatory version of the articles of the Constitution	5. (In some articles only)
Proportion of workers and peasants in the House of Representatives	5 / Article 180,, 243
Exclusion of the religious basis of political action	1 / Article 74
Amendment of the composition of the fiftieth committee to include judges as indigenous members	0

To ensure the right of defense in specific terms	1 / Article 54
Non-determination of the work of the Committee of Ten	1
The definition of the farmer (who inherits the land and cultivate it and has no other source of livelihood and the electoral locality in the village of of his own)	0
Attention to Upper Egypt Sector	1 / Article 263
Committee for the maintenance of the Constitution	0
Liberalization of regulatory authorities	1 / Article 216
Extending representation, in the elections, to have broader geographical scope	5 / Article 102
Briefing of articles	5. (Some articles, other than others)
The selection of ministers for efficiency rather than on electoral quotas	5. Article 146
Add literacy to military service duties	0
The existence of a Shura Council	0
Adoption of the presidential system	5. Section V (governance)

Detailed Articles of the Constitution	5. (Some materials, other than others)
Text on the Egyptian, African, Arab, Islamic and Mediterranean identity	5. Article 47
Set specific goals for the state	0
Civilians subject to their natural jurisdiction without exception	5 / Article 204
Combining conciseness and details with the need to elaborate on the articles of social justice	1 / articles 8 , 27 , 38 , 78 , 177
Reference to the right to culture	1 / Article 48
Reference to the 1952 Revolution	1 / Preamble
Adopting the interpretation of Al-Azhar's document of what is meant by « principles of Shari'a », which refers to the interpretation of the Supreme Constitutional Court	1 / Preamble
Establishing a mechanism to follow up the implementation of the Constitution	0
Defining a modern economic system that guarantees equality of opportunities without equal outcome	1 / Article 9 , chapter II of Part Two
Focus on civil action and the people's initiatives	5. Article 75

Reference to and protection of the Nile River	1 / Article 44
Asserting freedoms in the Constitution and leaving regulation to the law	1 / Article 92
Stipulating the crime of torture and its non-statute of limitations	1 / Article 52 , 55
Establish a mechanism to hold the President accountable and withdraw confidence from him	1 / Article 161
Banning parties on ethnic or religious grounds	1 / Article 74
The absence of articles that allow for prohibition or exclusion	1
Taking into consideration the rights of Egyptians abroad	1 / Article 88
Stipulation on transitional justice	1 / Article 241
The retention of Article 2 of the 1971 Constitution and the repeal of Article 219 of the 2012 Constitution	1 / Article 2
Refusal of the Shura Council	1 / Article 245
Rejection of 50 % of the workers and peasants in the House of Representatives	5. Article 243 , 180
Rejection of the individual system in the elections	5 / Article 102

Representing the Syndicate of garbage collectors in the Commission of the 50 th	0
Ensure freedom of association	1 / Article 76
Respect international covenants and treaties	1 / Article 93
A new constitution does not adhere to the old amendment	5. / Article 246 , (formal form involves an amendment and the content involves the drafting of a new Constitution)

- Controversial constitutional status:

During the past few years and even the present moment, there have been repeated requests to amend the Constitution, especially the Articles relating to the term of President of the Republic, which opens the door to the number of renewals of presidency and allows the re-candidacy of current President Abdul Fattah al-Sisi for a third term. Some of these cases concerned transitional matters, such as reconciliation and transitional justice, and other articles that give the state specific periods to make some changes or to modify the situation of some communities, such as those affected by Nubia⁵². In this context, the importance of the role of civil society in the protection of the Constitution and its participation in promoting democratization and non-abortion is spreading. Some civil society organizations have already reacted

52 Eman Muhammad Rashwan, 'Egypt: THE STATE OF LIBERAL DEMOCRACY' in Richard Albert and others (eds), 2017 Global Review of Constitutional Law (2018) <www.bc.edu/cloughcenter>;

Fathia al-Dakhkhni, 'Amendments to the constitution extend the presidency debate is renewed in Egypt, supporters talk about' 'bombarded articles... and opponents refuse to compromise the gains of the revolution' Middle East (Cairo, 2018) <<https://aawsat.com/home/article/1370781> / Amendment - Constitution - extended - period - the presidency - controversial - renewed - in - Egypt>.

to and strongly criticized these actions because they violated principles that the Constitution itself is supposed to protect⁵³.

However, the current attempts are still decent and follow the same mistakes and misdeeds, in such a way that civil society forces resorted to limited statements of denunciation and condemnation, which are often scattered in lieu of organized actions, as demonstrated by the presentation of the map of the previous constitutional participation in this section of the research. Therefore, we move now to the extrapolation of the past and current policies of Egyptian civil society in its attempt to influence the constitutional transformations in the democratic transition, showing the gruesome and precious policies and results, and then moving on to alternative policies.

The current policies adopted by the Egyptian civil society in the process of constitutional transformation:

It is obvious from the previous presentation that the different sects of the Egyptian civil society have followed a set of policies in their interaction with the processes of constitutional change as part of the transition towards democracy. We have witnessed some changes

53 Will the year 2019 be the year of the Constitution amendment? (Egyptian position Facebook Page, 2019) <<https://www.facebook.com/almawkef.almasry/posts/-year-2019-year-amendment-the-Constitution-and-we-The-New-Year-Yasser-Rizk-President-of-the-Council/1652700778163146/>>; ‘George Isaac calls for opening the public sphere and applying the Constitution instead of talking about its amendment’ (The Civil Democratic Movement Facebook Page, 2019) <https://www.facebook.com/civil.democratic.movement2018/posts/2324954024457637?_tn__=K-R>; Mohammed Nasar, ‘After officially announcing whether the institution of “Protecting the Constitution” will succeed in addressing the demands? (Egypt, 2016) <http://www.haaretz.com/hasen/spages/115278.htm> - the constitution - in - addressing - demands - modify it?>; Searched ‘Tags’ for The President of the Republic should not prejudice the Constitution and comply with its provisions, an appeal by independent Egyptian human rights organizations’ (Cairo Institute for Human Rights Studies, 2019) <<https://cihrs.org/-President-of-the-Republic-Non-prejudice/Baldsto/>>.

to the existing political system and the available legal framework. However, some of the general features that we will present in this section can be summarized, accompanied by an analysis of their impact and imbalances. We, then, present some of the policies that have been put forward by other researchers. Recommendations submitted by the researcher to the Egyptian civil society as a constitutive of democratic transformation constitutions.

First: the implemented policies:

- The confrontation solution; demonstrations and protests: This solution does not seem feasible under the current legal restrictions. It is possible to say that these confrontational policies and protest movements have already proved fruitful because they were part of the protest that led to the January 25th revolution, with the consequent constitutional shift or the overthrow of the 2012 Constitution. Later, however, the psychology and priorities of the Egyptian people themselves have changed the possibility of repeating this under the current situation.

- Boycott and abstention: It is not considered as an effective weapon and absolutely not hated. Boycotting the election of President Mubarak because of the lack of a minimum of guarantees of fairness has further eroded the legitimacy of those already shaky elections, further paving the way for subsequent revolutions. However, this refusal to participate, if not accompanied by alternative solutions, is merely a withdrawal from the political reality that generates a vacuum in the role that should be played by these organizations, and makes the balance of the experience of public work almost non-existent in the original dilemma of research.

- Centralization in the capital: The geographical distribution of civil society organizations in Egypt is also suffering from

centralization and constriction within the capital and neglect of the areas which are most in need of human development⁵⁴ Even the initiatives that tried to get out to the regions were modest and lacked the necessary focus, restricting their impact which contributed to furthering isolation of the majority of Egyptians who have the real decision at the moment of constitutional entitlements.

- The use of electronic means: Over time, a number of civic social movements, particularly youth movements, have become increasingly aware of the effective role that the Internet, especially the media, can play in the conduct of their activities. In addition to its widespread presence in recent years, this electronic medium is characterized by its low cost, accessibility and continuity with the external and international community. However, the use of this medium is still limited and has not been exploited by these organizations. In the course of our research, we have noted the extreme restrictions of the electronic bibliography that monitors the activities and role of these organizations in the processes of constitutional transformations, so that in most cases it depends on mere informative statements scattered here and there without arrangement or clarification. Notwithstanding the loss of civil work organization and history and easy to follow and achieve the spread and credibility at the same time.

- Personification of the conflict: Many of the positions issued by civil society in Egypt have been characterized by severe shortcomings in several aspects, including the lack of clarity of the situation or of the detail or even lack of objectivity. As shown in the previous presentation, these positions were often biased towards specific parties or persons; their statements were purely personal, or their criticisms or suggestions were too general, emotional and unspecified.

54 Ibrahim (no. 7) 46

- Non-constitutional claims: In a related context, some civil society organizations, namely unions, have been unconstitutional, illegal, unenforceable, or infringing upon the rights of other communities. For example, the above-mentioned claim by the Journalists' Syndicate to the Constituent Committee of the 2012 Constitution prohibits vigorously censorship of the media or the prohibition of absolutely free sentences in crimes of publication, while it is conceivable that such methods would violate the inviolability of the private lives of citizens, promote hatred or incite direct edging on crime. Such attitudes exacerbate the political crisis over constitution building. These organizations may, equally, lose the sympathy of many communities.

- Constitutional chatter: The extent to which the constitutional document is detailed or narrowly disputed is both doctrinal and practical. However, the tendency for the so-called "constitutional chatter" is common in societies that lack trust among their members. The constitutional document then considers them a "mandatory tool" that enables them to guarantee their rights. A society that has suffered, for decades, from the absence of the rule of law and transparency, nor has it witnessed a pluralistic political life that allows various parties to identify, interact and create an inheritance of experience that gives them confidence in one another or in the democratic system, is expected to suffer from this crisis of confidence and thus tend to favor details in their constitutional document.

Second: alternative suggested policies :

- Economic and Social Empowerment: some researchers have already pointed out that the health and social care activities of Egyptian civil society organizations are focused on purely charitable activities. Even organizations that adopt development activities which are difficult to quantify and explain because

of the mixed development activity in charity⁵⁵. Civil society organizations must have clear development orientations aimed at empowering individuals economically and socially, as it guarantees true democratic transformation.⁵⁶

- Constitutional Courts as an Intermediary: The idea that was previously adopted by the American researcher Douglas Nejaime in his research on the tripartite relationship between social movements, courts, and constitutional change is a very good idea that has not yet truly emerged in Egyptian reality. It is based on the idea that the dialogue between scholars of law and sociology becomes more intertwined to allow for constitutional change through court decisions that are influenced by legal opinions. They also influence the ideologues' social movements to attract their attention to the legal and judicial aspects of their theses⁵⁷. If the dialogue and interaction of civil society with the judicial and legal elites in Egypt took a more interrelated and pragmatic approach, many of the paths of democratization could have been improved, and we could witness the Egyptian judiciary system playing a pivotal role in the different stations of that political transformation of the country.

- The search for identity: The Egyptian civil society organizations are still lacking two essential factors for their effectiveness: the first is strategic planning and roles defining, and the second is the creation of a network of communication between them and the other parties in Egyptian society⁵⁸.

55 Ibrahim (No.7) 46

56 The previous source 79

57 Douglas Nejaime, 'Constitutional Change, Courts, and Social Movements' (2013) 111 Michigan Law Review 877.

58 Taha Kassem, 'CIVIL SOCIETY ORGANIZATIONS IN POST REVOLUTION EGYPT: SEARCH FOR IDENTITY' (2017) 7 International Journal of Political Science, Law and International Relations (IJPSLIR) 1.

- ‘Interpeace’ -an organization that has dedicated a whole section on the practical options and the role of Civil Society in drafting constitutions and submission of some candidatures based on the experiences of previous countries, which are generally directed to civil society in absolute terms and not to Egyptian civil society in particular. These recommendations will be stated in the next section of the researcher’s recommendations, namely the ones relating to civic education and research on constitutional proposals⁵⁹.

Policy recommendations :

- The main recommendation is that the role of civil societies in the constitutions of democratic transformation is a long-term one, and that is what we meant, in the title, by “the constitutional moment begins now.” A weak civil society cannot impose their suggestions on any constituent assembly. The next constitutional moment for Egypt begins now, and the time when the constitutional makers sit again together to reconsider and change, it will then be a culmination of this moment. Solving the dilemma lies in it. And in order to achieve that goal, the following policies are recommended:

- Awareness-raising is the solution: The most important role of civil society during any transitional stage is civic awareness, which reduces the cost of high information and the risk of decision-making under suspicion⁶⁰, caused by ignorance and lack of trust that characterized the relationship between political actors and politicians and people at those stages. The evidence that awareness is the solution, and the limited obstruction of laws restricting its effects, is that many of the participants in the revolution and

59 Michelle and others (n 2) 306–320.

60 Francesco Parisi, *The Language of Law & Economics; A Dictionary* (Cambridge University Press 2013). “Information Costs”

civil campaigns were not members of civil society organizations. There was a small number of participants in the revolution and subsequent campaigns. However, a simple comparison between the number of participating masses and the limited number of civil society organizations involved in political affairs indicates the validity of this reasoning. The most common organizations were young university graduates who were involved in development organizations and student activities.

- E-work: Egyptian civil society organizations need to focus on e-work more broadly and more systematically. Through this work, they can disseminate their ideas and contributions, communicate with people, provide educational and awareness courses, and produce data, research and encyclopedias that include archiving their positions. Their contributions to civil work and substantial material costs are of great importance. The Internet and e-work is a treasure trove opened up by the January 25th revolution and must be rediscovered by civil society organizations.

- Scientific foundation: the constitutional contribution must be based on clear scientific foundations. Attitudes, statements, suggestions, proposals and criticisms must all be objective and technically reviewed by specialists. They must also be specific and directed to the goal, not subject to emotions. And this is likely to emphasize the credibility of civil action in both the street and among politicians, as its role main consists in linking between them.

- Legal discipline: these contributions must be legally reviewed and civil society organizations must be entitled with a good legal qualification. The lack of necessary legal expertise has not only been experienced by members of the constituent committees but also by civil society organizations.

- Internal openness: members of civil society organizations should be more open to each other and avoid polarization within the same civil society. Mutual work and overlapping of social movements will inevitably be reflected in the same way of working with government, party or street parties. In other words, civil society cannot grant what they actually lack.

- Flexible comprehensive drafting: Despite the tendency of the constitutional drafters to detail their demands in the transition constitutions, it is preferable for civil society to be the most enlightened and moderate party among these drafters, based on the role assigned to them fewer details mean fewer conflicts and more comprehensiveness means that no particular party is threatened because the text can include every detail without tyranny. All political currents can then struggle to detail those generalities in the articles of law in Parliament. An example of such statements is the religious identity of the state. The text of the 2014 Constitution can include both civil and religious currents, as opposed to the text of the 2012 Constitution. Experience has shown that more inclusive constitutions and flexibility -without compromising the definition of words- achieve greater sustainability and application..⁶¹

Choosing a broad framework that allows everyone to work, at leisure, in the future, is the most efficient solution under decision-making.⁶² Constitutional choices are far-reaching choices, and even if current drafters are aware of their positions in the current or near moment and therefore try to strengthen these centers according to these data, it is impossible to determine their

61 Zachary Elkins, Tom Ginsburg and James Melton, 'What Makes Constitutions Endure?', *The Endurance of National Constitutions* (Cambridge University Press 1997) <https://www.cambridge.org/core/product/identifier/CBO9780511817595A011/type/book_part>.

62 «veil of uncertainty”: James M Buchanan and Gordon Tullock, *The Calculus of Consent, Logical Foundations of Constitutional Democracy*, vol 3 (Liberty Fund, Inc 1999).

positions in the distant future, which should also be protected, especially since the majority, gained after the revolutions, may not be necessarily indicative of a real majority. This is evidenced by the change in the position of the Egyptian street from the electoral fund within a few years, but it could be a majority resulting from the absence of a party's organization or a reaction from the extremist towards the counter-insurgency movement or the choice of economic necessity or security situation.

We notice that the verbal additions in the Constitution are very important. Even the rhetoric that may not have a strong and direct legal effect is important, not because it leaves room for the government or parliament to restrict freedom -a claim that may be rejected by bearing in mind that the Constitutional Court oversees the regulation of these constitutional freedoms- but because these statements send signals to the people, authorities and the judiciary authority and even to other countries, "signaling" that certain orientations of the state and society are not in favor of rights and freedoms and the universality of constitutions.

- Avoidance of partisanship: civil society organizations must avoid joining political parties or fronts, even if they agree with them in the ideology or goals, because their role is supposed to be the representation of popular desires which are not represented by these political parties. Partisanship can lead to the exclusion of such organizations by an adversary party in other parties that are hostile to it.⁶³

63<[214](https://www.facebook.com/ntalbekwnhasbek/?__tn__=kCH-R&eid=ARCBmBw_iPXZZ1FTmhswhWlNHwOQvnBV7S-oBJCzwg4hMiXjTFzr78-ZfwNP9gMLUt9fCpoWaN7YsD-WR&hc_ref=ART6CtG7dS1n3EqGUrODJoivTPY-Bwo0AE-OI33dejtMH9_NrHRcoNvhfOZanF2FtbZc&fref=nf&__xts__[0]=68.ARCENIS2Nq2kULpSE6ki52TKhK5ofKHHbiDfOqPmVxO_bHFJL-8hbJjBid1NG6FdjJmwCYJ5BaQXY1AMAtj82qNEvj3GnM5Ob37WY-czpsbj2iPcgEpCPWBXYfHHKYnKhF0iYTCT9Ped_u_DoJk-psQ7keAE-</p></div><div data-bbox=)

- Incite dialogue: the role of civil movements must also be to incite dialogue, not partisanship. As we have seen, the transition process, by its very nature, is an urgent process to avoid instability. However, the parties who have never discussed with each other need to engage in dialogue before the Constitution is drafted. The role of civil society must be geared to boosting dialogue.

- Financing problems: the financing problems can be overcome and collided with the current legal framework of NGOs by adopting one of two solutions: the first is to obtain funding from intergovernmental organizations such as the United Nations, to which the state is a party and the second is the reliance of civil society organizations on self-financing from their members such as trade unions and scientific boards.

- Demographic Considerations: the Egyptian civil society should attach importance to densely populated areas that are most in need of human development, at the same time, to achieve greater impact of their activities, without being subject to central trends. The constitutions are made not only in the chambers of the constituent committees, but also among the people who select those who are part of such committees and then survey what they have produced.

Conclusion:

Civil society, its concept and necessity emerged, from the outset, to fill the gaps left by the state and political parties. This role

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extends naturally to the moments of the Constitution drafting. The dilemma of being weakened by dictatorial regimes in such a way that it is difficult to fill that vacuum in moments of democratic transition is, thus, a dilemma that signals a problem in the structure of the work of civil society organizations themselves rather than its political and legal framework. The Egyptian civil society missed a historical opportunity to contribute effectively to the constitutional transformation after the revolution of 2011. Their contributions were characterized by many shortcomings, but also played positive roles to which we referred earlier.

For instance, it can be assumed that difficulties will be faced while trying to achieve any recommendations presented here under the narrow legal and political framework of the work of civil society organizations. This is the essence of the dilemma addressed in this paper. Civil society are following a shaky and vague path towards democracy after years of tyranny. The security, political or legal constraints faced now by these organizations are merely an extension of the previous constraints that were brought under the previous regimes, which led to the weak and inexperienced situation of these organizations. Therefore, the first lesson consists in learning from the close and distant past, in order not to enable the restriction to cancel the existence of civil society organizations, but rather push such organizations to change the form of their activities or speech. The activities of these organizations in the transitional stages are improving the educational and political upbringing and raising public and constitutional awareness among the people impartially and objectively. Such organizations are not required to play the role of opposition parties, but to contribute to enlightening society itself by enabling people to think and practice in an appropriate political and legal manner. On the other hand, such organizations do not lack areas of movement or material support, but rather their objective capacity to research, organize work, address the

people, provide accurate information based on scientific and legal grounds, and prepare programs in the people's interests. Therefore, the continuation of the work of these organizations, even in subjects that are not related to the direct confrontation with the Authority guarantees the most important role of freedom of movement and opposition which are the skills of their seniors, the training of their expertise and the establishment of a network of knowledge between them and the masses. Such skills may be adapted according to available circumstances.

This is what we meant in the title of the paper by "the constitutional moment begins now". Unlike many other drafters in the process of constitutional transformation, the role of civil society does not come at the moment of writing the constitution itself, but rather in making the constitutional moment and preparing it, and then working to ensure that the people will interact with its aftermath. All stages of democratic transformation and the accompanying constitutional changes are a new constitutional moment for any civil society. The present moment is the right moment, because the Egyptian civil society is on the brink of being excluded from the political scene.

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The role of community movements in the drafting of constitutions

Palestine needs a referential constitutional document... and the expected role of justice

Hendam Rajoub

Preamble

The rapid political changes and fluctuations in the world, in general, and in the Arab world, in particular, have led to the emergence of the issue of civil society as one of the most important issues that are widely discussed in seminars, public debates or lectures. The study of civil society has taken an important place in the literature; and different studies of the concept of civil society, its structure and its social composition as well as the role played by the civil society in the democratic transitions in the countries that are witnessing lot of social changes, especially those related to the system of government and the ruling authority or in the field of economic or social patterns, which means the re-establishment of the state and setting up of a new charter between the State and society.

The main objective of these discussions or studies is to try to revitalize the role of the civil society, considering its components, conditions and roles. This part of the research discusses the reality of Palestinian civil society as an independent or intermediate space between the State and the Palestinian society, regarding its role and its contribution to the democratic transition which combines several tracks, including the constitutional one.

The paper tries to answer the main question: Is Palestine facing a constitutional crisis? In the sense of how much Palestine needs to have a constitution or constitutional document that addresses the issues that the current Palestinian political and legal system lacks, or to address what the previous documents did not address. This main question will be answered by asking secondary questions: What are the previous and current constitutional documents and what is the role of the traditional Palestinian political components in their establishment? And what are the urgent reasons for which there was a need to find a constitutional document or a new basic law, in addition to the question about the reality of the Palestinian community movement and its role, if any, in previous constitutional experiences, and what role is hoped for them in the present and future?

