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Algeria: a Legal Reading of the Constitutional Amendment of November 1, 2020

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The AACL is the first regional network of constitution-making experts. Established in 2013, it seeks to contribute to the efforts of democratic transition and good governance in the Arab region by fostering legal education in the region, offering rigorous in-depth technical studies, focusing on the future of constitutional frameworks in the region, and putting its expertise at the disposal of reform efforts in all countries of the Middle East and North Africa region.

Editor's Note

Based on the Arab Association of Constitutional Law's mission to share views on constitutional developments in the Middle East and North Africa region, we are publishing this legal commentary on the constitutional amendment in Algeria prepared by Dr. Nasreddine Bou Samaha. In his paper, Bou Samaha sheds light on the content and mechanisms of the amendment that are in accordance with the Algerian constitution.

This paper is a joint collaboration between the AACL and KAS

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Introduction

The Algerian Constitution, similarly to the constitutions of all other countries around the world, does not entail provisions that clearly specify objective distinctions and procedural measures whether when adopting new constitutions or when amending existing ones. Even at the level of doctrinal research and studies, there are no attempts or demands to set up such provisions. This was alluded to by the Venice Commission, i.e. the European Commission for Democracy through Law, which has noted the impossibility of setting an ideal model for constitutional changes, describing such a move as "neither feasible nor desirable".[1]

If comparative constitutional experiences and relevant doctrinal studies were to be taken into consideration, it could be said that the choice between adopting new constitutions or settling for constitutional amendments – be they major or minor – would primarily depend on the magnitude and nature of the popular movement in a society, the unfolding developments and the key actors' capacity to influence the course of events in a way that is also aligned with the raised expectations and demands. If the above-mentioned criteria were to be applied to the *hirak* or popular movement of February 22, 2019 in Algeria, one finds that the popular demands unfolded clearly in the first few weeks into calls for changing the regime and overthrowing the existing power to demonstrate rupture with the practices of the past, which drove the country to a dead-end.

Such a change would definitely entail establishing a well-defined constitution that would provide the country with solid and sound foundations to overcome the difficult stage it has reached and remove the underlying causes thereof. This debate has accompanied the *hirak* since its onset and has been a huge point of contention, not between the "transitional or interim" [2] authority, but among the *hirak* circles, as the movement was not decisive about the demand for a new constitution or its willingness to settle for the amendment of the existing one to fulfill its demand. [3]

Chapter 4 of the Algerian Constitution specifically tackles constitutional amendments in five articles: articles 208 through 212, which determine the parties authorized to make constitutional amendments as well as the procedures followed in adopting the constitutional amendment, in addition to the limitations involved. Naturally, the Algerian Constitution – unlike other constitutional systems – does not entail provisions that specify how a new constitution could be adopted, and how it could be the result of particular political, economic and social circumstances that the country might be facing. The ruling power was able to exploit that situation in order to rule out the option of a new constitution and settle for a constitutional amendment

which was put to a public referendum for the first time, in an attempt to garner more legitimacy amid the circumstances under which the presidential elections were held, on December 12, 2019. This option has direct impact on the content of the amendments handled by the ruling power according to the constitution in force. Therefore, before tackling the content of the amendment bill, which was put to a public referendum, it is necessary to explore the procedures of constitutional amendment in Algeria.

Section 1: Amendment Methods of the Algerian Constitution

According to the 2016 constitutional amendments, it is suggested that the matter of constitutional amendment is a joint process carried out by a number of constitutional institutions alongside the popular will, or by constitutional institutions alone in line with the content of the proposed amendments. That, at the very least, is what the law dictates in order to protect the constitution from the whims of rulers and their tampering. However, the Algerian experience portrays that with every new president comes the establishment of a new constitution, due to the fact that presidents either adopted new constitutions or amended already existing ones more than once; starting with the amendment of the constitutions of 1963, 1976 and 1989, then the constitution of 1996, which was amended three times in 2002, 2008 and 2016, as well as the 2020 public referendum on the constitutional amendments.