The Palestinian Civil Society and the Palestinian Community Movement space

The Palestinian civil society organizations have a unique character since the emergence of these organizations took place in a context different from other countries of the world. The Palestinian civil society was founded in the absence of an effective and independent Palestinian state and in the absence of sovereignty over land. After the creation of the Palestinian National Authority (PNA), a law regulating civil society organizations was enacted. The legislation governing charities and social organizations was issued six years after the establishment of the Palestinian Authority, Law No. 1 of 2000 on charities and civil society organization. In addition to that, the Ministerial Council issued a decision on implementing regulation for this act in addition to the Decree No. 8 of 2007 on associations and bodies, and a presidential decree granting the Minister of Interior the authority to review all licenses of associations. In 2011, another

law was issued to amend the official law relating to associations. Finally, a law was issued regulating Cooperative societies work in addition to what was mentioned in legal articles related to other legislations such as the Civil Service Law, General Supplies, Civil Defense Law and others.

Despite the formation of unions, associations, federations, associations, clubs and institutions is a constitutional right stipulated in the amended Basic Law of 2003, the dilemma lies in the restriction of the right of creation by law. A number of these above mentioned legislations has been restricted from the space of Palestinian civil society; in particular, the aftermath of the Palestinian division. Decrees were issued granting the Minister of Interior the authority to review all the licenses of associations, based on the provisions of Part Seven of the amended Basic Law of 2003 and its amendments, and the presidential decree of 14/6/2007 declaring the state of emergency. The most important thing in these decrees is that the Minister of the Interior or their representative is empowered to take such measures as they deem appropriate for associations, institutions and bodies to close, rectify the situation or otherwise.

The Palestinian community movements

Following the rapid review of the Palestinian civil society space that has been used as an introduction to the Palestinian community movement, many community movements have recently spread within the Palestinian community as part of the civil society structure, and in a combination of many institutions with shared visions in specific groups; and these groups or movements bore several names such as: “coalition”, “initiative”, and others. The aim of these movements, like other social movements in the world, is to convey the voice of marginalized groups in society,

to protect their rights and to bring about community change commensurate with the goals, aspirations and the field of work of the institutions that belong to them.

An example of this is the Palestinian context. The movement of the unified teachers came in 2016, after the government did not comply with the prior agreements with the teachers, namely the increase in pensions commensurate with the cost of living and other functional demands. The resort to a social movement for teachers demanding their rights began with a partial strike that extended to the rest of the West Bank. The National Social Security Campaign is the most recent phenomenon of Palestinian social movements. The campaign came in the beginning of 2016, with the enactment of Legislative Decree No. 6 of 2016 on Social Security in Palestine, demanding the suspension of this law because of its illegal provisions. In order to comply with the community demands for amendments to this decision, the campaign was formed from a wide range of civil society organizations and unions until it reached an expanded conference to discuss the provisions of the law by a decree and the existence of a series of claims that needed to be amended.

The prevalence of these movements is markedly attributed to several reasons, the most important of which are: the deterioration of the human rights situation in the Palestinian territories, especially after the internal division. The presence of these institutions, in the form of social movements, has increased the chances of obtaining external funding which helps, at the same time, the strengthening and the continuity of many small community institutions, especially those operating in areas away from the decision-making center and the existence of financiers. In addition, the existence of these social movements came during the absence of the Legislative Council (legislative authority) and the increasing power of the executive authority over the work

of the judiciary, which means the absence of the citizen's voice or the refusal to hear his voice alone when demanding his rights and aspirations, or the fear and dread to claim them, and finally the existence of these communities in the work of advocacy campaigns which constitute a means of pressure to get the claims they seek.

The paper, "The Palestinian Coalition for Economic, Social and Cultural Rights", was adopted as a case study. It is a community initiative that seeks to bring about real economic and social change based on the values and principles of social justice. The coalition was chosen because its founding was the result of a social movement that established a broad struggle, as far as economic and social rights were concerned. Its membership represents a large segment of the Palestinian society, comprising a number of human rights institutions and community and political institutions (about 75 civil society organizations), through a study and understanding of the impact of this coalition on strengthening the protection and preservation of economic, social and cultural rights in the draft constitution.

The Palestinian Coalition for Economic and Social Rights was established in 2017. Its work is coordinated by the Observatory for Social and Economic Policies. The coalition works on issues relating to the protection of employers and workers in the matter of arbitrary dismissal, the file of medical transfers and the cutting of aid for UNRWA, in addition to legislations that believe in economic and social rights to citizens.

Stemming from the above, the community movement is one of the most important and urging issues that must be highlighted and focused on in the Palestinian context, given the political, economic and social challenges facing the Palestinian society, which are an integral part of the political role in confronting the

occupier, because they are basic needs that help the Palestinian citizens in the Palestinian context and his steadfastness on his land. Here, the role of the Palestinian Coalition for Economic, Social and Cultural Rights will be discussed in the context of the adoption of a constitution for the State of Palestine.

The Palestinian Constitutional Authorities: nature, timing and components of Palestinian Policy?

The debate on the constitution of a Palestinian state is one of the most controversial issues in the Palestinian context. The issue is not limited to legal obstacles, but political reality is the main obstacle. In addition, the Palestinian political system is characterized by multiple political components that result in the lack of clarity of the nature of the relationship between them, and the overlap in the powers and competencies granted to each. Each of these components arose under certain conditions and within a different political context which, in turn, contributed to the multiplicity of their respective institutions and different legal systems thereof. In order to be able to talk about creating a constitution for the state of Palestine, we must address the Palestinian constitutional authorities that also need to address the political components of the Palestinian political system as a starting point. In this part of the paper, we will discuss these components, in brief, and the documents or constitutional references issued by them.

First: the Palestine Liberation Organization

The PLO was established in 1964, following the first Arab-Palestinian Conference in Jerusalem, as a result of the decisions of the first Arab Summit held in Cairo. The United Nations General Assembly granted Palestine an observer status by

resolution 3237, on November 22nd, 1974. Under the resolution, the Organization was able to participate in works and courses held under the auspices of the United Nations General Assembly. The decision also gave the organization the ability to exercise Palestinian diplomacy which enabled it to make diplomatic confessions with more than 100 countries, ranging from full confessions to lower-level confessions. It also enabled Palestine to accede to certain treaties and international organizations such as the Cairo Agreement, signed by the organization with the Lebanese government in 1969, and with Jordan in 1970.

Second: the Palestinian National Authority

The Palestinian National Authority was established by a decision of the Central Council of the Palestine Liberation Organization, which approved its creation at the conference held in Tunis on October 10-12, 1993. This was followed by negotiations between the Palestinian and Israeli sides. The security issue constituted the largest and most fundamental part of the discussions between the parties and a pillar for any peace process or initiative between the two parties during the transitional period. Under the Oslo Declaration of Principles, the Palestinian National Authority (PNA) has exercised the functions of self-government in areas indicated by the Convention. The Oslo Accord was followed by signing other executive conventions for the document of declaration of principles that dealt with security aspects in the relation between Palestinians and Israelis, mainly the Washington Agreement signed in 1995 and the Convention on the Wye River signed in 1998. Article 8 of the Oslo Accord (Public Order and Security) allowed the establishment of a strong Palestinian police force.

Following the negotiations between the Palestinian sides, by the Palestine Liberation Organization as representative of the

Palestinian people and the Israeli side, which led to the signing of an agreement called the Declaration of Principles on Interim Self-Government Arrangements or the Oslo I Agreement, signed in 1993. The agreement allowed the Palestinians to manage their internal affairs. The Authority has exercised the functions of self-government in the areas referred to in the Convention, without having the competence to conclude international treaties under this Agreement, after reviewing the terms of the Agreement.

In 1995, the Palestinian and Israeli sides signed another agreement called the “Transitional Interim Agreement on the West Bank and Gaza Strip”, also called the Oslo II Accords, as the second phase followed by negotiations of final status which gave the PLO the authority to sign agreements with States or international organizations for the Palestinian Authority in specific areas, including economic agreements, agreements with donor countries, agreements to implement regional development plans and, finally, cultural, scientific and educational agreements.

Third: the Palestinian State

Following the stalemate of the Palestinian-Israeli negotiations, the Palestinian orientation began as part of a political program based on the use of international law as a means of resisting occupation. This began on November 23rd, 2011, when Palestine became a member of the United Nations Educational, Scientific and Cultural Organization (UNESCO), and enabled it to ratify a number of its conventions. Palestine’s membership in UNESCO has given it a position to promote international recognition. This has given Palestine a step forward and significant progress in the field of international relations through accession to international organizations and treaty-making. This resulted in Palestine becoming a non-member observer state, which was adopted by

the General Assembly of the United Nations on November 29th, 2012, by resolution 67/19. It should be noted that there is no provision in the Charter of the United Nations to grant States such a status. This status has been established only by practice. The decision to grant observer status to Palestine was made in accordance with article 135 of the rules of procedure of the General Assembly and article 59 of the provisional rules of procedures of the Security Council. After the decision to recognize it as a “non-member observer state”, this resolution reinforced the possibility of Palestine join some international treaties and organizations. The ability of Palestine to accede to international treaties and organizations has been established through the practice of the United Nations General Assembly: the recognition of the existence of the State as an entity but not as a member of the General Assembly, as in the case of Palestine, gives the General Assembly the power to accept that entity as a state member in specialized international agencies relating to the United Nations system, and gives it the capacity to accede to international treaties. This is what has already been done. Palestine has, so far, acceded to more than 100 treaties and regulations.

The Palestinian constitutional references and documents

The constitutional documents and references issued by the three previous political components, all of which were put under the name of the “constitutional bloc”, will be discussed in the absence of a single constitutional document for Palestine so far.

The PLO has not issued a comprehensive constitutional document in the form of the constitutions of various political regimes, but rather a cumulative series of basic documents. The most important of these documents was the Palestinian National

Charter, which was ratified by the Palestinian National Congress and declared the establishment of the Palestine Liberation Organization. The Palestinian National Charter contained an introduction and twenty-nine articles. This charter was amended and called the “Palestinian National Charter” following the process of political settlement with the Israeli side, which was ratified by the Palestinian National Council in its meeting held in Gaza on 14/2/1998. The Charter refers to the basic Palestinian foundations that define the definition of Palestine and the Palestinian Arab people, the definition of Zionism, and methods of struggle and guerrilla action. It pointed out that it attaches to this Charter a regime known as the PLO’s Statute, which defines how the organization, its bodies, institutions, their respective competencies, and all their obligations under this Charter are to be formed. The Charter is amended only by a two-thirds majority of the total membership of the Palestine Liberation Organization’s National Council in a special session called for this purpose.

With regard to the Organization’s Statute, it has established general principles of defining the nature of the relations within the Organization in terms of the Organization’s bodies, organs duration and functions, namely the National Council, as the supreme authority of the PLO, which establishes the Organization’s policy, plans and agenda, the Executive Committee responsible for closing relations and the coordination of the work between the Organization and all Arab and international organizations, federations and institutions which agree with them in the objectives or shall assist them in achieving the objectives of the Organization.

In its 19th session on November 15th, 1988, the Palestinian National Council (PNC) announced from the capital of Algeria the “Declaration of Palestinian Independence”, in which the

text stated that the independence of the State of Palestine was to be achieved on the land of Palestine and that Jerusalem was the eternal capital of Palestine. It dealt with the struggles of the Arab Palestinian people and affirmed the right to self-determination. Following the Declaration of Independence, many countries recognized the State of Palestine before the United Nations General Assembly, bringing the number to more than 80 at the end of the same year during which the document was issued. The document is not considered as a constitution, but it pointed that the State of Palestine is for the Palestinians wherever they are, where they develop their national and cultural identity, enjoy full equality of rights, maintain their religious and political beliefs and their human dignity under a parliamentary democratic system, based on freedom of opinion, freedom of party formation, minority care, minority rights, majority decisions, social justice, equality and non-discrimination in public rights on the basis of race, religion or color, or between women and men, under a constitution guaranteeing the rule of law and Independence, and on the basis of full loyalty to the heritage of Palestine's spiritual and cultural heritage of tolerance and coexistence between religions over the centuries. The document referred to the national and cultural identity of the Palestinian people, and it may be considered that it called for the need for a constitution that guarantees the rule of law and the existence of an impartial judiciary.

At the level of the Palestinian National Authority (PNA), the Palestinian Legislative Council ratified the amended Basic Law, issued by the late President Yasser Arafat in his capacity as Chairman of the Executive Committee of the Palestine Liberation Organization and President of the Palestinian National Authority.

The law contained an introduction, eight chapters and 121 legal articles. In its chapters, the basic law contains a set of constitutional

rules and principles that define the definition of Palestine, its people and its purpose, the source of authority, the system of government, public rights and freedoms. A chapter designed for the President of the Palestinian Authority and a clarification of executive authorities functions presented in the Council of Ministers and chapters for legislative and judicial authorities. The basic law explicitly stated in its preamble that “the fact that this Interim Basic Law has entered into an interim transitional period constitutes, by definition, an essential step towards achieving the national and historical rights of the Palestinian Arab people and Do not detract the right to seek and work for the return and self-determination, including the establishment of a Palestinian state with Jerusalem as its capital, the first of the two Qiblas and the third of the two Holy shrines, the place of journey of our prophet Muhammad (peace and blessings of Allah upon him) and the cradle of our Lord Jesus Christ. Moreover, its temporary provisions do not deny the right of a Palestinian to enjoy the rights equivalent to those with Moa Nation on the homeland”. This indicates directly that the legislator indicated that it was temporary for a transitional period, which met the requirements of the time it was set up, in spite of the nature of the subjects addressed by the issues covered by the Constitution, as well as the requirement to amend it with the approval of a two-thirds majority of the members of the Palestinian Legislative Council.”

It is noteworthy that a presidential decision in 2005 was made to form a committee to prepare a draft amendment of the articles of the Basic Law composed of seven members .It was required to submit the results of its work to the President of the Palestinian National Authority within a month of its date. Indeed, some provisions of the Basic Law were amended and issued in 2005. The most important of the provisions of the law was an amendment to the term of the presidency of the Palestinian National Authority which was limited to four years.

The president has the right to run for a second term and must not occupy the presidency more than two successive sessions. The term of the Legislative Council shall be four years from the date of its election. Elections shall be held once every four years periodically.

Several drafts of the Palestinian constitution have been published. Many of these drafts have already come into being. The latest was drafted in accordance with the presidential decree in 2011. The General Committee of the Constitution, in accordance with this presidential decree, formed the Drafting Committee, to undertake the task of formulating and submitting a full proposal for the draft constitution of the State of Palestine. The Commission was given full authority to decide on what it deems appropriate in terms of drafting a new draft or amending and revising existing and completed drafts. This draft was completed in 2015. The existence of this draft was preceded by the formation of another committee at the request of the National Council in 1988. The third draft of the Palestinian constitution was issued in 2003; the only draft adopted by the National Council, the Central Council and the Legislative Council, and was presented to the people for a referendum.

The Constitutional Bloc in Palestine

From this wide range of constitutional references and documents, which is the one that comes under the name of the “constitutional bloc”, in order to know its hierarchy?

The document is considered as the constitution, including the provisions of the supreme law of the state. However, this does not mean that the constitutional texts are limited to the provisions and legal texts contained therein, but beyond the provisions contained in other documents of a constitutional nature, like

the introduction to the constitution and “general principles of constitutional value and supra-constitutional principles”, collectively referred to as “constitutional mass”, such as “rights declarations”. On the other hand, the introduction of constitutions is used to devise some constitutional principles that have not been referred to by the Constitution itself, as an objective source of the right or because they help and guide constitutional interpretation. For example, the Egyptian Constitutional Council considers the “principle of human dignity” to be of constitutional value. In some States, the legal value of international treaties was explicitly mentioned in the introduction to the Constitution or preamble such as the 2011 Moroccan Constitution. The Lebanese Constitutional Council also considered that “the introduction to the Constitution has full constitutional value because it is an integral part of it.”. The 2014 Tunisian Constitution, in article 145 also stipulates that the preamble of the constitution of Tunisia is an integral part of it.

In order to apply the above to the introduction to the Palestinian Basic Law, this introduction does not refer to the importance of international law, but referred to another constitutional document, “Declaration of Independence Document”. It was noted in the declaration that “.....”... as the sustainability of the adherence of the Palestinian Arab people in the land of their ancestors, which resulted in the fact expressed by the declaration of independence of the National Council” the document binds the State of Palestine to the principles and provisions of international law and the purposes of the United Nations, namely, peaceful coexistence and peaceful settlement of international problems

On March 12th 2018, the Palestinian Constitutional Court issued an explanatory decision, which was submitted by the Minister of justice at the request of the Prime Minister, to interpret article

10 of the Basic Law of 2003 which refers to the international treaties in Palestine and the necessity of joining them. The Court concluded that “the Declaration of Independence is considered an integral part of the constitutional system in Palestine and even more so, then comes the Palestinian Basic Law. International agreements and treaties on ordinary national legislation (laws and decisions by law), international treaties and conventions fall below the Basic Law, followed by the various legislations in force in Palestine. “The Court, thus, granted the Declaration of Independence a supreme constitutional value than any other applicable legislation in Palestine. It is possible to say that it identified the components of the constitutional cluster, and considered it as part of the document.

Constitutions arise at a moment of crisis: Is Palestine in front of a constitutional moment?

In order to answer the question, it is necessary to address the relationship between these three components, which led to an overlap in powers, especially the foreign ones and the conflict between them, claiming legitimacy by knowing who is exercising the external or international relations of Palestine where international representations are exercised, since international treaties are part of the external representation by international treaties and conventions and the appearance of international relations. Palestinian legislation varied in response to this question: Some of these legislations granted the Palestinian National Authority the task of carrying out the international relations of Palestine, and other legislations entrusted the task to the Palestine Liberation Organization. The answer to the inquiry makes it easier for us to talk about the party who has the real role in establishing the constitution of Palestine.

Conflict of powers

The Palestine Liberation Organization (PLO) was granted external powers. This is reflected in some Palestinian legislations referring to the role of the PLO in this area, such as article 16 of the PLO statute of 1964 that the mission of the Executive Committee of the Organization is to represent the Palestinian people. Article 19 states: “The Executive Committee shall document the relations and coordination of the work between the Organization and all Arab and international organizations, federations and institutions with which it agrees with the objectives or aims to achieve the purposes of the Organization.” Article 26 also affirms the true role of the Executive Committee of the PLO. Article 26 of the Palestinian National Charter of the Palestine Liberation Organization (PLO) of 1986 also affirmed the PLO’s representation and responsibility for the Palestinian people in all fields, including politics, and all the demands of the issue at all levels, in addition to the authority given to the organization in cooperation with all Arab countries.

The introduction of the Palestinian Basic Law also states that the adoption of this law comes from “the fact that the PLO is the sole and legitimate representative of the Palestinian Arab people.” This was confirmed by the introduction of the Diplomatic Corps Law, which stated that: “The law of the Palestinian diplomatic corps represents a very important step in the development of the Palestinian diplomatic corps established by the Palestine Liberation Organization through the political circle and the adoption by the Legislative Council of the law of the Palestinian diplomatic corps does not constitute prejudice or derogation from the Palestine Liberation Organization as the sole and legitimate representative of the Palestinian people, the reference of the Palestinian National Authority, in accordance with the preamble of the Basic Law of the Palestinian National Authority.”

On the other hand, although the PNA is a self-governing authority that has been given specific powers under the Oslo agreement, some Palestinian legislation has granted it the task of external relations. An example of such legislation is Article 40 of the amended Palestinian Basic Law of 2003, which stipulates, “the President of the National Authority appoints representatives of the Authority to foreign countries, organizations and bodies and completes their duties, and their representatives shall be accredited to the Palestinian National Authority.” The Diplomatic Law No. 13 of 2005 also states that the Palestinian Ministry of Foreign Affairs has a role in “Representing Palestine externally and strengthening Palestinian relations with Arab and Islamic countries and international and regional organizations.” The Ministry of Foreign Affairs was also given the authority to establish and implement Palestinian foreign policy.

We conclude from this that the Executive Committee of the Palestine Liberation Organization has the authority to represent the Palestinian people externally in accordance with the Statute of the Organization and in the absence of any legal provision indicating the existence of a role for the National and Central Council in accordance with the Statute in respect of international treaties.

The recent practice of Palestine’s accession to international treaties has been made by the Executive Committee of the Organization and in the presence of the members of the Committee. It also confirms the external powers of the PLO that the UN resolution recognizing Palestine as a non-member observer state did not ignore the representative role of the PLO. This is confirmed by the report of the Under-Secretary-General for Legal Affairs and the Legal Council of the United Nations in response to “matters related to resolution 67/19 of the General Assembly on the legal status of Palestine in the United Nations.” The letters from President Mahmoud Abbas are also required to

join the United Nations or of international treaties, was issued and signed in his capacity as President of the State of Palestine and Chairman of the Executive Committee of the Palestine Liberation Organization.

The Palestinian National Authority (PNA), which was established by decision of the Palestine Liberation Organization (PLO), exceeded the organization's powers in foreign relations, although Annex II of the Declaration of Principles on Interim Self-Government (Oslo 1) of 1993 and the Oslo II Agreement of 1995, the PNA was excluded from the powers to carry out these tasks by explicit provision. At the same time, the PLO was granted the authority to sign treaties such as economic and educational agreements and agreements with donor countries and others, stressing that the separation of powers does not mean the independence of each state authority from its own functions or total separation, to achieve democracy and good governance.

Based on the above, the emphasis on the absence of a Palestinian constitution; in the sense that there is a no single document that governs the issues that the constitutional document must deal with, but a set of references, some of which mention basic pillars of the Palestinian cause and the established rights of the Palestinian Arab people. It is noteworthy that these references did not give the Palestinian people the right to develop or participate in the preparation or adoption of these references; and what came from Palestinian political leaders does not represent the political parties formed for the components of the Palestinian people. Some of them were placed by the councils of a group of factions and others by the legislative authority that has the right to enact ordinary legislation, and was not a constituent authority.