Such practices have negatively influenced interaction with the constitutional amendments themselves due to dimmed hope and the doubts cast on the real intentions which have prompted them, especially during the last amendments of either 2008 or 2016, which aimed to extend the term of President Abdel Aziz Bouteflika. A practice as such had affected the sanctity of the constitutional text, which was also subject to violation on several occasions in the past. This practice has pushed many experts to wonder about the feasibility of constitutional amendments and the adoption of the best possible texts amid the lack of political will to respect these texts.

It is therefore important to note that the goal behind limiting the parties authorized to initiate amendment of the constitution, as well as refraining from exclusively granting this competence to a particular authority at the expense of others, is to provide the constitutional text with its real value and shield it from undermining practices. In that respect, the Algerian Constitution determines the president and parliament as the parties authorized to make amendments.

First: The Parties Authorized to Initiate Constitutional Amendments

It is important to distinguish between the party that has the right to initiate amendment of the constitution and the structures in charge of constitutional review. Most constitutions define the right of initiative as a primarily political decision and limit it to constitutional institutions, as is the case for the Algerian Constitution (between the executive and legislative authorities). However, the constitutional content does not mention the process of preparing and drafting a constitution, since it is considered a task that is purely legal and technical.

1. The President:

The President of the Republic plays a pivotal role in the process of constitutional review, not only in terms of taking the initiative but also in adopting the proposed amendments, as Article 208 (3) states that "the constitutional amendment, approved by the people, shall be promulgated by the President of the Republic."

Also, "…the President may directly promulgate the law containing the constitutional amendment without submitting it to referendum, if it has been approved by three-quarters (3/4) of the votes of the members of the two Chambers of Parliament."

The president's competence in the field of constitutional review is not limited to the initiative of amending the existing constitution. It is possible for him to initiate a call for adopting a new constitution, as the text of Article 208 is generally formulated and only states the president's "right to initiate a constitutional amendment" – except for the substantive limitations in Article 212 – without specifying the nature of the proposed amendment and the constitutional amendment procedures that vary in content. [4]

In principle, the president has the right to initiate a partial or comprehensive amendment or call for the adoption of a new constitution. The difference lies in the possible procedural track of the constitutional review, depending on its content.

2. The Parliament:

The Algerian Constitution gave the parliament the right to initiate amendment of the constitution as per Article 211, which stipulates that "three-quarters (3/4) of the members of the two Chambers of Parliament, meeting in joint session, may propose a constitutional amendment and present it to the President of the Republic, who may submit it to a referendum."

In parallel with the president's competence, no limitations were imposed on the parliament's competence concerning the proposed amendment's content, except

for the general limitations mentioned in Article 212, and the condition of presenting the amendment to the president who will promulgate it after putting it to a public referendum, or who could do without that step and depend on the Constitutional Council's opinion, as per Article 112.

In fact, granting parliament this prerogative legally enshrines the public will, as per Articles 7 and 8 of the Constitution, which assert that "national sovereignty shall belong exclusively to the people" and "they shall exercise this sovereignty through the institutions they establish, hence through their elected representatives." Abiding by both the abovementioned articles made it to the top of the *hirak*'s list of demands in order to ensure an efficient democratic transition.

It is worth noting that the legislative authority in Algeria has never taken the initiative to propose a constitutional amendment on any of the constitutions throughout the Algerian constitutional experience. Added to that, the Algerian parliament, in its present system, has never adopted any legal text drafted based on the initiative of the members of parliament since the adoption of the constitution of 1996. It only adopted legal texts proposed by the government. It is therefore important to mention that amendments are not solely a matter of intentions or mere drafting of constitutional texts. They should reflect the political reality and legitimacy of constitutional bodies emanating from elections and real representation of the people's will.

Second: Limitations to Amending the Algerian Constitution

The Algerian Constitution includes some limitations that restrict the powers of the parties authorized to initiate the constitutional amendment, similarly to most constitutions around the world which speak strictly regarding this issue due to several considerations. The purpose was to make the constitutional review a tough task, but not an impossible one[5]. Given that the constitution is a political document, and simultaneously the most supreme legal document in organizing the state, the strictness of constitutional review procedures is rather justified. Accordingly, drafting legal texts must be done with the utmost responsibility, expertise and skill. [6]

Most states participate in setting a certain limit of provisions that prevent constitutional amendments from being affected by various justifications, including all articles related to the nation's principles that must not be subject to constitutional amendments.

Some states undergoing a transitional phase adopt a new constitution and render it unamendable for a certain period of time in order to ensure stability and acquire the constitutional experience. Other states maintaining deep-seated democracy are stricter in terms of constitutional amendment procedures since they aim to provide their constitutions with a sacred impression, which would then reflect their history of democratic practice.

The limitations to amending the Algerian Constitution and stated therein can be classified into procedural limitations and substantive limitations:

1. Procedural limitations

These limitations dictate restricting the constitutional amendment process to both the president and parliament. Upon the president's amendment initiative, the parliament votes on the proposed amendment using the same mechanisms for adopting a legislative text then putting it to a public referendum (Article 208). Alternatively, upon the parliament's initiative, the amendment is put to a vote and should receive three-quarters of the members of the two Chambers of Parliament's votes, after which the president promulgates the amendment (Article 211). The proposed amendment's content should be reviewed by the Constitutional Council, and in light of this review, it is determined whether the proposed amendment should be put to a public referendum, regardless of who took the initiative, be it the president or parliament.

The Constitutional Council ensures that the constitutional amendment does not infringe upon:

The general principles governing Algerian society, which in fact represent substantive limitations;

Human and civil rights and freedoms, and here, it is noteworthy that what is meant is not just any amendment in the chapter on citizens' rights and freedoms, but the amendments undermining these rights and depriving citizens of enjoying them. No amendment to this chapter shall abate gains achieved in this field. The constitutional amendment which enhances fundamental rights and freedoms is not problematic; it is rather much needed to support endeavors to promote a state of rights and law;

If the proposed amendment infringes upon the basic balances between the powers and constitutional institutions, such as provisions related to amending the structure and competence of constitutional institutions (whether to increase or reduce them) or to establishing new constitutional institutions.

Notably, the Constitutional Council's approval of the second and third cases does not prevent the resumption of the constitutional amendment procedures, as it still requires to put the proposed amendment to a public referendum given its importance. The first case, however, is related to substantive limitations detailed below:

2. Substantive limitations

These were exclusively and explicitly mentioned in Article 212, as fundamental principles of the nation that shall be excluded from any constitutional amendment as follows: "No constitutional amendment shall undermine…"[7], be it on the initiative of the president or parliament, even if it had been put to a public referendum following the opinion of the Constitutional Council.

Accordingly, no change in the content of articles which regulate general rules or mentioned principles in Article 212 shall occur except through adopting a new constitution, based on fundamental changes or pivotal events in society. This pushes one to think about the nature of the Feb. 22, 2019 *hirak* and its popular demands to change the regime and turn the page on political tyranny. Can the demands of the *hirak* be met through deep constitutional amendments, or is it necessary to adopt a new constitution?

Section 2: Demands of the February 22 Hirak and the Constitutional Solution

Algerians did not just discover the political situation in the country in the wake of the February 22, 2019 protests, a situation identical to the prevalent situation when Bouteflika was nominated for a fourth presidential term in 2014.