Regarding the draft constitutions in their various stages, committees were formed by a decision of a president with several

official attributes, namely, being president of the Palestinian Authority, Chairman of the Executive Committee of the Palestine Liberation Organization, and President of the State of Palestine. These committees, which can be described as the constituent authority of the constitution, prepared these drafts without the real involvement of the people or their representatives, the civil society or the Palestinian community movement. The same draft referred to the formation of the draft constitution committee, whereby the General Committee of the Palestinian Constitution formed a drafting committee of its members to formulate and present a full proposal for the draft constitution of the State of Palestine, in addition to granting the committee full authority to decide what is appropriate in terms of drafting a new draft which exists is a set of completed drafts; and consensus was made on the choice of eight people to do the job.

In addition, the Palestinian draft constitution (Draft Draft IV, September 2015) stated explicitly in the “Philosophy and Platforms of the Drafting Committee for the Constitution of the State of Palestine”, noting that “as a result of the specificity of the reality and the Palestinian situation because of the occupation, the Committee considered that this Palestinian privacy should be taken into consideration in the manner of drafting the constitution and the methods of approving the Palestinian Constitution”. The Drafting Committee, therefore, proposes that the General Committee for the Constitution be considered as a Constituent Committee and that the draft constitution should be presented after the approval of the General People’s Assembly as an embodiment of the general will of the Palestinian people. The referendum could not be held for compelling reasons by a decision of the Constitutional Court. The draft is submitted to the Palestinian National Council for approval. If the National Assembly cannot be convened, the Palestinian Central Council will approve it. “

We notice that the draft was based on what the legislator asked to submit to the referendum. But our observations on this are:

First, the constitution was drafted without representation of the sectors of the people from factions and political parties, civil society, women's institutions and social movements in choosing or participating in the formation of the general committee for the drafting of the constitution and method of formation.

Second, the Committee did not require that the draft be submitted for a referendum, except after the Committee itself approved the terms of the draft. Besides, how to adopt a constitution based on texts and drafts laid down in a draft constitution? It is the draft that established the mechanism for adopting the constitution, and there is a need for effective legislation to show the mechanism.

Thirdly, what the draft referred to in the case of the hypothesis that the referendum could not be held under any circumstance and which is possible because of the Palestinian situation and the solution that the committee came up with. It simulates the previous ways in which the documents and the previous Palestinian constitutional references were established.

The Constitution of Palestine: Impossible and hoped for by the community movement

The lack of a real role for the community movement is attributed to the participation in these references or the establishment of a constitution for many reasons: the Palestinian situation of the Israeli occupation and the absence of an urgent need for a Palestinian constitution at this stage.

The question in the Palestinian context is different from other contexts. The need for a constitution does not depend on the inclusion of a series or list of rights and freedoms or the statement

of the three authorities of the State and its system of governance, but rather on urgent Palestinian issues. The obstacles and challenges facing the establishment of a Palestinian constitution are also referred to as the “Palestinian situation because of the occupation”, the establishment of an independent Palestinian state (the absence of the state), the diaspora of the Palestinian people and the lack of Palestinian identity (continuity in place and time).

In addition to the obstacles represented in the modern Palestinian experience and the lack of accumulation of constitutional experiences to enable the real benefit from them, some of the previous documents were modified or placed from the ground as a result of pressure from the international community, in addition to the absence of a unified frame of reference for the Palestinians, and the form of division and internal Palestinian conflicts is a new obstacle added to the previous set of obstacles.

Output: temporary Basic Law

We conclude the need to work together in a joint manner between the social movements, the civil society, parties and the official institution in the adoption of the Palestinian Constitution, which guarantees the basic rights and freedoms of all Palestinians without any discrimination and defines the three authorities. It establishes a clear legislative pyramid and clarifies the legislative mechanism within the framework of the Palestinian state. Until the adoption of the Constitution of the State of Palestine, it is necessary to adopt an interim Basic Law for the State of Palestine, which regulates all these issues mentioned above. The alternative is to adopt a temporary basic law, considering that the urgent need is a moment of crisis. The amended Basic Law of 2003 and 2005 addresses the emerging issues in the Palestinian

reality, in accordance with the aspirations, wills and ambitions of the Palestinian people, and in a way to achieve unity between the two sides of the homeland and between the parties to the internal conflict.

Recommendations for the hoped-for role of the community movement in developing a reference document

This paper sets forth basic recommendations, proposals and concepts that the Palestinian community movement must adopt when speaking seriously about the establishment of a constitution for the State of Palestine or in the case of adopting a provisional basic law:

First, the highest degree of participation and influence in the industry of the constitutional reference, thus creating a certain societal circumstance that allows democratic consensus, benefiting from the technological development and the use of multiple means of communication (democratization of the use of technology) in the presentation of proposals, media pressure and means of awareness and education from conferences, protests, strikes or disobedience in the case of a lack of agreement.

Second, benefit from previous Palestinian constitutional experiences. The constitutions as a whole do not proceed from a common point and there is no single point of reference. The disagreement over the principles is provided in a way that helps in reaching agreement on new or updated reference points for what is already present, especially since our talk about a different context is different. These previous benchmarks define fundamental pillars in the Palestinian context.

Thirdly, there is a constitutional reference that sets out the established principles that the human society meets on equality,

family and gender, economic and social solutions, environmental rights and others.

The legitimacy of the constitutional democratic framework stems from the ability to provide the opportunity for all to participate in accordance with their different references in such a way that there is a flexible constitutional reference in terms of form and content that facilitates their manipulation. Flexible rules that allow interpretation of principles that do not reflect only the author of the text and the flexibility of constitutional control in a way that allows continuity. The dispute over the constitutional principles, and other flexible rules that allow the amendment in form and content (in a manner that does not allow revolution or rebellion against it, on the grounds that it is not accepted with the existence of texts that are real in writing and a court of errors and comprehensive to enable the development of legislation consistent with the Constitution.

Fifth, the Palestinian constitutional authority should be a prelude to a comprehensive internal Palestinian political reform, in which the Palestinian national agenda will benefit from the successful international experiences in this context and try to avoid the problems that have afflicted other experiences while benefiting from the impact of existing youth forces.

Sixth: The choice of the constitutional practice in a way that allows the societal movement to play a major role in drafting the constitution, taking advantage of the weakness of the Palestinian political parties because of their lack of confidence in the solution of the political situation and the constitutional reform in general.

Seventh, The constitutional reference includes sufficient safeguards to protect it and the existence of restricted and disciplined powers in a way that does not make it arbitrary in carrying out its tasks, based on the provisions contained in the

provisions of the Constitution, in addition to avoiding a gap between the constitutional text and practical application in the event that it is impossible to apply to the needs in order to find alternatives in the controversy issues expected to occur (instead of a vacuum).

Eighth: The practical application of the system of government should not be contrary to what is stipulated, or the duties and competencies granted to the three authorities in the state shall be contrary to what is stated in the constitution. Such determination shall not allow the authority of the authorities to infringe or abuse the other authority. This is one of the leading global experiences in the separation of powers.

Ninth: this reference document should include clarifying the difference between the State of Palestine and the Palestinian National Authority, with the assurance that foreign policy is carried out by the State of Palestine and not by the Palestinian National Authority. Consequently, the obligations and responsibilities of accession fall to the State of Palestine. Accordingly, the State of Palestine is working to strengthen its legal system and develop it in accordance with its international standards and obligations.

Tenth: the constitutional document should be a way to unify the applicable legislation in the West Bank and the Gaza Strip and replace it with Palestinian legislation in line with international treaties and standards and the need to clarify the definition of some concepts and terminology in the Palestinian legal system, in a manner that is not controversial in practice such as equality, religious, cultural and national identity of the Palestinian people “in line with the Declaration of Independence.

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The role of the Algerian League for the Defense of Human Rights in strengthening legal security in the constitutional amendment consultations of 2014: between the commitment and the politicization of the struggle

Fawzia Qasi

Introduction:

The law of legal security is a significant step in the European experience. It is rooted in the internal legal systems, whatever its character and the process of its constitutionality as a general principle is in the process of actual consecration, like what it is through the French experience. The utmost importance of this necessity is to strengthen oversight and to improve the protection of rights and freedoms, which provide the rule of law with its guarantees, making legal security relevant to the rule of law and the best system to achieve the goal of legal security.

As for the Algerian experience, we note that although there is no express constitutional text on legal security, however, and through our extrapolation of the five constitutions witnessed in the country, we see the existence of constitutional textual foundations devoted to the inevitability of legal security, where we note that the Algerian constitutional experiment has gone through two stages. The legal sphere has a wide or important dimension in the constitutions of this period (1963, 1976), which focused on the consolidation of socialist principles and the one-party ruling program, which controlled all State institutions and their three powers (legislative, executive and judicial) that were called the jobs which fall under the umbrella of one authority led by the National Liberation Front Party. Accordingly, the rights and

liberties provided for in the constitutions of this stage are the rights and freedoms provided by the ruling party's program. It can be asserted in this context that legal security was absent at this stage, where Algeria was, in which the socialist system is pursued, focusing its attention on achieving development, especially in the economic, social and cultural fields.

The Algerian legal and constitutional system witnessed a qualitative leap after the multiparty experience the country adopted in its political approach that transferred the constitutional experiment in Algeria to the second phase of its development. This stage witnessed the promotion of the fundamental rights and freedoms of the citizen, (1996, 2016), which reflected, in its entirety, a clear concern and the firm will of the Algerian constitutional legislator to provide legal and constitutional guarantees for the protection and support of the rights and freedoms of the members of society. This means that since the beginning of this phase, it has been the case to set up a democratic system of government and to follow its basic principles, to begin the march of Algeria towards the establishment of the rule of democratic law.

The principle of the supremacy of the Constitution has become the basis of the establishment of the legal system, since it is the supreme law of the modern state. However, following this principle does not mean access to a flawless system. Every the legal system has gaps. The constitutional institution makes continuous efforts to try to close it. The state and the law are social phenomena that do not know stability, but constantly evolve according to the influence of internal and external variables and the surrounding environment. The role of the civil society components in drawing the attention of the decision maker to these gaps is reflected in this debate. In this context, the debate on legal security has emerged.

The instability of legal norms, in view of legislative inflation, the lack of public interest in the enactment of laws, the contradiction among each other and other shortcomings that may characterize the legal system of the State, raised concerns about ensuring the protection of human rights and the preservation of fundamental freedoms of citizens, in light of the instability of the law, there must be a sufficient degree of stability of legal centers and self-rights, which is the concept on which the concept of legal security is based; the latter, academics and lawmakers, consider that legal security should rise to general principles. And its purpose is to correct the imperfections of the legal system.

Despite the appeal of this proposition, it faces many criticisms and raises many questions. There is reluctance among countries to recognize legal security as a principle, for reasons ranging from the ambiguity of the idea of legal security per se to the feasibility of its constitution, whether legally or constitutionally. However, the subject is receiving increasing attention at the level of the world's nations, and is becoming increasingly relevant to the goal of enshrining the state of law.

Based on the above, we will base our study on the following research problem:

Why did not the civil society, represented by the role of the Algerian League for the Defense of Human Rights, contribute to the achievement of legal security and the establishment of the rule of law in Algeria in the context of the constitutional amendment consultations of 2014?

In this paper, we seek to consider the permanent concern of the Algerian constitutional founder with the achievement of legal security and the involvement of the civil society in the constitution of the Constitution, especially the human rights, through

the role of the Algerian League for the Defense of Human Rights in the constitutional amendment consultations in 2014. A precedent of its kind in Algeria, as the ruling authority has never invited the components of civil society to participate in political debates, especially those related to the fate of the state.

The importance of the topic under consideration is to emphasize the importance of the role that the Algerian League for the Defense of Human Rights should play in the stability of individual legal cases that need to be protected from the negative side effects of the law or that can be expressed as legal insecurity, highlighted the importance of involving civil society in filling gaps and correcting legal flaws.

The issues posed by the legal security are at the very core of the aims of the rule of law, which give rise to the features of the rule of law and the guarantees of its continuity through the establishment of a series of requirements that should characterize the legal system in general, to the laws, and the ability of individuals to understand their content, allows them to anticipate with certainty the consequences of their future actions and actions.

The state of law, which aims at legal security, not only protects against chaos and arbitrariness, but also ensures the process of building and promoting the harmonious development of the law, on the one hand, and the relations between persons, on the other. The law cannot perform its security function if it is not easy to reach and expect. The theoretical and practical aspects of the concept of security in a broad sense are interrelated. If security is one of the purposes of law, it also implies the existence of technical means and mechanisms indispensable to that end.

Our discussion of the Algerian constitutional experience in achieving legal security is linked to the development of the consciousness of Algerian society throughout its history from inde-

pendence until today, which can be measured against the tangible improvement achieved by the rights and freedoms and the guarantees in the Constitution of 2016; so that the Algerian constitutional legislator has consistently sought, contrary to the will of the Algerian people in constitutions or constitutional amendments witnessed by the country, in 2014. However, this participation is incomplete, although it is the first of its kind in Algeria.

This paper first outlines the concept of legal security by addressing its three core components, noting that the legal prediction was the most important pillar of legal security in view of its guarantee of the legitimate expectations of persons of law. We then turn to the foundations of the constitutional enshrinement of legal security in Algeria, highlighting the importance of the constitution of the latter as a constitutional principle. Let us turn to talk about the constitutional reform consultations that took place in 2014 with the participation of a group of national associations and organizations, notably the Algerian League for the Defense of Human Rights, explaining the reasons for the failure of the latter to influence the decision-maker with a view to promoting legal security and protecting fundamental rights and freedoms. To the outcome of the struggle of the latter, and propose a set of recommendations addressed to the Algerian people to defend human rights.

The first topic: The concept of legal security

The disadvantage or obstacle in analyzing legal security and attempting to exploit the essence of the idea is such that it does not fit into a clearly defined legal category of boundaries, results, features and content. Therefore, it is difficult to define a legal security barrier¹ definition; however, most of the proposed defi-

¹ Fabien Grech, « Le principe de sécurité juridique dans l'ordre constitutionnel Français », In : *Revue française de droit constitutionnel*, Vol.2, n°102, 2015, p.408.

nitions share their enumeration of legal security components, namely, access, stability and predictability, which means that legal security, is an idea of multiple meanings and requirements, which makes it more complicated to define. In the following approaches we will propose a definition of legal security in an attempt to derive a composite definition.

a. Legal security in its broad sense:

In the beginning, we provide a broad definition of legal security, which was made by Brigadier General Gérard Cornu. For the latter, what achieves legal security can be defined in “any legal system that seeks to protect and ensure the good application of obligations, or at least minimizing the uncertainty in the realization of the right one. In this context, Korno refers to the security of transactions, emphasizing the security of inter-relations at the expense of objective security, where legal security is seen as a matter for the parties to the contract that must maintain their security by taking their custody, for example, to mitigate the consequences of a debtor’s potential breach of the obligation.²

In the same sense, Phillipe Malaurie argues that contractual risk is not so much uncertainty or ignorance of the law, but that the greatest risk that a contractual relationship may face is the non-performance of the obligation because of the debtor’s insolvency or malaise. These risks pertain to the behavior of individuals rather than to the quality of the law. However, the latter must strive to ensure the effectiveness of the personal rights as stipulated in the contract. There is no point in creating obligations without strict penalties, But also to promote the achievement of the objective and legal expectations contained in the contract. The idea of the effectiveness of the law as a service to the expect-

² Kiteri Garcia, *Le droit civil Européen : nouvelle matière, nouveaux concept*, (Bruxelles : Editions Larcier, 2008), p.105.

tations of the stakeholders is a new aspect of legal security, as exemplified here by Mallory and Korno. The law should ensure “good implementation of obligations” in the words of the latter. We also see, through Korno’s definition, that the legal security of persons of law is, to some extent, a matter of self-interest; they must remain vigilant and do not neglect to build their rights and the necessity of their knowledge of positive law³.

We find another more detailed definition of legal security, in the glossary of legal terms published under the supervision of Rémy Cabrillac, where three distinct meanings were enumerated. In the first sense, legal security was defined as “the ideal state of law, by compiling consistent, relatively stable and accessible texts so that individuals can build their expectations⁴.

This definition appears to be more accurate and acceptable, as it highlights the fundamental idea of legal security, namely forecasting. On the other hand, if we assume that, through this definition, all legal texts are physically accessible, the full intellectual access to these texts seems to be an ideal and difficult, if not impossible, state of puberty. As this definition suggests, stability will only be relative. It is not possible to conceive of a law that does not take into consideration changes and developments according to the needs and requirements of society. Furthermore, substantive law cannot predict everything, because the needs of society change, their interests are so numerous and their relations expand; so full security remains an ideal situation.⁵

In the second sense, legal security has been defined as “the right of the individual to have the provisions applied to him fixed, that is, the right not to reconsider the individual’s expectations through retroactivity of jurisprudence or retroactivity of laws”; the legal

³ Thomas Piazzon, *Op. cit.* p.60.

⁴ *Ibid.* pp.60,61.

⁵ *Ibid.*p.61.

security is conceived in this sense from the subjective law, and not from the standpoint of substantive law, but the content of the definition is not very different from the first meaning. The difference is the focus on the individual situation of the concerned.⁶

Similarly, the third meaning is not very different from the second meaning, where it is suggested that legal security is “the need to respect the stability of situations that require a reduction in the likelihood of reconsideration.” Like his predecessor, we find in this sense the idea of respecting expectations, (Through retroactivity of the jurisprudence or retroactive effect of legal texts), but from the standpoint of the very content of the text of the law on the basis of stable law. However, the meaning remains the same in both definitions: to ensure that expectations that have already been met are built by law persons.⁷

B. Structural Concept of Legal Security:

In the above, we note that the definitions and approaches that we have included share in the most important aspects and components of legal security, with different emphasis on one side or another. By relying on the course of our analysis of the concept of legal security, Thomas Piazzon, who has made prediction the cornerstone and foundation of legal security; legal security is therefore: “the best case in which the law has credibility and material access, is understandable and understandable, that is, intellectual access by law and that the law is respected by the legitimate expectations of these, They built them in advance, where the law, which requires that, seeks to implement these expectations, so that people rationally predict the law of the results of their actions and their actions.”⁸

⁶ Ibid. pp.61, 62.

⁷ Ibid.p.62.

⁸ Ibid.p.62.

This definition describes legal security as optimal, since complete security is merely an illusion and cannot be achieved. The definition also refers to the physical and intellectual access requirement of the law and focuses on the desired result behind it: the prediction that has made it the essence and basis of legal security. But the lack of reference to the requirement of stability in the definition, does not mean exclusion of the latter, in view of its importance in achieving legal security, but the reason is that the stability of the law means stagnation, which is not commensurate with the progress of society and the development of its needs and requirements. It is sufficient that these amendments and changes in the law are accompanied by technical measures that ensure respect for the predetermined expectations of the law. In other words, the importance of the stability requirement should be seen from the perspective of prediction, whether it is substantive law, subjective rights or individual cases.⁹

As for us, after analyzing the components of legal security and the inherent relationship between each other, we recognize that there is talk of the availability of legal security when public law enables people of law to maintain their legal status and when members of society, especially their own rights and fundamental freedoms, The stability of the law, in view of the changing circumstances and the renewal of contexts. This is the achievement of legal security through the provision of a number of legal guarantees and mechanisms that promote the sub-requirements of legal security, whether on the availability of law or the stability of personal rights or to ensure that the legitimate expectations of the individual are not compromised.

⁹ Ibid.p.62.

a. The impact of legal time in building individual expectations:

Both stability and prediction refer to the time factor; but, while stability is primarily about respect for the past, prediction, on the other hand, is concerned with the future. Prediction is the real substance in the study of legal security, considering the crucial role played by the time factor in achieving the latter, and in view of the facilitation and protection of expectations built by law. Legal time helps determine the value of legal prediction. The function of law is to provide harmony among individuals within a single society. Legal time is the key. The legal system cannot provide harmony and concord in a single society without defining, measuring and regulating the temporal dimension.

The ability to build expectations is the advantage of human societies developed by anthropology; instead, primitive societies relied on magic and other rituals to dispel ambiguities surrounding the future. Thus, the advance and development of rights would provide the law with the ability to construct individual expectations legally, thus allowing the law to control the future. The translation of this requirement into reality presupposes some special technical solutions that allow individuals to construct these basic expectations. Substantive law should monitor the inconsistency of the legal system and not devise solutions or ambiguities that give rise to conflicts rather than resolve them. The issue is linked to the legal security of the persons of the law so that they can effectively exploit and enjoy their rights and freedoms.¹⁰ The control of legal time is a way to build future expectations through which individuals can control their behavior with confidence and knowledge of the results of their actions and actions. Because time is the social bond, individuals need to define the time environment in which they live, and to give them objective and common criteria by all.¹¹

¹⁰ Ibid.p.62.

¹¹ Ibid. p.23.

The contractual area is the most illustrative example of the law's efforts to control legal time and the requirement of predictability. As long as contractors' expectations are included in the contract, whatever the expectations and whatever the reason for the contract, all parties' expectations should be respected in the name of legal security. In other words, in the contractual sphere, legal security is synonymous with respect for the original expectations of the parties to the contract, the expectations contained in the contract, whether it concerns the legal consequences of the contract or the motives that led to it.¹²

Respect for legal expectations justifies the stability of the rights and obligations arising from the contract. Otherwise, contractual relationships lead to a number of disadvantages, including the ambiguities that may surround the contract when it is concluded, using vague phrases or formulas, as well as the use of incomprehensible technical terms. This is what we discussed when analyzing the requirement of intellectual access to the law. The matter is related to the principles and concepts of the contract in order to avoid future disputes. This is reflected negatively on the legal security of the expectations of the parties.