At the time, the president's circle succeeded in passing the fourth term and exploiting an intimidation discourse that took advantage of the events' outcome in the Arab Spring countries, in addition to the weakness and division of the political class in Algeria, and the majority of Algerian people's aversion to political affairs. The presidential circle's attempt to reproduce the fourth term experience by insisting on nominating the president for a fifth term in the 2019 elections played a major role in triggering popular action from large categories of the Algerian society. This was especially true after the people had felt generally insulted, for they had found themselves under the rule of what what was known as the "cadre" (frame), which refers to the merely symbolic image and figure of the president, given that he was paralyzed and absent from the political scene due to his illness.[8]

In light of the situation, the first pledge after the December 12, 2019 presidential elections was to make a constitutional amendment by resorting to a public referendum[9], hence by following a different method to steer clear of the regime's practices during the rule of Bouteflika who amended the constitution three times through a mere parliamentary vote.

First: Propositions from the Constitutional Amendment Bill

President Abdelmadjid Tebboune pledged, during his electoral campaign, to commit to making deep constitutional amendments that would achieve the *hirak*'s demands which were political by excellence and mainly called for actually cementing a democratic rule and a state of rights and law. In this context, three key points mentioned in the pledge will be covered in order to examine the fulfillment of the promises made, which involved the actual respect of the separation of powers principle, the restriction of the president's prerogatives and the respect of the independence of justice… All of which in the framework of a consensual constitution resulting from a serious and inclusive national dialogue.

1. 1- Respect of the Principle of Separation of Powers

The Algerian Constitution explicitly stipulated the principle of separation of powers for the first time in the preamble and in Article 15 of its 2016 constitutional amendment; admitting for the first time the terrible encroachment of the executive power on the legislative and judicial powers. The two chambers of parliament did not have any weight to confront the government, which single-handedly managed the country's public affairs and extracted its strength from the president's extremely wide prerogatives at the expense of the parliament and the weakness of constitutional texts in the matter of governmental work oversight. For several years, the prime minister even refrained from presenting the declaration of general policy to parliament (People's National Assembly), although this measure was mandatory as per Article 84 of the 1996 constitution. The subordination and subservience of the legislative authority to the executive authority reached its peak when the president appointed the speaker of the Council of the Nation to represent him in international forums, although he heads one of the parliamentary chambers, which ought to be totally independent from the executive authority. The judicial authority was not better placed, as the executive authority also dominated the High Council of Magistracy (Supreme Judicial Council) and influenced its pivotal role in ensuring the independence of justice (to be detailed in the part about the independence of justice).

Given the paramount importance of the principle of separation of powers, it was supposed to top the list of suggestions to be included in the constitutional amendment of 2020. In fact, the preamble stated that "the Constitution shall ensure the separation and *(balance of powers)*" by adding the expression in parentheses, which portrayed awareness that it was not enough to confirm the aspect of separation in the principle of separation of powers, but it was also necessary to present sufficient guarantees to retain balance among them.

This cannot be achieved without strong and clear constitutional provisions that constitute a clear indicator of the executive authority's intention to respect the principle of separation of powers and balance between them[10].

However, the inclinations of the panel of experts appointed by the president to prepare the amendment bill[11] did not initially reflect this intention, despite the clarity of the letter of appointment, which determined the constitutional amendment areas that the commissioned panel must comply with. Although the letter asserted that the third area was dedicated to the separation and balance of powers[12], the amendments related to the Council of the Nation were disregarded, like those related to cancelling or re-examining the electoral composition and the methods of electing members, especially the presidential one-third. It was retained that the president shall appoint one-third of the members of the Council of the Nation, which, in itself, is a practice that intrinsically infringes upon the principle of separation of powers.