Despite the above, the question of legal security does not arise when it comes to the protection of all expectations whatsoever, but only when it comes to the protection of legal expectations in the strict sense of the word. In other words, legal security is only concerned with predicting the legal consequences of the behavior adopted by the author's act of its own will. What is important in legal security in this case is the prior knowledge of the legal consequences of such conduct. It is here that the subject is able to control his behavior with the greatest legal certainty, which assumes that the law should be clear and precise enough for the person concerned to build expectations, but it is also assumed

¹² Ibid. p.45.

that the law will not remotely destroy the legitimate expectations that have been built.¹³

The second topic: prediction and legal security

From the foregoing, we conclude that the prediction of the legal effects of acts and behaviors is the essence of legal security for persons of law. According to Batiffol Henri, security is not only about individual protection and freedom, but security is an expression of the aspiration to reach a system of sound texts, for it is this certainty that responds to the critical needs of prediction, to be able to anticipate the legal effects resulting from his actions and actions, to determine after what he can or requires or not to do, so as to control his actions according to the results.¹⁴

Given this angle, the problem is that contractors know what to expect in view of the provisions of the positive law. As long as the fraud to take the consent of the other party is illegal, the instability resulting from the cancellation of this contract can ensure, accordingly respecting the real will of the affected contractor, therefore, the failure to take retroactivity into consideration in such a situation does not threaten the legal security of the parties.¹⁵

The relationship between predictability and legal security has given the latter two different aspects: firstly, the potential afforded by substantive law to the persons of law to build expectations with confidence and certainty. It is also a guarantee not to reconsider or reverse voluntary behaviors and behaviors based on legitimate expectations of the law. Under this second aspect, the proposed solution in the name of legal security presupposes

13 Cresp Marie, *Le temps juridique en droit privé : Essai d'une théorie générale*, Thèse de Doctorat en Droit, Université Montesquieu- Bordeaux IV, 2010. p.23.

14 Thomas Piazzon, *Op.cit.*pp.47, 48.

15 *Ibid.* p.48.

the assessment of the legitimacy of individual case-by-case prospects. From the practical side, it should be said that taking into account the requirement of legal security assumes flexibility and hardness at times.¹⁶

The retroactive effect of laws is a source of threat that makes law people accountable in the future for actions or facts that are compatible with today's law. Therefore, reaction is considered as abuse of power. The cost of such reaction may be reflected in the economic sphere. Companies, national or foreign, face difficulty in building expectations and strategies for employment or investment, which makes the economic, practical and technical potentialities lost in the midst of this organizational mosaic, thus losing their competitive advantage.¹⁷

The statute of limitations and the non-retroactivity do not put the stability of the law itself a subject to controversy, but rather the stability of individual rights and situations. Therefore, it is no longer a question of the dialectic between progress and the stability of the law: it concerns the protection of the subjective rights and legal situations that existed prior to the adoption of the new text (non-retroactivity) –i.e. legal cases - which at certain periods of time gives them a certain value (limitation), and in either case substantive law ensures the stability of what is an object, a fact or a truth.¹⁸

As for respecting the expectations of the law, the stability of individual rights and individual situations, access to substantive law is necessary so that lawmakers can build their expectations with confidence. The material and intellectual access to the law is a prerequisite for predicting and achieving legal security.

16 Ibid. p.49.

17 Ibid. p.51.

18 Ibid. pp.52, 53.

a. Building Proactive Expectations:

We note, from another side, that some expectations are deliberately constructed by law persons outside the clear texts defined by substantive law, and that access is easy and readily available. This is the case, for example, when the law foresees future developments of substantive law, which they estimate it is possible. Therefore, these guesses are constructed in a manner that is contrary to the state of positive law. If each actor or party assumes that the legal text that they are following or coordinating their actions and actions at present is very likely to be modified or modified -which is the cause of different behaviors that seek to bring about change by increasing the work according to some practices that fall within the margin of the legal text.¹⁹

A debtor can, for example, have a legal obligation to use the possibility of non-execution of ‘an exception of non-execution that will come to liberate him from his debt, while the law is subject to the risks of such presumptions. The anticipation does not mean predictability. The former is a legal bet on future substantive law, with a difficult and achievable hypothesis that makes anticipation impractical, while the second (the prediction) falls under objective substantive law, means that it is accessible; therefore, an unreachable law cannot be predicted, since access must be available to be legitimate, achievable and not achievable. In other words, access to the law is not only a prediction, but a condition of its conditions.²⁰

19 Elisabeth Catta, Catta Elisabeth, “Codification et qualité de la réglementation : L’expérience française”, *Revue LeGes*, n°3, 2007. p.425.

20 *Ibid.* p.35

B. Threatening the retroactive effect of new laws and jurisprudence:

It should be recalled that even if the amendments of the law are announced, and the latter are expected, they will continue to be accompanied by legal concern as a result of the threat posed by the retroactive effect of the new laws, but it should be noted that this reaction is not found in positive law. In the same context, we note that there is a difference between the retroactivity of the law and the retroactivity of the jurisprudence. The retroactivity of the law is exceptional and can only be achieved if it is in the interest of the law. Between the reactionary law, on the one hand, and the purpose of the interest for the general justified, on the other, while the judge's basic function is to interpret the legal texts. The more the judge tries to interpret the text that has been applied to the existing dispute, the better the interpretation is, and the reticence of jurisprudence, The retroactivity of laws rarely takes place when the judge seeks to adapt the legal text to reality, in line with the development and progress that is taking place, while noting that the jurisprudence modifies the interpretation of the legal text and not the text itself.²¹

However, this retroactive effect, whether in terms of legislation or jurisprudence, remains a threat to legal security, to the detriment of the expectations of individuals, in the interests of their legitimate trust. Before enacting legislation retroactively, the legislator must conduct an in-depth and detailed study, to the field, sector or legal persons concerned with the retroactivity of this legislation. The legislator, for example, can return to the specialists and the advice of academics and jurists, not to mention the direct involvement of stakeholders, as well as the components of civil society, through opening a constructive discussion with the relevant institutions, which will provide the legislator with

²¹ Thomas Piazzon, *Op.cit.* p.55.

all the details and data necessary to study the issue of legislation retroactively, to avoid problems, disturbances and prejudice to the rights or individual cases or legal centers of the persons concerned; the change is accordingly deliberate and judicious.²²

The third topic: The foundations of the constitutional enshrinement of the principle of legal security in Algeria

The stakes facing constitutional architecture vary according to the political or transitional context, which leads to the amendment, revision or promulgation of a new constitution. Constitutional engineering in this case includes the identification of the motives for this change and the recognition of their bets in order to establish the political results. In the framework of this study - in the constitution of legal security and recognition of its constitutional value, guaranteeing the sovereignty of the people, and maintaining the stability of its basic rights and freedoms, in light of developments in the social environment, externally or internally.²³

A. the Algerian Constitutional Experience:

Algeria has known a number of constitutions since its independence in 1962. Despite its recent experience, it has undergone several constitutional amendments aimed at reaching a constitutional architecture based on the adoption of democratic norms. This is due to the changing factors governing the constitutional process and its evolution, most recently in the events in the Arab region in general and especially in the Maghreb at the beginning of 2011, which was called the “Arab Spring”.

22 Ibid.pp.55, 56, 57.

23 Sari Nawal, «Distinction between the retroactive effect of law and the retroactivity of jurisprudence», unpublished intervention presented at the National Forum on: Legal Security, Faculty of Law and Political Science, University of QasdiMarbah, Ouargla, on 05 and 06 December 2012, without a page.

The legal organization of the structure of the state authorities is an important factor in achieving political balance between the existing powers in the countries undergoing a transformation or a transition to democracy. The role of the constitutional founder is to embody this structure while ensuring the separation of powers and constitutional justice.²⁴

In this context, we recall that the Constitutional architecture in Algeria has undergone a qualitative shift since independence until the constitutional amendment of 2016, which was reflected in the institutions of the Algerian constitutional system. Algeria followed the socialist approach through the 1963 Constitution and the 1976 Constitution. These constitutions were filled with the idea of patriotism and revolutionary legitimacy. In this period based on the idea of one party, which was constitutionally dedicated, which means that the legislation issued in this period reflected the aspirations of the National Liberation Front, as the ruling party, which governs the conduct public affairs, and in this sense, society should submit and follow what the one-party government imposes.

The least that can be discerned in this period is the absence of constitutional justice by virtue of the non-functioning of the Constitutional Council, which has been in force since the 1963 Constitution. With the monopolization of the one-party in power in all spheres, including the legislative sphere, this was inevitably a waste of legal security of the members of Algerian society; that was adapted to the nature of the State and its outputs, and the origin should be the opposite. However, we note that it was

24 Louay abdelhattahazzayani «The Constitutional architecture: A Reading of Some Elements of the Quality of the Constitution», a published intervention presented at the National Seminar on «The Prospects of Constitutional Reform in the Light of the High Royal Speech on 09 March 2011», organized by the Faculty of Legal, Economic and Social Sciences. , University of Mohammed I Bojdah, in partnership with the Center for Studies and Human and Social Research Bujdah, on 22 and 23 April 2011, without a page.

the period of the emergence of the Algerian state, and that the Algerian people at the time were convinced of the revolutionary legitimacy due to the modernity of the country's independence. The thinking was in the direction of achieving the economic and social development of Algeria, the eradication of illiteracy and the adoption by the state of socialism and planned economy in that period. This phase did not appeal to Algerian people.

However, the country witnessed a decisive turn, beginning with the events of October 1988, in light of the deterioration of the economic reality of the country and the changing social situation. The Algerian people were complaining about the policies of the one party, condemning the right wing to choose their representatives by opening the way to multiparty. This time the state must respond to the demands of its people by issuing a new constitution in 1989.

This new constitution is characterized by its adoption of a break with continuity and its transition to a new regime, by enshrining a number of fundamental democratic principles that have been recognized as part of the public order. These include the principle of party pluralism, the principle of freedom of expression and the principle of separation of powers, the rule of law, which the legislator must take into account in any legislative process. Otherwise, its constitutionality has been challenged, especially since the Constitutional Council has been activated in this period. However, the foregoing remains only partial and insufficient.

In addition, new bodies have been created, aimed at addressing the issues and concerns of members of society, such as the Supreme Council for Youth and the National Observatory for Human Rights. The provisions of the new Constitution and its principles have also been clearly reflected in the legislation of

this period. Among the laws that appeared in this stage, we can mention²⁵:

- Law of associations of a political nature issued on 05 October 1989.
- Municipalities and governorates Law issued on 07 April 1990.
- Monetary and Credit Law 90/10 of 14 April 1990.
- The Labor Relations Act 90/11 of 21 April 1990.
- Law 90/31 of 04 December 1990 concerning non-political associations.

The constitutional founder tried to bring the system closer to the citizen, especially with regard to his right to litigation, by issuing the 1996 constitution, in which the transition from a single judicial system, which was characterized by the length and complexity of judicial proceedings, Judges, and reduced the length of dismissal in judicial proceedings.

B. Constitutional Amendment of 2016:

The Algerian constitutional institution continued its efforts to consolidate legal protection and strengthen constitutional control, including in the Constitution of 2016 some amendments that may be described as revolutionary in the legal sphere, particularly in the protection of the fundamental rights and freedoms of the individual and to ensure his legal security. This was clear from the beginning, which has been amended to suit the content of the new constitutional amendments.

25 Séverin AndzokaAtsimou, «L'ingénierie constitutionnelle, solution de sortie de crise en Afrique : les exemples de l'Afrique du Sud, de la République démocratique du Congo, du Burundi et du Congo», Thèse de Doctorat en Droit, Université Cheikh AntaDiop De Dakar, Soutenue le 29 juin 2013, pp. 414, 415.

The first thing that draws attention to the introduction to the new constitution, which reflects the constitutional legislator's preoccupation with achieving legal security, is the explicit recognition of the principle of separation of powers for the first time and, in the order given in paragraph 13 of the preamble to the new Constitution, the independence of justice and legal protection, and the control of the work of public authorities in a legitimate society, in which human rights are fully realized. "We note that the constitutional founder followed the principle of separation of powers with the phrase "independence of justice and legal protection", in accordance with the principle of separation of powers, which guarantees legal security, which has been enshrined in Algerian constitutions since the 1989 Constitution in the form of "legal protection", which is always referred to as the "control of the work of public authorities", referring to the role of the Constitutional Council as a regulatory institution ensuring respect for the law and its conformity with the constitution. Thus, paragraph 13 reflects the total guarantees ensured by the Constitution for legal security.

The Algerian founder did not stop recognizing the principle of separation of powers in the preamble of the Constitution, but re-stated in Article (15)²⁶, which promotes the independence of the judiciary in Article 156 as the protection of individual and collective rights and freedoms. The constitutional legislator followed it by explicitly stating for the first time in Article 182 the independence of the Constitutional Council as the body that ensures compliance with the laws of the Constitution. As a culmination of these reforms, the Algerian founder expanded the notification of this regulatory institution, where the notification area included the simple majority of parliamentarians or the National

26 Bloudenin Ahmed, *The Algerian Constitution and the Question of the Exercise of Power in the Transition Period* (Algeria: Dar Houma for Printing, Publishing and Distribution, 2013), p67.

Assembly (Article 187), but also opened the door for litigants in general and citizens in particular to resort to the Constitutional Council, the outcome of which is the violation of one of the rights or freedoms guaranteed by the Constitution (art. 188).

We note that the Algerian constitutional institution has been constantly developing its view of things, keeping abreast of developments and developments that have taken place, both at the external level and with the accompanying changes in concepts, at the level of Algerian society in the transitional stages it has undergone. If legal security is not a priority in the first constitutions (1963, 1976), which reflected the one-party program at the time - the National Liberation Front - but the constitutions that followed the socialist period (1989, 1996, 2016) expressed the maturity of the modern Algerian state and its efforts towards devoting the state of democratic law.

C. Mechanisms of the Constitutional Council to Achieve Legal Security:

The 2016 Constitution is a revolution against the Algerian constitutional order, especially with regard to the control of the constitutionality of laws. The Constituent Authority has made profound developments in this regard. The first thing that can be noticed is the increase in the number of articles of the Constitutional Council (Article 182 to article 191), which was included in chapter I of Part III of the Constitution, entitled “Control and control of elections and legislative institutions”.

There are several developments that have affected the content of these articles for the first time. The constitutional legislator sought to emphasize the independent character of the Constitutional Council by an explicit provision. This was mentioned

twice in the first paragraph of Article (182)²⁷ and in the last paragraph of the same article. The intention of the Constituent Authority to strengthen the requirement of the Constitutional Council to exercise its authority in the performance of its role of controlling the constitutionality of laws, free from the effects or pressures of the public authorities. In addition, the Algerian founder explicitly stated, for the first time, that the views and decisions of the Constitutional Council are binding and final in the face of public, administrative and judicial authorities, in the third paragraph of Article (191)²⁸ of the 2016 Constitution.

The constitutional legislator's will was to strengthen the status of the Constitutional Council, as an independent monitoring body that ensures respect for the integrity of the Constitution and to ensure the protection of the individual and collective rights and freedoms set out in its provisions, The three bodies stipulated in the previous constitution, represented by the President of the Republic, the President of the National People's Assembly or the President of the National Assembly, have added Article (187)²⁹ in the 2016 Constitution to the Prime Minister, so that he may also have the right to notify. However, this addendum does not promote constitutional oversight as required, due to

27 Ibid., P. 67, 68.

28 Article 15 of the Constitution of 2016: «The State shall be based on the principles of democratic organization, separation of powers and social justice.

The elected council is the framework through which the people express their will and monitor the work of the public authorities.

The state encourages a participatory democratic state at the community level.»

29 Article 182 of the Constitution of 2016: «The Constitutional Council is an independent body charged with ensuring respect for the Constitution.

The Constitutional Council oversees the validity of referendums, the election of the President of the Republic and the legislative elections.

It considers the essence of the appeals it receives about the provisional results of the presidential and legislative elections and announces the final results of all the operations mentioned in the previous paragraph.

The Constitutional Council enjoys administrative and financial independence.»

membership, the prime minister of the government and his subservience to the President of the Republic.

However, opening the area of notification to the simple majority of the members of Parliament (50 members), as stated in the second paragraph of the above article, means opening the door to representatives of the elected people, even if these representatives represent the parliamentary opposition, 30 members), which is an important step, in addition to Algeria's efforts to enshrine the rule of democratic law.

The culmination of efforts to strengthen constitutional oversight is the creation of Article (188)³⁰ of the 2016 Constitution, which can be considered as the actual embodiment of "legal protection", which has been explicitly affirmed by the constitutional legislator in the preamble to Algerian constitutions since the 1989 Constitution, The Algerian citizen has developed an effective and powerful democratic tool, which is the mechanism of non-constitutionalism, which allowed him to seek recourse to the Constitutional Council if the law dealing with the disputed case violates one of his rights or freedoms guaranteed by the Constitution, So the notification is no longer limited to political power, which is a human rights revolution that is unprecedented in the Algerian constitutional order.

The 2016 Constitution links the right of the citizen to litigation, as stipulated in articles 157 and 158, and his right to petition the Constitutional Council in article 188, so that we can see that this

30 Article 191 of the Constitution of 2016: «If the Constitutional Council considers that a legislative or regulatory text is unconstitutional, this text shall lose its effect, beginning on the day of the decision of the Council.

If a legislative text is considered unconstitutional on the basis of article 188 above, this provision loses its effect as of the day determined by the decision of the Constitutional Council.

The views and decisions of the Constitutional Council shall be final and binding on all public authorities and administrative and judicial authorities.»

latter article creates an interactive relationship between the ordinary judiciary and the judiciary Constitutional. The reform of the Constitutional Council, by including the individual challenge of unconstitutionality, will inevitably be reflected in its legal nature and the importance of its role in ensuring the legal protection of the rights and fundamental freedoms of citizens³¹. This will enhance legal security by establishing an integrated legal system and a guarantee for these rights and freedoms, which represents a significant development in the context of the establishment of the rule of democratic law.

In the same context, it should be noted that the constitutional constitution of Algeria included, in the 2016 Constitution, the requirement of specialization in the legal field. The appointed or elected member should have at least 15 years' experience of membership in the Constitutional Council (184)³². The importance of specialization in the law through this article brings the constitutional council closer to the performance of the Constitutional Court. The Algerian founder, thus, prepares the Constitutional Council to exercise judicial control over the constitutionality of laws. The legal specialization makes the members

31 Article 187 of the Constitution of 2016: «The Constitutional Council shall notify the President of the Republic, or the President of the National Assembly or the President of the National People's Assembly or the Prime Minister.

It is also possible to notify of fifty (50) deputies or thirty (30) members of the National Assembly.

The practice of notification set out in the preceding two paragraphs shall not extend to the notification of the non-constitutional declaration set forth in article 188 below.

Article 188 of the Constitution of 2016: «The Constitutional Council may be notified of a non-constitutional motion on the basis of a referral from the Supreme Court or the Council of State when a party to the trial claims before a judicial body that the legislative provision on which the dispute is based violates the rights and freedoms guaranteed by the Constitution.

The terms and modalities of this paragraph shall be determined by organic law. «

32 Mohammed Busseltan, «Making a decision about the non Constitutionalism: A New Algerian Perspective», in the Journal of the Constitutional Council, No. (08), (Algeria: 2017), p13.

of the Council more comprehensible and understandable to the constitutional provisions and the legal rules. This allows them to guarantee the right to litigate, especially when the mechanism of payment of unconstitutionality is moved, because of the judicial procedures that provide guarantees to the litigants.³³

It is useful to say that since its independence, Algeria has undergone varying stages and new circumstances, characterized by instability in Algerian constitutional architecture. Each stage has produced a new constitution for the country, but what we can confirm is that the evolution of the Algerian constitutional system has been on the rise. The Algerian has made important efforts and made great strides in ensuring security and legal stability by providing institutional constitutional protection for fundamental rights and freedoms, both individual and collective, constitutionally guaranteed.

The fourth topic: the importance of reference from the constitutional enshrinement of the principle of legal security

The stability of the legal centers and ensuring that the legitimate expectations of the people of the law are not violated are the supreme goals pursued by the constitutional legislator through enshrining legal security as a constitutional principle. This will enhance the protection of human rights and fundamental freedoms of citizens, which is one of the legal democratic state pillars that rely on legal principles and democratic structures.

33 Article 184 of the Constitution of 2016: « elected or appointed Members of the Constitutional Council shall have the following:

- 40 years of age on the date of appointment or election;
- At least 15 years of professional experience in higher education in the legal sciences, in the judiciary or in the profession of a lawyer before the Supreme Court or in the Council of State or in a higher position in the State.

A. Improving protection of fundamental rights and freedoms:

The constitutional provisions are considered the most powerful protection of fundamental rights and freedoms, in view of their supremacy over the legal rules. They also guarantee the punishment of any party or party that violates the law and violates or infringes on these constitutional rights and freedoms. Like most countries in the world, as well as to provide the necessary guarantees for their protection and practice through the various mechanisms contained in the Constitution, noting that these guarantees evolved gradually, from the first constitution after the independence of Algeria until the 2016 Constitution, in which we see the crystallization of the mentality of the Algerian constitutional legislator; and his continuing efforts aimed at improving the protection of fundamental rights and freedoms.

The rights and freedoms received considerable attention from the Algerian founder in the 2016 Constitution. At first sight, the number of articles devoted to it increased to 41 articles (article 32 to article 73), particularly social rights, where the constitutional legislator wanted to promote the rights of women by introducing article (36)³⁴, which provided for equality between men and women in the field of employment and in positions.

On the other hand, and always in the context of Algeria's adherence to the international charters it has ratified, the constitutional legislator has taken care to enshrine the rights of the child, as a member of society, in accordance with the principle of social justice, a category that needs special protection, given its weakness and innocence. Children, in response to negative international reports in this context, and the age of the child was set at less than sixteen (16) years, and provided for the guarantee

34 Ammar Abbas, «The role of the Algerian Constitutional Council in ensuring the principle of the supremacy of the Constitution», in the Journal of the Constitutional Council, No. 01 (Algeria: 2013), pp. 68 ,67.

of abandoned or unmarried children and the penalty of punishment for all those who commit violence against this age group. The constitutional legislator did not forget to protect other vulnerable groups, including the elderly and those with special needs³⁵, stressing that the living conditions of these segments of the society, which are characterized by weakness, weakness and impotence, are guaranteed by the Constitution.³⁶

Another age group that drew the attention of the Algerian founder to the constitution of its rights is the youth group, with a constitutional and legal framework that recognizes their abilities and the importance of empowering them and activating their role in state building and development. This interest is evident in the text of the Algerian founder on this segment in three different places in the 2016 Constitution, beginning with the preamble, where the constitutional legislator mentioned that young people are the driving force for achieving national goals and raising the challenges they face in various fields; (37)³⁷ in the chapter on rights and freedoms. This statement is based on the State's responsibility to frame the youth sector and develop its capabilities. This is what the constitutional legislator sought to ensure through the establishment of the Council mentioned in

35 Article 36 of the 2016 Constitution: «The State shall promote the equalization of men and women in the employment market.

36 The State encourages the promotion of women in positions of responsibility in public and corporate bodies and departments.

37 Article 5/69 of the 2016 Constitution: «The employment of children under the age of 16 is punishable by law.»

the articles (200)³⁸ and (201)³⁹ in the Constitution. In the same context, Professor Nasruddin Bousmaha confirmed that the Constitution of the Supreme Council for Youth came to fill the gap and correct some of the failures that have been recorded on many of the parties that have been involved in the preparation and implementation of youth programs, such as political parties, civil society bodies and public institutions entrusted with promoting the role of youth.⁴⁰

This is in addition to another set of new rights introduced by the constitutional legislator in the separation of rights and freedoms, such as the right of citizens to live in a safe environment (article 68), the right of disadvantaged groups to housing (article 67), as well as the right of every citizen to obtain information (Art. 51)⁴¹. This article is considered as the constitution of the requirement of access to law that is derived from legal security.

The constitutional legislator not only recommended these new rights, but also established a new independent oversight mechanism to protect and guarantee them. It is the National Council

38 Article 72 of the Constitution of 2016: «The family is protected by the State and society.

The rights of the child are protected by family, society and state

The State shall guarantee the abandoned or unknown parentage children.

The law punishes violence against children.

The State shall facilitate the benefit of vulnerable groups with special needs of the recognized rights of all citizens and their integration into social life.

The family and the state protect older persons.

The law defines the conditions and modalities for the application of these provisions.»

39 Article 73 of the 2016 Constitution: «The living conditions of citizens who have not reached the age of work and who cannot do it and who have been unable to do so are guaranteed.»

40 Paragraph 15 of the Preamble to the 2016 Constitution: «Youth are at the heart of the national commitment to raise economic, social and cultural challenges, and remain with the next generations the primary beneficiary of this commitment.»

41 Article 37 of the Constitution of 2016: «Youth is a living force in building the nation.

The State is keen to provide all the conditions to develop its capabilities and activate its energies. »

for Human Rights, which is provided for in articles (198)⁴² and (199)⁴³ of the 2016 Constitution which will be able to move the judiciary, in case where human rights were violated, in addition to preparing annual reports to express his views and recommendations for the promotion and protection of these rights. Noting that each of these new regulatory bodies is still under the establishment and this is not surprising, pending organic laws that will regulate the modalities of their work.

It is worth mentioning that, in the future, we may witness the emergence of an interactive and cooperative relationship between the National Council for Human Rights and the Constitutional Council as two regulatory institutions that strive to guarantee human rights. It showed the existence of ambiguity and difficulty in defining the concepts of fundamental rights and freedoms and thus how to deal with them in the context of activating the supervisory role of both institutions.⁴⁴

It is certain that these new articles and the new supervisory bodies that are devised by the constitutional legislator are part of the promotion of the legal protection of the rights and freedoms of members of society in their various categories, without distinction, in accordance with the principle of social justice and equality of all in the democratic state of law sought by Algeria,

42 Article 200 of the 2016 Constitution: «A Higher Council for Youth shall be established, an advisory body to be set up by the President of the Republic. The Council includes representatives of youth, government representatives and public institutions responsible for youth affairs.»

43 Article 201 of the 2016 Constitution: «The Supreme Council for Youth shall submit opinions and recommendations on matters relating to the needs and prosperity of youth in the economic, social, cultural and sports fields. The Council also contributes to the promotion of national values, national conscience, civic sensibilities and social solidarity among young people.»

44 Nasr El Din Bousmaha, «Youth and Democracy in Algeria in Light of the Constitutional Amendments of 2016», unpublished intervention, delivered on the day of the seminar entitled «Any Future for Democracy: Democracy 2030» organized by the National Assembly on 22 September 2016, without a page.

which will strengthen without the slightest doubt, the principle of legal security.

B. Devoting the state of democratic law:

The state of law is a theoretical model in the first place, but it has also become a political issue. It is now considered the main feature of democratic systems by making law a distinctive tool for the conduct of political and social organization. The theoretical origins of the rule of law derive from German jurisprudence in the 19th century, where it is defined as an institutional system in which public authorities were subject to law. Hans Kelsen redefined this concept at the beginning of the 20th century, on the basis that the state of law is the state whose legal rules are hierarchically sequenced, in which its authority is constrained. In this Kelsenian model, every legal text derives its validity from its conformity with the higher texts. This model assumes that the law is equal before the legal rules. This means that there is an independent judiciary that ensures the protection of individual and collective rights and freedoms, and regulatory institutions that ensure that laws conform to the supreme law of the state, which is often the constitution.

The state of law which the modern state seeks must have the necessary elements to ensure that they are subject to the law. These principles are based on the basic principles of democracy, such as the separation of powers, the independence of the judiciary and the independence of constitutional supervision, so that the ultimate goal is to guarantee fundamental rights and freedoms in the Constitutional provisions, especially the social rights of members of society, as stipulated by the majority of constitutions in the countries of the world.

The state of law to be sought by the modern state is the state that expresses the general will of the members of society. It is the state that reflects the authority of the people. It is the central idea on which democratic principles are based. The constitutional enshrinement of the rule of law guarantees the democratization of the political system; and this is meant to avoid manifestations of arbitrariness and reduce the sovereignty of the people.

The efforts of governments to respond to the interests and requirements of their citizens are linked to the ability of democratic institutions and processes to promote rights and equality; the establishment of the rule of law applies not only to the application of legal rules and procedures but also to a central role in protecting rights and promoting the integration of different groups of society -a wide area of human development. On the other hand, it is possible to draw a common denominator between democracy and the rule of law. The purely institutional approach does not allow the actual results of operations and procedures to be determined, even if the latter are theoretically correct. If we analyze the relationship between the state of law and democracy, “Where the law is a tool in the hands of the government, in other words, the government is above the law, and the” state of law “requires that all members of society, including the government, be subject to law. The constitutional limits of the exercise of power, which is a fundamental aspect of democracy, require adherence to the rule of law.”⁴⁵

Another essential aspect of the link between the rule of law and democracy is the recognition that their respective processes are

45 Article 51 of the Constitution of 2016: «Access, transfer of information, documents and statistics to citizens.

The exercise of this right can not affect the private lives and rights of the private parties and the legitimate interests of the Contracting Parties and the requirements of national security.

The law defines the modalities of exercising this right.»

complementary to one another and reinforce one another. This is most evident when the state of law is determined in its substantive conception, rather than purely formal and procedural, Such as the achievement of justice and the consolidation of democratic governance, strengthens the link between the rule of law and democracy. In general, the formal perception of the rule of law gives attention to procedures related to the development and application of legal texts, while the objective perception of the rule of law aims at protecting rights and formulating them in a wider problem involving human development. It is a state of law that should include elements such as a strong and effective constitution, an obligation to ensure equality between men and women and to protect minorities. It is a state of law protected by an independent judiciary, which plays a key role in ensuring respect for the fundamental rights and freedoms of citizens.⁴⁶

The 2004 report by the former Secretary-General of the United Nations, Kofi Annan, defined the concept of the rule of law on the grounds that the latter was “a principle of governance, whereby all individuals, institutions and public and private bodies, including the State itself are accountable to the laws promulgated in public, applied equally to all, within which they should govern an independent judiciary and conform to international human rights norms and standards, and to take measures to ensure compliance with the principles of the rule of law, equality before the law and Law, and fortunes Law enforcement, separation of powers, participation in decision-making, legal security, avoidance of arbitrariness, transparency of legislative processes and processes. “ Over the years, the commitment of the United Nations to strengthening the rule of law at the national level has

46 Article 198 of the Constitution of 2016 establishes a National Council for Human Rights, which is at the heart of the text «the Council» and is placed with the President of the Republic, the guarantor of the Constitution. The Board has administrative and financial independence.»

improved through support for reform initiatives in the development of constitution-making; legal reform; capacity-building of justice, governance and human rights institutions; and in strengthening civil society.

Fifth: Inviting the civil society to participate in the constitutional amendment consultations of 2014

The Algerian constitutional institution continued its efforts to consolidate legal protection and strengthen constitutional control, including, in the 2016 Constitution, some amendments that may be described as revolutionary in the legal sphere, particularly in the protection of the fundamental rights and freedoms of the individual and to ensure his legal security. This has been amended to suit the content of the new constitutional amendments.

The first notice of this amendment is the call by the executive branch of the civil society to participate in the constitutional amendment consultations held in 2014. More than 37 organizations and associations took part in these consultations. However, this participation is modest compared to the size of the civil society in Algeria, since the executive authority invited only those who recognize it, especially the loyal ones.

A. the Participation of the Algerian League for the Defense of Human Rights in the consultations:

Among those who participated in the consultations in 2014 is the Algerian League for the Defense of Human Rights, which works for the equality of men and women, and the service of democracy through the building of the rule of law. When did this association emerge the emergence? And what are the objectives for which it is struggling?

The Algerian League for the Defense of Human Rights was founded in the period of the Socialist regime in Algeria in 1985, where the FLN party was the only party and ruler of the country, during which the authority did not recognize the existence of a civil society. A law 87-15 on the establishment of associations was promulgated after Algeria's transition to a multiparty system in 1989, the year in which the Association was officially accredited by the Ministry of the Interior. The Association became subject to the provisions of Law No. 90-31 of December 1990.⁴⁷

The struggle of the Algerian League for the Defense of Human Rights is one of the most active and active national Societies in Algeria. It publishes annual reports on the human rights situation in Algeria, characterized by objectivity and freedom of expression, within its work program, which is as follows:⁴⁸

47 Article 199 of the 2016 Constitution: «The Council shall assume the task of monitoring, early warning and evaluation in the field of human rights.

The Council, without prejudice to the powers of the judiciary, shall examine all cases of violations of human rights which it considers or is aware of, and shall take all appropriate action in this regard and shall present the results of its investigations to the competent administrative authorities and, if necessary, to the competent judicial authorities.

The Council initiates awareness, information and communication activities to promote human rights.

It also presents views, suggestions and recommendations concerning the promotion and protection of human rights.

The Council shall prepare an annual report to the President of the Republic, to the Parliament and to the Prime Minister, and shall also publish it.

The law shall determine the composition of the Council and the modalities of its members' appointment and the rules governing its organization and functioning.»

«The Constitutional Court in the Arab World: Prospects and Horizons», organized by the Arab Organization for Constitutional Law , And Gulf Knowledge Center for Research and Studies, in cooperation with the Kuwaiti National Assembly, Kuwait, 9 and 10 December 2017, without a page.

48 Available on :https://laddh-algerie.org/?page_id=469 accessed on : -01-05 2019.

- The Association seeks to defend its rights and freedoms in accordance with the Universal Declaration of Human Rights of the United Nations in 1948. This declaration was ratified by Algeria in the wake of its independence.
- The League fights against all forms of discrimination, racism, injustice, tyranny and oppression.
- The Association defends the political rights of the citizen outside any partisan activity, such as political participation, the right to vote and other political rights, as well as the Association's defense of the economic, social and cultural rights of the individual.
- The Association denounces any violation of human rights, freedom of thought and expression, right to assembly, and the right to cultural and trade union organization. It also condemns the use and practice of torture methods. As evidenced by articles regularly published on the Association's official website, as well as annual reports.
- The Association provides a helping hand to every person whose rights are violated or whose freedom is threatened.
- The Association for the Equal Rights of Men and Women.
- The Association defends the rights of the child and seeks to promote them.
- The Association seeks to promote democracy by working to build the state of law.

The Algerian Association for the Defense of Human Rights was established by a group of jurists on the initiative of the lawyer Ali Yahya Abdel Nour, who headed the association from its inception until 2005, where he withdrew from the presidency of the association due to illness. And the second wing, headed

by lawyer Mustafa Bouchashi, who was succeeded by lawyer Nouredine Ben Yassid. This latter wing is stronger than the wing “Hussein Zahwan,” in view of the enjoyment of the recognition of both the Algerian authorities and the International Organizations.

In mid-May 2014, the Presidency of the Republic called for political consultations for the purpose of a consensual review of the Constitution for 150 parties, including 36 political figures, 30 of which accepted the invitation, 64 parties, 52 of them before the call, and 37 collective organizations, The Algerian League for the Defense of Human Rights, and 12 professors of the rank of professor, all of whom accepted the invitation. The invitation was aimed at discussing the preliminary draft amendment to the constitution, which was prepared in advance by a committee of five legal experts appointed by President Abdelaziz Bouteflika in April 2013, who wrote its preliminary draft.

The Algerian association called for the constitutional amendment to “institutional and constitutional insurance for Algeria”, where the association proposed by its president, “Hussein Zahwan,” the constitution of a precautionary framework that holds barriers against all slippages and threats that may result in activity and in the political arena. In this context, Zahwan pointed out that this proposal, which came in the form of a memorandum that touched on “a new look beyond the simple amendment of the Constitution,” and “Hussein Zhouan” to the press after receiving him by the Minister of State Director of the Office of the Presidency of the Republic, “Ahmed Ouyahia” that “the Association had thought for more than ten years on the issue of the Constitution and submitted a memorandum on the same subject in 2011 called” a statement of the Algerian constitutional reconstruction⁴⁹. “This indicates the Association’s recent attempt to

49 Ibid.no page

participate in influencing the opinion of the ruling authority, in defense of human rights, from the beginning -a fair struggle in the eighties.

Additionally, Al-Nahda took an anti-constitutional position that enshrines the right of women to participate in politics, and suggested that only legislative mechanisms contribute to the effective establishment of such equality. This is detrimental to the Algerian League for the Defense of Human Rights as we will explain later.

B. the Evaluation of the outcome of the struggle of the Algerian League for the Defense of Human Rights:

It is undeniable that the struggle of the Algerian League for the Defense of Human Rights is commendable, especially given the period of its establishment, which dates back to a political period dominated by a system of government that does not recognize pluralism or civil society. However, the struggle history of the Algerian League for the Defense of Human Rights could have been more effective, and more effective had the Association remained and focused on achieving its established objectives. Accordingly, we mention in the following points the pitfalls that have marred the struggle of the Association:

- The Need to complete the association:

We have already mentioned that the establishment of the Algerian League for the Defense of Human Rights dates back to 1985, meaning four years before Algeria became a multi-party system

See: UN Chronicle, «Rule of Law and Democracy: Reducing the Gap Between Policies and Practices,» Vol. XLIX No. 2012 4, December 2012. Available at: <https://unchronicle.un.org/en/article/state-of-law-and-mocracy-to-drive-the-cart-between-politics-and-practice>Video: 2017 / 07/30.

Ibid. without page.

in 1989. It is therefore considered an old national association. However, the democratic transition in Algeria, despite gaining official recognition by the Ministry of the Interior since 1989, was the first memorandum in the course of amending the Constitution, submitted by the Association to the ruling power represented by the Presidency in 2011 under the title “Statement of the Algerian constitutional reconstruction”. After the president Aziz Bouteflika announced “on the amendment of the Constitution, why did the Association wait for nearly twenty years to communicate directly with the ruling authority in order to influence the course of constitutions or constitutional amendments that preceded it.

The main reason for such inefficiency, non-influence and non-communication between the Association and the ruling authority is the internal divisions and disagreements that broke out among the activists of the Algerian League for the Defense of Human Rights, especially after the withdrawal of the founder of the association, lawyer Ali Yahya Abdel Nour, after twenty years of leadership. Because of the old age and the disease, the withdrawal led to the division of the latter into two different wings. As we mentioned previously, the first is headed by attorney Hussein Zahwan and the second wing is headed by lawyer Mustafa Bouchashi. This split has paralyzed the association’s activity for many years, So that the Association did not hold a conference conforming to the new law 12-06 on associations until September 2013, in order to renew its structures and submit its financial report to the Ministry of Interior, which almost led to the disbanding of the Association and the end of its struggle, in accordance with the new law of associations for 2012.

This division let the militants engaged in internal differences at the expense of the struggle of the Association known in the field of defending human rights, in the absence of this division, the

Association would not give up its role in influencing the course of the constitutional experiment in Algeria. Therefore, the activists of the Association must overcome their personal interests and focus on the objectives of the association, which is the defense of human rights.

-The Commitment to defending the objectives set:

In addition to the previous initiative which came from the ruling authority represented by the Presidency of the Republic to invite a number of associations and organizations of civil society to participate in the constitutional amendment consultations in 2014, including the invitation of the Algerian League for the Defense of Human Rights, in 2008, at the initiative of the President of the Republic, “Abdelaziz Bouteflika,” which decided not to submit to the referendum, and only to submit to the deputies to vote for it, which angered the Association, which condemned the amendment, which was the opening of the presidency of more than my mandate N, in addition to denouncing the constitutionalization of the promotion of women’s political rights and raising their representation in the parliament.⁵⁰

This denunciation has clearly shown that the association’s activity has become politicized, so that the Association has deviated from its established objectives, the most important of which is to work for equality of rights between men and women, so that it can become involved in the field of political game, arguing that the constitution of such a right belongs to the President of the Republic to the opening of the arena and to win the women’s electorate, in addition to the revolutionary family in the presidency of the year 2009, through which he nominated “Abdelaziz

50 See: Report of the Secretary-General, (S / 616/2004), «The Rule of Law and Transitional Justice in Societies in Conflict and Post-Conflict Situations», paragraph 6, Distr. General, August 2004 ,23. Available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=S/616/2004> Viewed on: 2017/07/30.

Bouteflika,” for a third term, and in our opinion, the Association violated the rights to defend for which it was founded, as one of the components of civil society in political life. But the reason for this rejection and condemnation is due to the proximity of the activists of the Association of the opposition parties, especially the party of the Socialist Forces Front, which is totally disrespectful to the Association, which put their personal interests above the promotion and protection and guarantee women’s rights and equality with men, whatever the intention of the then president , It is a political thing, and here comes the role of political parties to denounce or emphasize such a matter, since they represent the people, and not the role of the civil society to intervene in politics.

- The Transition from negative condemnation to positive influence

What’s wrong with that the Algerian Association for the Defense of Human Rights is restricting its continuous denunciation of the policies of the ruling authority and describing the human rights situation in the country through its reports and articles, without the Association seeking to provide the alternative with the aim of activating it. By issuing reports or sending memos to the ruling authority, and even as a component of civil society, as a link between authority and society, it should play the role of the appointed partner of the Authority by raising awareness among members of society “Defend” or the means of protecting them if they are exposed to the violation, which means spreading the legal and constitutional culture in society, whether through the organization of forums and seminars, or through training courses, or through the issuance of publications for distribution.

In this context, the Algerian Association for the Defense of Human Rights can be used to inform the Algerian citizen of the

mechanism of non-constitutionalization, which was created by Article (188)⁵¹ of the 2016 Constitutional Amendment, which can be considered as the actual embodiment of the “legal protection”, the introduction of the Algerian constitutions since the 1989 Constitution, by extending the scope of the notification to the ordinary citizen, who established the Algerian founder with an effective and powerful democratic tool, the mechanism of pushing the unconstitutional, which opened the way to seek recourse to the Constitutional Council. The subject of the dispute is in violation of one of the rights or freedoms guaranteed by the Constitution, and thus the right of notification is no longer confined to political power, an unprecedented human rights revolution in the Algerian constitutional system, which is the quality of the revolutions in which the Association should contribute to and give opinion in, especially as they fall within the objectives that the Association seeks to achieve and strive for. This article is supposed to be activated in 2019, as stipulated in Article (215)⁵² of the 2016 Constitution. Therefore, the Association’s activity will be more and more effective if it contributes to the activation of this mechanism.

These reforms that will be reflected in the performance of the Constitutional Council, by incorporating the individual challenge of unconstitutionality within its powers, will inevitably be reflected in its legal nature and the importance of its role in ensuring the legal protection of the rights and fundamental freedoms of citizens. This will enhance the achievement of legal security by establishing an integrated legal system and guaranteeing these rights and freedoms. This is considered an important development in devoting the state of democratic law.

51 See (A / 133/66), «Strengthening and Coordinating United Nations Rule of Law Activities», paragraph 18, Sixty-sixth Session, Distr. General, August 2011 ,8. Available at:

<http://www.un.org/Docs/journal/asp/ws.asp?m=A/133/66> Viewed on: 2017/07/30. Available on: https://laddh-algerie.org/?page_id=469 accessed on: 2019-01-05.

52 Ibid

Professor Bosmaha Nasreddine summed up the above in an intervention in which he assumed that the mechanism of pushing for unconstitutionality guaranteed by the 2016 constitution will achieve a number of results, which he mentioned in three points⁵³:

- First, to strengthen the protection of human rights by expanding the powers of the Constitutional Council by including the mechanism of individual non-constitutional payment, which will make the Constitutional Council play a complementary role to the rest of the judicial and constitutional institutions that are specialized in the protection of human rights.
- Second: the development of a new legal framework for the interactive relationship between the Constitutional Council and the legislative authority. This was followed by the extension of the notification points to include the parliamentary opposition (50 deputies from the first chamber or 30 members from the second chamber), which will force the legislature to remain in constant readiness to fill any legislative vacuum, in the event that the Constitutional Council recognizes the unconstitutionality of certain legal provisions.
- Third: to strengthen the judicial role of the Constitutional Council; by strengthening the interaction between the latter and the Supreme Court and the Council of State, i.e., creating an interactive relationship between the ordinary judiciary and the constitutional judiciary.

53 Available on : <https://www.ennaharonline.com/%D%8A%8D%8A%7D%8A%8D%8A%7D%8B%-3D8%9A%D%82%9D%8AA%D%8B%1D%8AD-%D%8AF%D%8B%3D%8AA%D%8B%1D%8A%-9D8%A%7D%84%9D%85%9D%8AC%D%84%9D%8B-3%D%8A%7D%84%9D%88%9D%8B%7D%86%9D8%9A-%D%8A%7D%84%9D%8A%7D%82%9D%8AA/> accessed on : 2019-02-01.

Conclusion:

The Algerian founder's preoccupation with legal security has emerged clearly since the 1989 Constitution. This concern under the term "legal protection", which appears in the preamble of all the constitutions of this stage, is intended to guarantee the constitution by ensuring rights and freedoms and protecting them from the abuse of public authorities. This is what makes us assert that the need for legal security is constitutionally and legally enshrined, not in explicit, understandable and clear terms, given the modernity of the subject and the controversy surrounding it, but it is clear that the three sub-requirements established for legal security are matched by legal and constitutional texts where we note:

- The access requirement was established by the Algerian founder in the last constitutional amendment of 2016, as stipulated in Article (51) of the Constitution, which guarantees citizens access to information.
- The requirement of the stability of the rights of self and the stability of the legal centers guaranteed by the mechanism of control over the constitutionality of laws, which is specialized in the Algerian Constitutional Council, as stipulated by the Algerian Constitution in the first chapter of the third section of the control.
- The requirement of legal prediction is guaranteed by article (2) of the Algerian Civil Code, which provides for the non-retroactivity of the new legislation to occur in the past, thus protecting the legitimate legal expectations of the persons of the law.

However, this development in constitutional architecture achieved legal security without the involvement of civil society organizations, which had no impact on the decision maker,

whether at the stage of the socialist system, where the political system did not recognize civil society, or in the period of transition to pluralism where the authority has always sought to limit the activity of national associations and organizations. This dispute remains between the two parties, as we explained in this paper by discussing the role of the Algerian League for the Defense of Human rights, which will be governed by this struggle. The finest thing that should change its approach is confined in the condemnation and opposition to the policies of power, to the participation of the latter in raising human rights awareness of human rights among citizens, which will not come out from the context of its objective, that make them work on promoting democracy and the rule of law.

What we can confirm is that the development of the Algerian constitutional system has been on the rise, and in the interest of enhancing legal security. The Algerian founder has made important efforts and steps taken to ensure legal security and stability by providing institutional and constitutional protection of fundamental and individual rights and freedoms, constitutionally guaranteed. In this regard, the civil society should be invited to participate in constitutional reform consultations, in which there should be more effective initiatives to return to the origin of civil society as a link between power and society, with the need for civil society to move away from politicizing its struggle, at the expense of the interests of the community.

By the People, for the People: Public Participation and Drafting the Egyptian Constitution

Karim Mahmoud

“The constitution-making process is a unique moment—an opportunity to build consensus, a shared sense of identity, values, and purpose, and to resolve major differences.”¹

1. Executive Summary

The issue of constitution-making has recently gained considerable focus and attention by both academics and practitioners, especially after the political changes in Arab countries beginning in 2011, and the new wave of constitutionalism which has swept over the region is a direct consequence. These moments of constitution-making represent a phase where the entire nation gathers to determine their own future, by setting forth a legal and political system in a document (a Constitution) which will last for years, if not for more.

This paper explores the works of the constituent assemblies that wrote both the 2012 and 2014 Egyptian Constitutions; examines the role of public participation in the process of drafting these constitutions; and proposes recommendations for a genuine and effective participation by the public in such processes, in order to ensure a deliberate and democratic outcome.

¹ Michele Brandt, Jill Cottrell, *Yash Ghai*, and Anthony Regan, ‘Constitution-making and Reform: Options for the Process’ *Interpeace* (2011)

2. Background

A Constitution represents a contract between the people of a nation and their government. It is the document which dictates the rights and responsibilities of each citizen, as well as the functions and limits of each state institution. Therefore, the constitution is the most vital legal and political document in the land, and the final reference point for every individual and institution. Hence, society itself represents the most important constituent element during the constitutional drafting process, and its role in this endeavor shall be the most ensured and recognized.

Social movements participated widely in drafting both the 2012 and 2014 Egyptian Constitutions. In the process of writing the 2012 Constitution, for instance, the Muslim Brotherhood group, alongside Al-Nour Party (the political arm of the Salafist movement²), dominated the drafting committee of the Constitution and did not allow sufficient space for other representative groups to mold the constitutional text. Afterwards, the Administrative Judiciary Court issued a law which dissolved the first committee which was preparing to write the Egyptian constitution in April 2012, because their decision to elect fifty percent of the people in charge of making a draft, internally, from the Egyptian parliament was deemed illegitimate.³

Subsequently, the 2014 Constitution was written in a two-level process, with the input of two drafting committees. The first committee, the Committee of Ten, was composed of technical experts: six judges and four law professors. The second committee, the Committee of Fifty, was meant to include all social sectors and movements, and thus involved participants from political parties, the

2 The Salafist movement is a fundamentalist Islamic movement, which adopts strict conception of Islam.

3 Case Number 26657 for Judicial Year 66, Administrative Judiciary.

opposition, as well as Al-Azhar⁴ and the Coptic Church.⁵ However, the Muslim Brotherhood was excluded from this committee, although one of their withdrawing members was represented.

Through the participation of various social movements and groups in writing both the 2012 and 2014 Constitutions, it can be argued that the Egyptian society played an unequivocal role in Egyptian constitutionalism after 2011. These different movements had their separate, and sometimes conflicting, ideologies and agendas for a constitutional document and vision. This is demonstrated by the role of religion and religious institutions in both the 2012 and 2014 Constitutions, as well as the powers of state institutions in both these documents.

On the other hand, while the role of any given society in writing its constitution is important, the participation of experts should not be neglected, either as members in the constitutional drafting committees, or as consultants. As the constitution is a legal document, which contains legal jargon and technical connotations, constitutional experts should enjoy a genuine role in drafting it and giving it a legal accreditation.

In a state like Egypt, the role of powerful institutions should be taken into consideration, and it should be recognized that mere citizens would not be able to run the country without a meaningful participation from these institutions. While this brings a difficult equation to the table, balance can and should be achieved. This is one of the issues which this paper will attempt to address. A constitution that is created solely by social movements could not be a valid option for a state with powerful institutions, and a constitution that is only made by an individual or state institution, does not represent the people, either.

4 Al-Azhar is the formal Islamic institution of the Egyptian State.

5 The Coptic Church, is the church which represents the majority of Christians in Egypt.

Therefore, this paper seeks to answer the following query: Why is public participation an essential element of the constitution-writing process, and how is it effectively achieved? This paper argues that no social movement or sector should be excluded from writing their constitution, as they are both active citizens and key actors in the political process. It also claims that the exclusion of certain citizens from such processes without a legitimate reason could later contribute to a state of strife and create a feeling of non-belonging related to the outcome.

According to Egypt's recent experience with the implementation of two constitutions between 2012 and 2014, this paper will rely on such context by examining the participation of social movements and groups in drafting the 2012 and 2014 Constitutions. Hence, this paper will analyze the appointment of the constitutional drafting committees, the drafting processes of the two constitutions, and the effectiveness of social participation on the final respective constitutional documents.

This paper also generates recommendations for future decision-makers in times of constitutional drafting processes, as well as when making major amendments to the constitutional document. These recommendations will be attributed to the issue of public participation and the form and effectiveness of such participation.

3. The Creation of the 2012 Constitution

The public debate over the Egyptian 2012 Constitution was both political and ideological in nature: the Islamist movements, fronted by the Muslim Brotherhood, and the Salafists, on the one hand and the liberal movements, alongside the liberal political parties, on the other hand. While the debate over state institutions and democratic reform after the January 25th

revolution occupied a considerable portion of the political discourse therein, there was also heated discussions over the identity of the Egyptian state, represented by its constitution: is Egypt an Islamic or secular state? Which political and legal systems should be adopted? And how much will religion shape them?

Due to the triumph of Islamic movements and groups in the parliament and the chair of presidency, and the leading role of the Muslim Brotherhood in Egyptian politics after the 2011 Revolution, Islamists dominated public life and the role of secular and liberal movements was marginalized. Thus, when the parliament decided to form a constituent assembly to write the Egyptian constitution, this assembly was comprised of a majority of Islamists.

After the first constituent assembly which was supposed to write the Egyptian constitution had been dissolved, a new a constituent assembly was formed by the same parliament in June 2012.⁶ The new assembly composed of 100 members was still dominated by a majority of Islamists and the voices of its secular and liberal members were largely ignored. The strife between Islamist and civil⁷ powers in Egyptian politics led to a futile debate, where the argument over the content of the constitution was not even political most of the time; the battle over the constitutional document was, actually, over political position and influence. While this presents very negative aspect of the constitution-making process after the 2011 Revolution, this strife can also be understood due to the critical moment

6 El-Youm El-Sabie', '“Parliament” Selects Today the Members of the “Hundred Committee” to Make the Constitution of the Revolution’ (12 June 2012) <<https://goo.gl/eHT3m8>>

7 The liberal and secular movements in Egypt, proposed themselves as “civil” movements. This could be understood under the hostile responses towards whatever is “secular,” by the Islamist groups and scholars.

Egypt was living in that period, of determining whether the country would explicitly become either a theological state or a secular one. This battle was not only fought by political elites, but was additionally present in public debates on television in talk shows, social media websites, universities, and even coffee shops, as hotbeds of political discussion.

3.1. Participation within the Constituent Assembly

3.1.1. Selection of the Constituent Assembly

As discussed above, the Egyptian parliament selected the first constituent assembly to write the constitution, which was later dissolved after a judicial decision considered it illegitimate. A new constituent assembly was elected by the parliament, consisting of 100 members - 50 of whom were parliamentarians, while the remaining 50 hailed from outside the parliament. The prior ruling of the Administrative Judiciary Court dissolved the first constituent assembly upon this very issue (selecting members from within the parliament), as the parliament had insisted on this condition and chose 50 members from both the higher and lower houses.

The main problem with both of these constituent assemblies was that the Islamists dominated both bodies, and the representation of liberal and secular representatives was therefore minimized. This unbalanced public representation was one of the core obstacles to the democratic transition after the 2011 revolution. It created a condition of strife, and the constitutional drafting process was dismantled. Hence, the focus moved away from the content of the constitutional document itself towards the identity of the members who were supposed to draft it. Unbalanced representation later became one of the essential grounds for disregarding the 2012 Constitution after the toppling of the Muslim Brotherhood government in 2013.

Although this was the first time an elected assembly was given the opportunity to draft an Egyptian constitution, this body was not directly elected by the people through suffrage, but rather indirectly elected, as it was chosen by the Egyptian parliament. The parliament was composed of a majority of Islamists, that is why the Islamists dominated the constituent assembly, in turn.

3.1.2. Proportionality of the Constituent Assembly Members

The representation of women and Christians in the constituent assembly was not proportionally accurate, as women only represented 7% of the members of the assembly, while they currently represent around half of the population in Egypt⁸. Also, Christians represented only 7% of the assembly.

3.1.3. Independence of the Constituent Assembly

The issue over the independence of the constituent raises the question of who sets its policy and agenda. This, likewise, raises the controversy over the role of the public in determining how their own constitution is formed and drafted. In this regard, it can be said that the Islamists controlled the agenda of the 100-member Constituent Assembly from its inception in the parliament, throughout the drafting process and when adopting the articles of the constitution in the assembly. This effectively denied participation by various social actors and stakeholders, who were barred from the process of constitution drafting.

3.1.4. Publishing the Constituent Assembly's work

A local television channel named *Sawt El-Sha'b* ("Voice of the People"), with a corresponding YouTube channel, aired the

⁸ El-Youm El-Sabie', '10 Most Important Numbers in the Count of Egypt's Population 30) (2017 September 2017) <<https://goo.gl/aV7NSL>>

drafting sessions of the 2012 Constitution by the 100-member Constituent Assembly. This guaranteed transparency in the working of the assembly, and clearly showed the positions of the members of the assembly, their priorities, and what they stood for. This also allowed the opportunity for every citizen to follow the constitution-building process and to interact with it in real time. Furthermore, the talks of all the meetings of the assembly were later published in written form for public access.

3.2. Participation outside the Constituent Assembly

3.2.1. Civic Education

The issue of civic education comes before the issue of public participation itself. Citizens should be well-informed and educated about the matters they discuss and deliberate before making the appropriate decisions. Otherwise, these decisions cannot be relied upon and fully considered as well-informed: “Civic education is the foundation upon which effective participation can be built. Without it, formal avenues for participation will be inaccessible to many people and participation by ill-equipped citizens will be relatively fruitless.”⁹

The political elite, including academicians, policy-makers, and parliamentarians, did recognize civic education as a priority for the constitutional drafting process in 2012 and 2014. Although citizens were directly engaged with critical political debates previously, they were not fully informed about their function and essence; before the 2011 Revolution especially, citizens were not politically engaged, and did not meaningfully participate in public life. On the other hand, the Islamist/secular issue was put before the people, even if

⁹ Katy Le Roy, ‘Public Participation in Constitution-making: The Pacific Islands’ *Interpeace* (2011)

the question was not religious and plainly political. This state of confusion raised a theological debate before the populace and, ultimately, harmed public life, and entangled citizens in fractious constitutional debates.

3.2.2. Public Demonstrations

The 2012 Constitution was written during a time of polarization and lack of consensus, where no sole political power could fully control the grasp of the government and overcome its opponents. Therefore, the transitional period, including the constitution-writing process, was full of public demonstrations and protests by both Islamists and liberals. Although the marches were usually headed by civil powers, as Islamists were already ruling, many of their demands were denied and Islamists went about implementing their own vision to rule the country against other people's wishes and will.

3.2.3. Voting on the Constitution (referendum)

Voting on the 2012 constitution reached 32.9%, which is a relatively low participation with regard to previous voting processes; during the referendum unconstitutional amendments in March 2011, overall participation reached 41.19%, the People's Assembly reached 60%, and the presidential election results were 46.4% and 51.8%, respectively. This low participation reflected the poor interest of citizens in voting on the constitutional document, especially with many of the liberal and secular movements calling for a general boycott of the constitutional referendum¹⁰. Due to the deep divisions in Egyptian society towards the constitution and the accompanying work of the

¹⁰ DW, 'Egypt.. Intellectuals Between Boycotting the Referendum or "NO" Voting' (12 December 2012) <<https://goo.gl/fQtw7f> >

constitutional drafting assembly, 63.8% of the people agreed to the 2012 Constitution, and 36.2% declined it.

4. The Creation of the 2014 Constitution

The 2014 Egyptian Constitution was written after the fall of the Muslim Brotherhood government in 2013. After becoming actively involved in politics for two years following the 2011 Revolution, the Egyptian public relatively distrusted both the Islamists and the liberal political parties, which brought about a decline in people's interest in public affairs. This is evident from the low public participation in the referendums of both the 2012 and 2014 Constitutions, which reached 32.9% and 38.9%, respectively.

The main purpose of drafting a new constitution only two years after the previous one was the desire to eliminate the influence of the Muslim Brotherhood from Egypt's politics; the 2012 Constitution was a physical representation of this monopoly. Therefore, at first, the intention was only to amend the 2012 Constitution, and to discard the previously incorporated constitutional articles influenced by Islamists and their religious tenets, such as article 219 of the 2012 Constitution¹¹.

While the 2012 Constitution was drafted by a constituent assembly of 100 members elected by the parliament, the 2014 Constitution was drafted by a constituent assembly of 50 members appointed by the Interim President Adly Mansour, and previously assisted by a committee of 10 experts. Therefore, the process of amending the 2012 Constitution, which was later altered to form the drafting process of the 2014 Constitution, was

11 Article 219 of the 2012 Constitution states that: "The principles of Islamic Sharia include general evidence, foundational rules, rules of jurisprudence, and credible sources accepted in Sunni doctrines and by the larger community."

assembled in two levels: a first committee composed of 10 experts in constitutional law, and then a public constituent assembly of 50 members to review the proposals of the expert committee and draft the final constitutional document. Both the committee of 10 and the assembly of 50 were directly appointed by the interim President, and were neither directly nor indirectly elected.

4.1. Participation within the Constituent Assembly

4.1.1. Selection of the Constituent Assembly

As stated above, the creation of the 2014 Constitution was originally meant to be only an amendment to the 2012 Constitution. The Egyptian interim President ordered a committee of 10 experts to review the 2012 Constitution and to propose new amendments to it; then a constituent Assembly was to review the proposed amendments and prepare a final draft. Both the committee of 10 and the constituent assembly of 50 were appointed by this interim President.

Contrary to the Constituent Assembly of 100 which drafted the 2012 Constitution and was indirectly elected, the constituent assembly of 50 was directly appointed. This did not reflect a democratic method of selection, through either direct or indirect means. On the other hand, given that the interim President was the President of Justice of the Supreme Constitutional Court and deemed to be an impartial persona, it was believed that his selection of the Assembly members would not be politically biased.

4.1.2. Proportionality of the Constituent Assembly members

The participation of women in the Constituent Assembly of the 2014 Constitution reached 10%, which represents a 3%

increase over the previous Constituent Assembly in 2012. On the other hand, only 6% of the Assembly were Christians, who represented the three denominations of Christianity in Egypt (Copts, Catholics and Protestants), a 1% decline from earlier. However, the presence of Islamists was limited in this Assembly, and the Muslim Brotherhood group was not represented.

4.1.3. Independence of the Constituent Assembly

Owing to the lack of a single majority in Egyptian politics at the time of the 2014 Constitution's drafting, it can be argued that the Constituent Assembly functioned relatively independently in setting its own policy towards writing the new constitution. Articles on the rights and freedoms¹² and the daring Articles such as Article 226/5,¹³ showed that the Constituent Assembly functioned in this regard without outside pressures.

4.1.4. Publishing the Constituent Assembly's work

After its completion, the work of the Constituent Assembly was published in written documents. In addition, many of the sessions were video-taped and published on YouTube. However, many of the sessions with experts and participants from outside the Assembly were recorded, neither for this Assembly, nor for the previous one.

12 Article 92 of the 2014 Constitution reads as follows: "Rights and freedoms of individual citizens may not be suspended or reduced. No law that regulates the exercise of rights and freedoms may restrict them in such a way as infringes upon their essence and foundation."

13 Article 5/226 of the 2014 Constitution states that: "In all cases, texts pertaining to the re-election of the president of the republic or the principles of freedom and equality stipulated in this Constitution may not be amended, unless the amendment brings more guarantees."

4.2. Participation outside the Constituent Assembly

4.2.1. *Civic education*

The issue of civic education was not substantially present at the agenda of the Assembly drafting the 2014 Constitution, as it was not firmly present with the previous constitutional Assembly, although it should have been a top priority of both assemblies. This is especially the case considering the short time period the Constituent Assembly of 50 had to write the Egyptian Constitution: only 60 days.¹⁴

4.2.2. *Public demonstrations*

The political sphere around the writing process of the 2014 Constitution was relatively calm compared to the conditions in 2012, soon after the 2011 Revolution. Especially when many of the opposition leaders of the Muslim Brotherhood were being sued in courts, while most of the liberal parties, including the Islamist, Salafist party (Al-Nour), were represented in the Constituent Assembly. Therefore, the need for protesting against the work of this assembly was not as pressing as it was with its predecessor.

4.2.3. *Voting on the constitution (referendum)*

The voting percentage on the 2014 Constitution rose to 38.9%, compared with the 2012 Constitution where the percentage was over 32.9%. Furthermore, while 63.8% agreed on the 2012 Constitution, 98.1% agreed on the 2014 Constitution. Although the percentage of 98.1% demonstrates Egyptian society's acceptance of the 2014 Constitution, the fact that the 2014 Constitution is essentially a modified version of the 2012

¹⁴ Michael Meyer-Resende, 'Egypt: In-Depth Analysis of the Main Elements of the New Constitution' *European Union* (2014)

Constitution and not an entirely different text proves that when more sectors of the society are included in the constitutional writing process, a high number of the public can reach an agreement over the final constitutional product.

Recommendations

- Public participation should be fulfilled at all stages of drafting the constitution: the decision to make a new Constitution, engaging in the subjects pertaining to constitutional reform and the constitutional agenda during the process of constitutional drafting, after concluding the draft of the Constitution, receiving proposals and suggestions from the public and finally submitting the Constitution to a referendum.
- Referendums: The rush to finalize the constitutional drafting stage could indirectly push people to agree on a text that does not meet their hopes and demands; or at least, does not give them the chance to discuss and examine the constitutional content thoroughly. Therefore, while making a referendum on each article of a new constitution can be time-consuming and difficult to achieve, especially when the public is not sufficiently educated on the relevant concerns. Therefore, separate referendums should be made on each section of the Constitution. If one of the constitution's sections was turned down by the public referendum, then the Constituent Assembly could consult the public on their objections to such a section, reform it, and put it to a second referendum. In this way, the text will tolerably reflect social preoccupations.
- Civic education: People should be made aware of the essence, purpose, and end of the Constitution, as well as the contents of such a document and its impact on society. This process

should begin prior to the work of the Constituent Assembly on drafting the Constitution, and continue in tandem until the voting on the final draft.

- Proportional balance of those groups participating in the Constitution-making process (Constituent Assembly) should be applied. This includes women, youth, Christians, political parties, unions, civil society, state institutions, etc.
- Proportionality may be determined according to the percentage of the categories of society, such as women and men, the elderly and youth, Muslims and Christians, etc.
- The constitutional debate should not only take place in urban centers, but also in more remote areas, such as villages and oases, where people do not have easy access to media, such as television, internet websites, social media and newspapers. This will ensure that these populations are fairly represented and their concerns heard.
- A committee should be created to genuinely examine the proposals and suggestions of the public to the Constituent Assembly on the content of the Constitution.
- A Constitution should be a method of resolving conflicts, not intensifying them. Therefore, the constitution-making process shall be as open and inclusive as possible.
- A Constitution should not be written in a rush. For example, both constitutions of Tunisia¹⁵ and South Africa¹⁶ took approximately two years to be drafted.
- The involvement of experts in the constitutional making process is essential to producing a well-drafted document.

15 Fathy El-Gray, 'The New Tunisian Constitution and the Future of Democratic Transition' Al Jazeera Centre for Studies (2014) <<https://goo.gl/ajjGBz>>

16 South African History Online, "The Drafting and Acceptance of the Constitution" <<https://goo.gl/yKpui2>>

Their voices should be heard, and their advice well-examined.

- The involvement of key state institutions in Egypt is necessary for the success of the Constitution making process. The same thing should occur for the implementation of the constitutional document itself. Therefore, the participation of important players in Egypt's politics should be fulfilled.

Summary

This paper has discussed the role of public participation in the constitutional drafting processes in Egypt after the 2011 Revolution. It explored the role of public participation both within and outside the constituent assemblies that wrote the 2012 and 2014 Constitutions, and reflected the merits and drawbacks of this participation.

While this paper argues that public participation should be guaranteed as much as possible. Even more, it should be claimed that public participation is the core of any constitutional document's legitimacy. Moreover, this paper demonstrates that experts play a vital role in making good constitutions. The constitutional document is a technical product which will later be interpreted by judges and implemented by parliamentarians. Therefore, the drafting of such a crucial text should be critically handled by experts who come from legal backgrounds, as well as other expertise and professions.

On the other hand, although genuine and effective public participation could extend the constitutional writing process, it cannot be neglected for the reasons of time constraints and tight deadlines. The creation of a Constitution is a decisive moment in any society's future and history; therefore it cannot be made in a rush, or conceived in a limited number of days or weeks.

The problematic of religious authority in Morocco

Abdelhakim Abou A Louz

Executive Summary:

The paper aims to develop the Moroccan constitution in terms of religious authority. However, in order to reduce the tendency of monopoly in governance of the previous constitution, the 2011 document limited the constitutional prerogatives of the king and opened them up in the religious article, so that the Constitution referred the entire religion issue to the Emir Al Muminin who exclusively decides about it. After nine years, it became possible to resume working on the religious competence in a way that guarantees that an emirate of Al Muminin would be an effective institution in the constitutional structure and that the administration of the religious affairs would be controlled through the designation of a responsible and accountable authority. In the context of the outputs of the Moroccan popular movement of February 20, 2011, the king quickly designated a committee that was assigned to amend the country's constitution, according to a new methodology based on listening to a large number of political and civil actors. The work of the Committee culminated in a draft of a new constitution which was submitted by the King to referendum on July 1, 2011. It was then agreed upon on the 30th of the same month after it has been published in the Official Gazette. The new constitution defines the relationship of religion with the various actors. In the two chapters 41 and 42, a distinction was made between the king as head of state who exercises specific functions in the constitution (Chapter 42)¹ and

1- Ali Hassou and Saeed Abu Ali, mosques in Morocco .., p.23

Article 41 states that the King is the Head of State, its supreme representative and

the king as Amir Al Muminin to who exclusively manages the religious affairs (Chapter 42)². This was a personal diligence on the part of the Royal Advisory Committee after its failure.. its content covers a new legislation that breaks with the wording of Chapter 19 of the Constitution of 1996 and before it³, which allowed to deviate from the positive legitimacy, and to seek for the path of religious legitimacy with which the traditional mechanisms of government could work whenever necessary.

The old constitutional tradition, although it disappeared from the constitutional text of 2011, but it reappears once again to frame the political debate, on the one hand the movement of imams who became active in terms of the written media and social networking sites increased. Their demands had echoes in the parliamentary questions addressed to the Minister of Endowments and Islamic Affairs⁴. On the other hand, the voices of the modernist elites have escalated, demanding the

the symbol of the nation unity, the guarantor of the state's permanence and continuity, and the supreme rule among its institutions. He ensures the respect for the Constitution, good functioning of constitutional institutions and the maintenance of democratic choice, the rights and freedoms of citizens, and groups, and to respect the Kingdom's international commitments.

The King is the guarantor of the independence of the country and the estate the Kingdom in the circle of its true borders. These functions are carried out by him, by virtue of dhahirs, by the powers expressly vested in the Constitution ...»

2 The Article 41 states that the King, amir al mumineen and the protector of the denomination and religion, and the guarantor of the freedom to practice religious affairs. The King exercises the religious powers related to the Emirate of al mumineen that are exclusively authorized to him under this Chapter through Dhahirs.

3 The Article 16 of the 1996 Constitution provides that «the King, amir al mumineen and the supreme representative of the nation and the symbol of its unity and guarantor of the state's permanence and continuity, is the guardian of the religion and the guardian of respect for the Constitution and the maintenance of the rights and freedoms of the citizens, groups and bodies.

4 Mohammed al-Sassi, the king submits a constitution, reading the relationship between the text of the royal speech of June 17, 2011 and the text of the new constitution. Within the framework of the familiar, the constitution and the illusion of change (Dafer point of view, coordination of Omar Bendoro, 2011, p.19)

need for religious freedom to be exercised, in accordance with the constitutional principle devoted to the relevant international conventions over the national legislation.

The new demands bring back to debate the uniqueness of the king by virtue of the religious field through the Dahirs issued by the king the various laws revealed to them, which aim, in their general content, to define the meaning of Islam as the religion of the state and protect it from the contrary beliefs, whether related to other religions or the alien versions which are considered by the official discourse “strange to the Moroccan environment.”

The paper tries to address the specific issue which is the possibility of overcoming the problem of the Moroccan political system consisting of the coexistence of several legal systems, including the religious legitimacy, which allows the king as Amir al-Mu'minin to have absolute powers in the religious field. In a society where religion is the basic component of the public culture, the religious authority is limited only to the royal institution, as an increased source of authority. It is possible for it to open up to other powers that were not stipulated, which would eventually lead to the re-production of access to discretionary authority whose scope was determined by the stakes faced by the official policy in the religious sphere⁵.

Is it possible when building a modern constitution that the emirate of al-Mo'mineen will retain the right of initiative and action from within the constitutional legitimacy without contradicting it?

The paper proposes amendments to the Constitution and ordinary law, and believes that there is room for action within

5 review our study: Mosques and their Values in Morocco (Amran, Falseya Court, Arab Center for Research and Policy Studies, Fall 2012, Issue No. 2), pp. 111-124. <https://omran.dohainstitute.org/ar/issue002/Documents/abedhakimaboulouz.pdf>

the consensuses allowed by the current situation and achieve the equation that was difficult to obtain in 2011: keeping the king present as an authority in the field of religion, while involving other parties who are strongly present in the field without a full control to express themselves as legitimate actors for fear of falling under the jurisdiction of the Constitution and the Royal Dahirs:

The proposed version is:

- Preserving the King's authority to define the general characteristics of the Moroccan Islam and its doctrinal tendencies.
- Determining the powers assigned by the King to the authority to manage the religious policy and make them under control.

To achieve this, we propose to privatize the emirate of al-Mo'mineen with a special chapter in the Constitution 41, and dividing it into several chapters:

- First: refers to the emirate of al-Mo'mineen as a symbolic value of the king.
- Second: refers to the powers of the King in determining the meaning of Islam to be referred to the Constitution and intended to be the official religion of the state.

Third: Identifies the competent constitutional institutions and appoints their controls.

Otherwise, its deportation should be under the Constitution (laws, regulations) or ordinary legislation (ordinary or regulatory laws, decrees, decisions ...).

It is a matter of a new order of Chapter 41 in terms of form and content, with the aim of distinguishing between the supreme authority which is due to defining the characteristics of religion

in Morocco and its doctrinal constants, and distinguishing them from the “mundane powers” of daily administration of the religious field. Thus preventing the maintenance of this latter level contingent on the constraints of the current measure, this provokes protests and renewed demands.

In our opening of the Moroccan constitution, we rely on this research on the Moroccan Islam to understand some aspects of official or civil religiosity, which expresses itself in a variety of rich ways that political forces have not succeeded in expressing them and did not plead for the prominent multiplicity of actors among the religious powers before the Advisory Committee in drafting the 2011 Constitution.

In the context of the justification of the proposed amendments, the openness required for the constitutional studies on social sciences has been utilized to reach a legalization that attempts to keep pace with the transformations of the religious life of the Moroccans and to bring the legal base closer to the social reality and the types of sectarian expression that pervade it. If the religious content of Morocco is broadcast in a variety of ways, it is important that the legislator proceeds with the religious transformations and expect the resulting mobility.⁶

6 The debate on religious freedom in Morocco is being revived after the US State Department issued its report on religious freedom around the world, which monitors Washington's view on the status of religious practices in 200 countries around the world in 2017. The report focuses on the legal articles listed in the Criminal Code, which prevent «destabilizing the Muslim faith» or tempting Muslims to change their religion and convert to another religion other than the religion of the country. The source said the Moroccan government had arrested and interrogated Christian citizens because of their religious beliefs and their communication with other Christians, according to reports of human rights organizations ... <https://iq.usembassy.gov/ar/our-relationship-ar/official-reports-ar/>

The king determines the Islam of the state.

Since the terrorist attacks that took place in Casablanca on 16 May 2003⁷, the State of the Amir al-Mu'minin has continued to codify religion through three overlapping levels: faith, religious rituals and organization. The State has a specific religious identity centered on three constants:

- The Ash'ari creed.
- The Maliki's doctrine.
- The Sunni Sufism.

This process of codification has resulted from the need for stability and continuity, amidst a situation characterized by internal conflicts, which took on more obvious forms after the terrorist attacks of 16 May 2003 and the consequent questions about the contents of official faith and the ability to interpret the contents of traditional rituals to make them appropriate with the new conditions, and able to resist external influences.

For his part, the Minister of Endowments, in the subsequent years, continued to define the characteristics of the religious perception in Morocco by building a Moroccan Islam that integrates several cultural, historical and religious data in an attempt to produce a Moroccan religious reference. In order for this Islam not to appear to be static and reflecting the Moroccan religious tradition, the minister is trying, through a historical approach, not to make religion a separate body but part of the Moroccan reality.⁸

The contents of Chapter 41 of the 2011 Constitution have been articulated through the actions taken over 11 years following the events of 16 May 2003 and still continue. The project has been

⁷ Rokaya al-Musadq, the illusion of change in the new constitution, within the collective author, the constitution and the illusion of change. PG, p. 75

⁸ Rukaya al-Musaddaq, the illusion of change in the new constitution PG, p. 64

submitted under the slogan of rehabilitation and modernization, which is officially expressed as “the rehabilitation of the religious field.”⁹ The text and other laws issued since then state a clear tendency to control the religious sphere and restrain its perpetrators to walk in accordance with small details that determine the act of belonging to and exclusion from the religious field.

Dahirs, a symbol of religious authority:

Under Chapter 41 of the Constitution, the King exercises his powers in the religious sphere by means of Dahirs issued by him as the Amir al-Mu’minin, not as the supreme representative of the nation or as a king, a holder of specific powers of the Constitution. Unlike the ordinary Dahirs¹⁰, the Dahirs issued under Chapter 41 of the Prime Minister are not signed, which means that the religious authority of the King is not subject to delegation but is exercised under his supervision¹¹. These powers are also exercised by decrees¹² and royal decisions¹³.

9 We use the civil religion to describe the various religious expressions that are not issued by official bodies such as associations, for example ...

10 The study of Islam daily is the first collective work exclusively for Moroccan researchers is an objective national monitoring and the religious practices among the Moroccans, through a group of students, researchers, we were among them and who addressed their doctoral dissertations in one of the chapters of the study: EL AYADI Mohammed, RACHIK Hassan, TOZY Mohamed, *L’Islam au quotidien. Enquête sur les valeurs et les pratiques religieuses au Maroc*, Casablanca, Prologues, coll : Religion et société, 2007.

11 they are 4 simultaneous attacks with explosive belts occurred the heart of the city. The perpetrators of the Casablanca attacks came from the Sidi Moumen area, a poor suburb of Casablanca. The accusation mentioned the involvement of a group called the «Salafi Jihadist» were behind the incident. More than 2000 suspects were arrested, most of whom were sentenced to 30 years in prison. The real entity responsible for the incident has not been announced yet to this day. For more information, see Mohammed Al-Masari, *Media Coverage of the May 16 bombings in Casablanca*. Magazine Point of View, Issue 21, Winter 2003.

12 Mohammed al-Taouzi, in an interview by a weekly political news, No. 6, 14-20 November 2003.

13 This project aims at «strengthening the spiritual security of the Kingdom by fortifying its faith, maintaining its sectarian unity, defending its values and constants, and integrating the religious discourse into the mainstream of the community pro-

The King began to issue laws in the religious sphere immediately after the above mentioned terrorist attacks on May 16th, as the legal production in all its hierarchies, witnessed speed and streamlining and as a response. It seemed that the legal actors understood the necessity to confront terrorism that suddenly and strongly hit Casablanca. It has clearly and unambiguously demonstrated that the royal laws issued by the King, as Amir al-Mu'minin, have fully binding legacy, ending the problem of legal interpretation that chapter 41 might cause. The Dahirs are not regarded only as a violation of the constitutional powers of the king as head of State, but as an embodiment of real powers he possesses as Amir al-Mu'minin, and shall be published in the Official Gazette, as are the rest of the laws that have to go through decrees and royal decisions and reach the level of implementation.¹⁴

Formally, it is possible to mitigate the impact of the monarch's isolation in the religious sphere through the discharge of this power to Dahirs under an independent constitutional text. As long as there is no punishment on the king's Dahirs, there is no fear of making the legislation in Morocco, from a delay in passing them because of the weight of the rationing and the poor fit that prevents passing the regulatory laws¹⁵.

Religion is regulated in the law:

ject.» See the text of the royal speech during the occasion of the first ordinary session of the Supreme Scientific Council for the Hijri year 1430. The website of the Ministry of endowment <http://www.habous.gov.ma>

14 The dahir is signed by the Prime Minister, except for the dahirs concerning: the appointment of the Prime Minister and the Ministers and their Exemption - Trusteeship Council - Status of Exemption - Referendum - Dissolution of Parliament - Appointment of Judges ...

15 The Executive dahir is issued and signed by the king and is characterized by the same specifications that characterize the dahir, but the executive dahir is intended to give the executive legitimacy to the law issued by the parliament. Without the issuance of this dahir in the Official Gazette, the law approved by the Parliament can not be passed to the stage of implementation

First: Higher Scientific Council:

Under the second paragraph of Chapter 41 of the Constitution, the Amir al-Mu'minin presides over the Higher Scientific Council, which examines the issues submitted to it ... The Council is the only body competent to issue an advisory opinion on the cases referred to it.

The terms of reference of the Council have been determined by virtue of a Dahir, which has made Chapter 41 problematic.

Is the advisory opinion issued by the Council a decision or an opinion? How can an advisory opinion bind the state and its institutions? How is the "decision-making of an advisory opinion" activated, and what are its effects on the Constitution and the principle of popular sovereignty? Will the Council issue comments on the legislative institution or the work of the Constitutional Court, or will it serve the religious legitimacy of the King? Is the Council a mechanism for regulating the religious practice of Moroccans, or just the work of the official institutions responsible for religion? ..., How will, for example, the Ministry of endowments be observed while it is regarded as the executive organ of the policy of the Amir al-Mu'minin, to whom the entire matters of religion return?¹⁶.

The frequency of the advisory opinion of the Council indicates that the purpose is not limited to the State administration of religious institutions, but rather extends to detailing the religion of the state and determining its doctrinal basis. It is a fundamental and official religion that, according to circumstance, appoints other fundamentalists to fight (Salafism, Shiites ...). The Council, accordingly, is responsible for the State's doctrine and issues

¹⁶ like the decree of December 2, 2005, instructing the Minister of endowment and Islamic Affairs to determine the application of the provisions of Law No. 13.01 regarding ancient education.

advisory opinions on every event that requires the revitalization of official beliefs to suit the new circumstances. The Council finds itself in need of rewriting the doctrine of the religious state on the margins of any debate on religion in the public sphere, which blows up discussions among the competing actors about the feasibility of constitutional guarantees, slogans and the large number of laws that theoretically guarantees individual and collective freedoms.¹⁷

The field of work of the Higher Scientific Council raises other questions: Is its advisory opinion obligatory for institutions or obligatory to Moroccans who belong to the Muslim religion? Are its topics limited to subject matters of worship, or will they widen to include the field of transactions and political issues?¹⁸

The Hussaini lessons, which were held in Ramadan each year, were presented to Amir al-Mu'minin with strict limits to the members of the Scientific Council as the major producers of official religious discourse. The endowments resolved the issue of Islamic affairs in the opening lesson of a series of Ramadan lessons, in the year 1424 Hejir, in the original position of "senior scholars" and limited them to "communication". As for the application side, it lies in the political aspect relating to the management of the affairs of the state and society, it is first and foremost a matter of rulers where the king is the only authority

17 The resolution shall be generally issued by limited bodies (the Higher Scientific Council and the Ministry of endowment) in organizational and administrative matters for the implementation of dahirs or decrees issued at the time in the Official Gazette,

18 In addition to dahirs, the King exercises legislative and executive functions under the Constitution in accordance with decrees and decisions. It is generally issued by a number of authorities, which are authorized to do so in organizational and administrative matters for the implementation of dahirs, laws or decrees, which are then issued in the official gazette. The decision may also be individual - appointment- promotion and shall not necessarily be issued in the official gazette. For more info, Ashkarey Mohamed, The Dahir in the Moroccan Public Law «First Edition, 1983.

which has the right to direct political action in the name of religion, because religion and politics can only be gathered in Amir al-Mu'minin". In the same lesson we read: "The doctrine of the scholars was established over the centuries to become based on the need to strengthen the state by supporting Amir al-Mu'minin to maintain the seriousness of religion."¹⁹

In order to form a Moroccan body that gathers the rest of the faithful religious scholars and to establish close ties, On February 14th, 2006, a dahir was issued to establish a public benefit institution called the "Muhammadiyah Association of Scholars"²⁰. This apparatus has not yet been able to create scientist leaders in a sense that the dahir limited its duties in bringing the local figures and giving consideration to them without any real authority, which prevented its members from building credibility in favor of the discourse produced by independent scientists who are followed by most Moroccan public.²¹ This apparatus has remained in the position of institutions charged with reporting and adapting the texts according to circumstances, the "Moroccan religious model" and responding to the contrary doctrines²².

19 After 7 years of passing the Constitution some of the regulatory laws still did not see the light as the law of the functioning of the official character of Tamazight and the National Library of Languages.

20 Dahir No. 1.03.300 of 2 Rabi al-Awwal 1425 (22 April 2004) to reorganize scientific councils

21 The memorandum of the unified socialist war on the constitution reviewed by the proposal to specify the title of the Principality of the emirate of al mumineen as a symbolic title of extensions to the particle of the state is considered the answer to all these questions. Mohammed al-Sassi, the king submits the Constitution. p, g., p. 27

22 The Council intervened through its fatwas in a number of controversial cases, the issued of which was collected between 2004 and 2012 and published in a unique book, namely:

- Preventing the marriage of a Muslim woman with a non Muslim. – the number of wives is a social solution for the benefit of women and men - confirming the rule of men inherited twice the share of women - the right of divorce for the man only - athletes break Ramadan because they travel - the menstruating should keep the cleanliness of the mosque - the killing of those who came out of Islam – the

The subordination of scholars and their councils to Chapter 41 of the Constitution gave rise to a structural weakness in Morocco's ability to produce religious actors capable of formulating a discourse that transcends its local boundaries²³. Many scholars have found their way to emigrate to the Arab Mashreq countries, which have an increasing demand of religious leaders who are capable of producing religious models of regional and international significance rather than expectations in their local surroundings.

In practice, what was stressed by the dahir was that the scientific council show faithfulness to the religious principles of Morocco (Ashariyah, Maalikis, Sufism). This did not prevent the intervention of other actors to work on interpreting these constants towards their recognition, in a way that serves their own sectarian and doctrinal affiliation; hence, exploiting the high degree of generality of the discourse on religious constants in official directions.²⁴

Legalization of the religious function:

Religious professionals are considered the cornerstone of the project of "Rehabilitation of the religious field in Morocco", which represents the motto of religious policy for the period after the events of May 16th, 2003, in the broad definition. It included the mission of religious professionals (including all those who serve in the mosque such as imams, preachers and muezzins and others,). They are restricted by law, (imams and

divorce for the woman who discovered that her husband is Baha'i - the Muslim does not inherit her Christian father - procreation through the conversion of semen is allowed.

m.alyaoum24.com/163528.html

23 Mohammed Al-Sassi, the King submits the Constitution, p. 27

24 See the lesson in a video on the website of Morocco's Ministry of endowment Habous.gov.ma

preachers in mosques), in addition to the category of religious guides - a new profession whose task is to follow the imams and monitor them. Those who are designated to do it are employed through a contract with the state, after a full year of training.

The rehabilitation of the religious imams was one of the main axes of the “Charter of the Scholars” plan announced by the king on September 27th, 2008 as “deputies of the Grand Imam, the Amir al-Mu’minin, in the direction and guidance of religion.” On the occasion of the start of this program, the Minister of endowments said that 1,500 people in all rural and urban communities will supervise this “unprecedented” process, which aims to enable the imams to perform their tasks to the fullest possible extent, and to create a suitable religious framework for a society that is keen on its fundamentals, its constituents and its identity as well as the appropriateness of this framing with a “new, more open and conscious” audience. The minister also highlighted the necessity of the program for all imams, as well as being essentially a spiritual and divine meeting, rather than an educational meeting to “brief the religious and institutional managerial staff in which imams work.” But the overall rehabilitation efforts of the 70,000 religious dignitaries are still on the table, posing a serious impediment to the realization of the “Religious Restructuring Project”.

Within the framework of the Religious Rehabilitation Plan, significant funds were also injected into the budget of the Ministry of endowment in order to improve the physical conditions of imams and mosques and increase the local resources, as well as caring for all imams in the kingdom’s mosques by providing them with health care coverage.

The new procedures have been distinguished from the previous policy of the Ministry of endowments which considered

volunteering as a job within the mosque. All that the Ministry endowments pays are considered rewards and as it was deemed that the Ministry was not obliged to pay salaries in return for performing prayers. "The minister was prejudiced by the religious figures that belong to his ministry," says one of the imams we interviewed²⁵.

The problem of the dahir, which is organizing the religious leaders, is that it tries to unite the imams on the doctrines of the state and subject them to observation in the midst of rapid transformations in this profession. For example, the group of imams has undergone major changes that have weakened its social balance. The imam of the mosque, after being the village leader, students' professor, village counselor, and the one who establishes marriage contracts and reconciles between the opponents, has seen his current his present situation changed completely. He became aware of the fact that the customs and inherited traditions were unable to organize the affairs of the mosque and its imam. After the request was urgent to him and he was asked for permission for being the imam in the mosques, the imam became obliged to carry his bags and offer his services to other religious actors from customary groups, associations and committees overseeing mosques.

After being the source of religious knowledge, the demand for the Imam of the mosque started to decline dramatically. Despite the continuity of relying on him as a source of religious opinion by the 60-year-old and older groups, this ratio is declining significantly for the younger age groups²⁶. The role of the Imam of the mosque

25 the dahir of the league N°1.05.210 and some of the association's duties: to contribute to the revitalization of scientific and cultural life in the field of Islamic studies through closer cooperation and partnership with other scientific institutions and bodies of common interest and to strengthen the bonds of cooperation and communication among the scientists, thinkers, associations, scientific bodies and national and foreign cultural institutions.

26 From the abstracts of the survey on daily Islam in Morocco,

as a source of simple religious information (forgetfulness in prayer, for example) is marginal in comparison with the role of religious preachers and oriental religious channels²⁷.

The condition, which is a customary contract whereby the tribe agrees with a scholar to lead the prayer, teach the children, memorize the Qur'aan and the issuance of advisory opinions, in exchange for an annual physical or material duty, is the only remaining outlet for the religious dignitaries after the abundance of graduates from the Islamic Studies Division, Dar al-Hadeeth al-Husayniyah, and the mosque of the villagers and the colleges of Sharia, and the training programs that have recently been approved of in this field²⁸. This caused a proliferation of the religious schools qualified to enter the religious labor market, especially under the conditions that have become required to enter religious professions such as preaching and guidance, the most important of which is to obtain higher university degrees from higher institutions of religious education²⁹.

EL AYADI MOHAMMED AND OTHERS, ISLAM IN EVERYDAY LIFE ..OP.CIT

27 In his book «Disrupting the Speech of Extremism,» we read: «The dismantling of the discourse of extremism, with its internal structure, the understanding of its doctrinal origins, the analysis of its intellectual constructs, the extrapolation of its vocabulary, and its horizontal and vertical extensions in the lives of contemporary human societies and to monitor the network of different concepts, with the full invocation of its theses, and the accurate and proper diagnosis to give the subjective and methodological aspects

<http://www.arrabita.ma/Article.aspx?C=107195>

Zeghal (M), Gardiens de l'Islam, Les oulémas d'el Azhar dans l'Egypte contemporain. Paris, P.S.P, 1996.

28 Until recently, Al-Azhar was the institution that provides the institutions of religious education in the Islamic world with scientific frames, including the Saudi institutions. Following the events of September 11 and the subsequent developments, there was a growing demand for its frameworks to rationalize religious discourse and frame its role in the Islamic world. For more information, see:

Zeghal (M), Guardians of Islam, The ulema of El Azhar in contemporary Egypt, Paris, P.S.P, 1996.

29 For more information see our author: Salafi Movements in Morocco, Anthropological Sociological Research, Center for Arab Unity Studies, 2nd edition, 2013).

By seeking to control the religious professions, the law competes with other actors. "The deputies of Amir al-Mu'minin" often have to follow the committees supervising the mosques in which they practice, as long as they decide to appoint the imam or expel him from work, since it is these committees that draw the curriculum, so that the religious values remain the victim of every crisis between the members of these committees and these associations, and hardly can the Imam and the preacher, after each crisis, balance the wishes of senior officials and run the affairs of the mosque, without having the law of religious officials resolve these problems³⁰.

Thus, the religious official finds himself in front of three directions :

- State policy and laws.
- Religious convictions of the supervisors of the mosques³¹.
- Committees and associations controlling the places of worship.

"The Charter of the scholars Plan" is put as a Code of Conduct for the practice of the prayer rite and other rituals, whereby imams and the general supervisor are subject to strict supervision and even prohibition in case of non-compliance with what is considered a Moroccan religious tradition in the Imamate referred to in the plan. The result is that they are subjected to intense competition from graduates of religious education that is

³⁰ The former minister had the conviction that spending on the mosque and its staff is one of the sufficiency duty. If some did it, no need for others to do it. Many preachers considered the period of the «al mudghari al alawi» to be the bad era of the mosques, as they call his ministry only manages the crescent watch and issue the rites of the adhen in a sign of its commitment to the imams. In any case, we are sure that the religious leaders in the most Arab countries are better than their counterparts in Morocco, in terms of qualification of training institutes and the codification of the job. Ibid., P. 44

³¹ Among the results of the research on daily Islam, for further reading, review El Ayadi Mohamad and others, Islam in everyday life ...op,cit , p 141

not subject to institutional oversight. After the graduates of old schools carry a heavy load consisting of rules and mechanisms of belief and jurisprudence, fundamentalism and language, and the absence of the curricula of these schools of training sessions on the functions of the mosque and advocacy and due to the fact that these institutes lack training sessions relating to the missions of the mosque and the absence of any thoughtful practical programs of effective training courses, they are forced to study by their experienced peers, or through communication and friction, or through the new official programs that have become targeted at imams, including the Charter of the Scholars, meaning that the supervisor finds himself again after his hard-edged journey forced to find a job suitable for his academic training, which is to work as an imam of a mosque, but he will not be ready for this before he is acquainted with the peculiarities of this complex function (the secrets of the imamate).

In this context, the importance of parallel religious education institutes is reflected in the fact that it rehabilitates the graduate of formal education and provides him with the necessary technical knowledge that strengthens the achievements of official education in memorizing the Qur'an and some principles of forensic science. It also allows him to resume his career in the official course through the follow-up study in a free modern school, so that in a few years he could pass the baccalaureate in private education and enroll in a university. This diversity of paths allows for jobs in mosques outside the influence of the state, which derive their choices related to the profession of the imamate from the convictions of dedicated supervisors and the source of the chaos of religiosity and sectarian strife (Salafi-Sufi) without the supervision and effective presence of scientific councils of the supervisory authority³².

32 Ibid., P. 142

The imams, who are targeted by the official training programs, remain traditional like networks of guidance and assistance to those who seek the charter-party of the participants; thus exposing them to occasional exhaustion. The traditional intermediaries are only local witnesses whose expertise ends with limited land borders. The imam is lucky if they help him find a mosque with more effective extension of networks.

Moreover, the entrusted imams were affected by the requirements of the training programs including the adherence to the Moroccan doctrinal principles and their lack of effectiveness, because of the supply of persuasion and conviction, which intensifies the recruitment of multidisciplinary people to take on the tasks of the mosque, especially the professors of all levels. This trend has developed in the period of sectarian oscillation (Salafi-Sufi) in the religious politics in Morocco in recent years and after the events of May 16th, 2003. In a manner, the rug was pulled from under the feet of the graduates of these schools by evicting them from their last bastion, which is participating in the mosques, and urging them to protest in order to allocate all the functions of the mosque to the graduates of the official religious school, and who do not find at best to work out of these functions.³³

Monitoring mosques:

The conditions of mosques, in turn, were organized according to a royal dahir issued concerning the jurisdiction and the organization of the Ministry of endowments and Islamic Affairs, which resulted in the Directorate of Mosques, which is charged

33 In 2005, the study of the first batch of the training program of 150 imams and 50 guides on this training took place. See the speech of the Minister of Awqaf before the Foreign Affairs committee, the National Defense in the House of Representatives on the submission of the sub-budget of the Ministry of Awqaf and Islamic Affairs, November 11, 2005. It is published on the website of the Ministry website: www.habous.gov.ma

with the census and control of mosques and the establishment of a special record for them³⁴.

Before the issuance of the dahir, the authorities (the Ministry of endowments and the Ministry of the Interior) were forced to take several precautionary measures after the period of 16 May 2003 in Casablanca that began by closing down several mosques under the pretext of “extremist ideas”³⁵.

The consolidation procedures that have been applied to solve many problems have been raised. In principle, the rulers allow the mosque to have the right to apply, for consolidation, to the competent authorities³⁶, provided that the application includes the following documents: Design - Association License - Certificate of validity of the shop - number of sanctuary facilities in favor of the mosque.

Prior to the events of May 16, 2003, the Ministry of endowments has shown great strictness in accepting requests for consolidation. These applications are often rejected for many reasons. The most important of these reasons is that the concerned mosques do not provide private facilities. Only mosques that have shops that bring resources that exempt the ministry from carrying any financial burden resulting from consolidation can be accepted. We noticed that several mosque associations have submitted many times to request consolidation but in vain for the same reasons³⁷.

34 For example, to get enrolled in a program of training 150 instructors and 50 guides it is required to obtain a license in Islamic studies. It is known that graduates of this training are employed and are paid the same remuneration and compensation as the assistant administrator (the tenth degree).

35 Ali Hassou and Saïd Abu Ali, *The Mosques in Morocco A Vision from Within*, 2007, p. 55

36 *Ibid.*, P 23

37 *Ibid.*, P57

However, after the events of May 16th, the competent authorities added considerable flexibility to the consolidation procedure so that they could control the mosques run by the “Salafist Societies”, without paying attention to the resource problem that was an argument for non- consolidation in the last period. Many consolidation requests involved in this case were made by the subordinate authorities of the Ministry of Interior. While it continues rejecting the requests for consolidation, directly submitted by private individuals to the endowment authority³⁸, indicating how much the security concern governed the process of nationalizing mosques.

However, the policy of consolidation hastened by the Authority did not include all the mosques under the supervision of the Salafist associations or organizations to which the worshipers belong, making hundreds of Salafist worshipers go to in Ramadan every year.³⁹

Visitors to the mosques that do not belong to endowment ministry soon notice their clear Salafi character, whether in terms of prayer rituals, Friday prayers’ topic, or the identity of the society’s staff is keen on the affairs of the mosque and the characteristics of worshipers.

These mosques also witness a great activity in terms of collecting donations from the supervising societies in order to complete their construction and equipping them. However, they have not been placed on the list of consolidation at the Ministry of endowment, so that the supervision and guidance of the ministry remains subject to negotiation about their size and limits⁴⁰.

38 Ali Hassou and Said Abu Ali, *Mosques in Morocco ..*, p23

39 According to the dahir No. 1.16.38 of 17 Jumada I, 1437 (26 February 2016) concerning the functions and organization of the Ministry of Awqaf and Islamic Affairs <http://www.habous.gov>.

40 Regarding the quality of projects supervised by the mosque associations, they are a variety of associations which oversee the construction of mosques only, and

At the level of funding, state subsidies for mosque associations remain scarce, including only mosque logistics (bedding, water and electricity expenses, loudspeakers, etc.), as well as the fees devoted to the mosque staff (imams, preachers, cleaners, Al Hizb readers, muazzins, observers, and preachers), while only the imams and the preachers of the non-state mosque benefit from, although the latter benefit from covering resources collected by donors after each prayer. These campaigns are particularly active in the Salafist mosques.⁴¹

The mosques that are under the care of the Salafists represent a propaganda network that encourages the care and the equipment of those mosques and the construction of other mosques. This call is carried out on the platforms of the Friday prayers, and when going out of the mosques, in light of the scarcity of resources allocated to mosques from the budget of the guardian ministry, where official figures are less significant in front of the large number of mosques and the variety of their types and their dilapidated conditions .

As for the benefactors who are mobilized by the Salafi movement activists, in addition to the religious motive gained from building mosques, they get some important gains that can be summed up in the legal status within the social milieu. In addition to the

others interested in working in mosques, which still need to be complemented in terms of tiles, or decoration or sanitary equipment, electrical and restoration, or the construction of accessories (houses of ablutions, libraries, Koranic schools), including those that cost the daily affairs of the mosque. In fact, the tasks of the “Mosque associations” belong to the organization of religious events in coordination with the competent authorities.

41 Including the “Benefactors Association for the Construction and Equipment” of a mosque a district Mubarak Ouamr Ait Melloul (near Agadir). It was this Assembly that built the mosque and equipped it. The Association is sponsored by the company of antique monuments attached to the «Koranic school for the memorization of the Koran and the teaching of its sciences» despite many requests made by the Management Association of Religious Endowments for annexation that was not approved.

role of building the Qur'an classrooms next to the mosque in the promotion of the Islamization movement at the grassroots level and in neighborhoods and networks of mutual support around the mosque, it allows the elderly to gain new knowledge, get closer to local authorities and gain respectable status in the public.

Among the new measures adopted by the state to monitor the mosques' organizations, control their physical sources and identify ways of financing the mosques, they issued the Law No. 29.04 to change and amend the dahir, which is considered law No. 1.84.150 of October 2, 1984, concerning the places dedicated to the practice of the Muslim religion⁴².

Officially, this law aims to expand the scope of consultation for the granting of a license to build places dedicated to the practice of the Islam, and stipulated that the building to be completed conforms with the general program for building mosques and the need for the organization of the benefactors who wish to build one of these places of worship within the framework of an association in accordance with the Dahir related to associations, as well as the control of the collection of funds allocated for construction.

This law is a framework for control and surveillance to prevent against all the attempts aimed at exploiting the places designated for the practice of the religion of Islam "for improper purposes". It is also integrated under the efforts exerted to "address those

42 As for the imams who were practicing in the mosques that were included because of their «salafist doctrine», the local authority asked them to obtain a referenced document submitted by the Scientific Council, even though they have received a recommendation in the Imamate or a speech from a scientific Council. This document can be obtained after a test by the Scientific Council, but the case of the famous reciter Omar al-Qazabri, who makes the taraweeh prayers in the Mosque of Hassan II in Casablanca, shows the role of the public and media pressure in keeping the imams in their positions despite their Salafi orientation. See our author, *Salafi Movements*, op. Cit.

who exploit mosques for other purposes” that are dangerous to the kingdom’s spiritual security.

The law required the regularity of the construction of mosques within the framework of public charity associations that are subject to a model statute set by the administration. In general, every petition for “public charity”⁴³ is made to raise money for the construction or maintenance of these mosques, whenever the maintenance is concerned with major works, through prior authorization by the concerned worker (the governor) after obtaining the opinion of the Ministry of endowment and Islamic Affairs.

It is clear, therefore, that the law was established for security purposes, which include limiting the activity of associations that do not follow the religious and doctrinal line of the state. With the new law, it is most likely that many mosques’ associations will be frozen, especially if we know that most of them have used recently traditional customary ways that are outside the tutelage of power to raise funds, which, by virtue of the new law, became mandated to monitor the collection and disbursement of funds.⁴⁴

Despite all these actions, which were expressed in the new law, and the result of the events of May 16, 2003 from the siege of associations operating in the field of the Moroccan religion and prevention of the activity of some of them and the closure and annexation of mosques under their control, the members of the Salafist organizations found several ways to access the functions

43 The official Journal of the Department of Islamic Affairs. The latter is waiting to complete the construction of the mosque to be included.

44 With the exception of some of the few references that are absent from the speeches of the latter referring to the sectarian Salafi, and perhaps that is what enabled him to retain his position as the official speaker (Imam) of the mosque. Abdelghani Muneib, Religion and Society, Sociological Study of Religion Morocco (Casablanca, Africa East, 2006), p. 80

of mosque (Imamah and preaching) due to their personal ties with the local authorities and a network of benefactors at the city level during the month of Ramadan.

Even if the mosques that are not under the state control, and it is the latter that pays the wages of the custodians, the Salafist organizations find an opportunity to invest their graduates through this network of mosques, and thus represents an important mobility area for the Moroccan Salafi activists, as long as the search for the imam or preacher and their nomination, it remains a matter of the Assembly that manages the mosque, so that the latter requires only the recommendation of one of the scientific councils, while what the imam signs from a commitment to respect the Maliki doctrine remains just an administrative procedure.

The Religious Education Institution:

On January 29, 2002, Dahir No. 1.02.09 was issued by the implementation of Law No. 13.01 in the matter of ancient education, and its second article defines the ancient education in “Quranic schools, ancient schools, the mosque of villagers and other mosques according to the old patterns.”

The text falls within the context of the state’s rehabilitation of the religious field, and basically aims to protect more than a thousand students and pupils in fifty-four antiquated institutions from extremism in accordance with the operative of the royal discourse of April 20, 2004.

The rehabilitation had appeared before the state put its religious model. In this period, the Directorate of Ancient Education in the Ministry of endowment held several training sessions for the elders and the scholars of old schools, which were dedicated to

providing them with the three principles of the Moroccan Islam (Al-Ashariyah-Malikiya-Sufism) before adding the constant of the Emirate of al mumineen

The formative meetings aimed at providing the old school scholars with knowledge about the administrative and financial management of educational institutions, and some modern educational curricula continued. These meetings continued until the ministry issued the implementing decrees of the old education law which introduced these institutions in the institutionalized era.

The outcomes resulting from the rehabilitation of the antiquated education raised many problems, including the number of antiquated schools that remain outside the roof of the law, and the suffering of others from structural weaknesses.

In general, these institutions suffer from:

- The loss of radiation of the founding religious symbol.
- Many schools are concerned about the rehabilitation project and their refusal to engage in it.
- The retreating of the traditional administration forms in terms of financing which are based on traditional solidarity networks.
- Unemployment has increased among the graduates of this education, in a way that the rehabilitation project did not keep up with any prospective insight for the graduates who are required to fulfill the “Moroccan model of religiosity”.

The Complementary actors found a way out to block the requirements of the royal dahir and the law that was passed according to it through the charitable associations, which are organized in accordance with the law of 13.10. Through it, they

worked on the construction of institutes that responded to the formalities of the archaic education law or the reestablishment of their own institutes. They were thus able to resume work in the field of religion. And , thus, the Salafi religious associations or those subsidiary Islamic movements were able to resume their activities. In addition, the authority interfered by closing down the Salafist religious education institutions on the pretext of not responding to the imposed pedagogical determinants.

From a legal point of view, there is a paradox in how the authority has dealt with religious associations that operate in religious education. The authoritarian practices towards these associations still exist, even if their strictness and intensity are weakened. The associations that do not adhere to religious education laws are prevented from activity. However, they were founded in accordance with the Public Freedoms law. Education is only one aspect of their activities. The essence of the problem here is the absence of legal texts relating to religion and action within its domain, violence and the use of its words (Kharidjites - heretics, Confused, extremists) and the activity of those working on restoring the religious orientation of the state.

The great overlap between what is ideological and what is legal in the policy of the state in relation to religion raises the need to rehabilitate the judicial system so that it can deal with the parallel society (education, charity, welfare...). It becomes clear that the advocacy of the judiciary for the state's submissions results in the fact that the Moroccan judge remains a prisoner of a conservative tendency that is away from development to the level of vision due to the absence of texts and weak training.

Through the measures taken since May 16, 2003 against religious associations, sponsors of archaic and other types of education, it has become clear that the new policy to manage the religious

issue has left a great margin for the intervention of the Ministry of the Interior and the various intelligence agencies to control the religious field and count its breath to achieve objectives that are not expressed in official discourse, including the settlement with many spectra for the purpose of allowing them some field presence under the cultural action banner.

Conclusion:

If the public debate about the religious powers of the king during the drafting of the 2011 constitution is dim and conservative in its entirety, the reality of enclosing the religion and controlling it draws attention to what it can cause from difficulties that remove the religious policy and its weak performance from the religious status of the king who is entrusted, by the Constitution, with managing everything in the religious field.

It was also important to detect major changes taking place at the grassroots level of religion, and the apparent inability of the official actors to know how to express them during the preparation of the 2011 constitution, in a way that their apprehension preventing them from compromising the emirate of al mumineen and to express the demands of the believers, and we were able to follow these transformations to energize people's expectations from the constitution and then the discovery of alternatives that the authority can take in the future.

The emirate of al mumineen has a certain position in the Moroccan constitutional structure. It is imperative to preserve the symbolic value of the emirate of al mumineen. This can be expressed constitutionally. It can be expressed in a special chapter: in a separate part whose chapters are devoted to the authority of the religious field that is vested in the King, and clearly determines where these authorities start and end, provided that the rest

of the chapters refer to the competencies maintained by the institutions (the Scientific Council, the Ministry of endowment), which are governed by the general constitutional principle that binds responsibility by accountability.

It is therefore a proposal for a constitution that aims at establishing a political system that does not deny the legitimacy of the emirate of al mumineen but reduces, to the maximum possible extent the monopolistic tendency of religion. In a society in which religion represents the general culture, it remains authoritarian in a place where the authorities, on the one hand, arrange things under the circle of responsibility. Thus, avoiding a return to the founding process, but the same path should be activated, by initiating a constitutional amendment that brings out chapter 41, in a new way.

It is also a matter of resuming the institutional dialogue with civil society activists to find possible consensuses for what is meant by a “Moroccan religious model”; in this sense, agreeing upon a “code of conduct” in the religious field, which means a matrix of laws allowing, under its roof, the participation of al actors in the religious field in its administration, rather than having the State gasping, power and opposition, behind a complete and total domination on the religious affairs, for no reason.