The change in circumstances, compared to those that prompted the constitutional founder to grant that prerogative to the president as per the 1996 constitution, on the one hand, and the practical implementation, which proved the impact of this method of appointment on the lack of independence of the legislative authority and the contribution to forming a majority loyal to the president, on the other, are enough reasons to make this point a main area that must be included in the constitutional amendment to deprive the president of this competence and ensure the respect of the principle of separation and balance of powers. Amending this provision is nowhere near a violation to the letter of appointment or a change in the nature of the system of rule, contrary to what the panel of experts stated in its special report that presented the reasons behind the Preliminary Draft on Constitutional Change in May 2020. [13]

2. Limiting the President's Prerogatives

The wide prerogatives granted solely to the president at the expense of the other authorities constitute a main defect held against the previous Algerian constitutions as well as the current one. During his electoral campaign, President Tebboune pledged to reduce his prerogatives in the framework of the constitutional amendment in order to put an end to rule monopolization and tyranny in the practice of power. [14]

The constitutional amendment did not reflect the above inclination, as it did not include substantive amendments to the constitutional prerogatives of the president. By simply comparing the provisions of the first article of the third chapter of the amendment bill that was put to a vote on November 1, 2020 to the first article of the second chapter of the 2016 constitutional amendment, in addition to other articles related to the powers conferred upon the president, it is found that the recent bill did not reduce those powers, but rather enhanced them in some cases. Below are some examples from the two bills:

a. Article 91 in both bills (the numbering was kept intact): Article 91 stipulated the main powers of the president in managing the affairs of the country. The content of Article 91 was expanded in form from 10 clauses to 13, which means that three clauses that did not exist in the first text were added. In fact, four clauses were added, but clauses 1 and 2 were merged in one clause. Hence, the powers of the president were enhanced.

The powers stipulated in clauses 6, 10 and 11 were constitutionalized. However, this is nowhere near considered as a new addition since the president already enjoyed these powers and had previously exercised them in different instances — like when the president summoned the electoral body as per the Organic Law no. 8-19 related to the electoral law or when he called for early presidential elections. [15]

However, clauses 1 and 2 were merged into clause 1, and clause 2 had new content stipulating that "the president can decide to send units from the People's National Army abroad, upon the approval of the majority of two-thirds of members of each of the two chambers of parliament." This provision was the most debated and received conflicting views, because of the previous legal reading into the Algerian Constitution's provisions and the military credo that had a defense aspect, which does not allow for the army's participation in military operations outside the country's borders.

Clearly, the president's powers have been expanded here, even if they are joint due to linking them to the approval of two-thirds of members of each chamber of parliament, and even if it is stipulated that the president's powers should not negate democracy or conflict with the nature of the system of rule approved by the Constitution.

In many countries that have deep-rooted democratic practices, the president is granted such powers. However, the historical context of Algeria and its surrounding field (regional) situation have created staunch opposition to such powers, especially given the presence of the French military in the African Sahel under the pretext of fighting terrorism, as well as the field losses and exorbitant expenses that have weighed down the budget of the French state.

While the government in Algeria asserts that the participation of its units in tasks outside the nation's borders is limited to peacekeeping operations, the opposition has expressed its concerns that such activity would serve to deploy Algerian troops in areas from which the French army would want to retreat. Consequently, the Algerian army would become involved in military operations that Algeria has always been opposed to.

b. Article 92 in both bills (the numbering was kept intact): The article includes the president's main powers in appointing people to jobs and tasks. The article maintained the same content, in addition to granting the president the power to appoint the members of the controlling authorities (sulutat al-dabt), which is, in reality, a constitutionalization of a prerogative already stipulated in the laws that had established the aforementioned authorities.

c. Moreover, the president retained his power of appointment in many institutions. For instance, he could appoint one-third of the members of the Council of the Nation, the members of the Constitutional Court that replaced the Constitutional Council, the chief judge of the High Council of Magistracy, the members of the consultative bodies stipulated in the constitution, the members of the National Independent Authority for Elections and other consultative institutions in which appointments are made by the president by virtue of the laws regulating their work. The president also appoints people to sensitive positions in economic institutions.

3. Enshrining the Independence of Justice

This goal was declared as a key area which should be included in the constitutional amendment as a response to the popular movement's demands, which called for fighting corruption through liberating the judiciary from the executive authority's grip, as well as entrenching its independence to instill a state of rights and law.

Undoubtedly, the cornerstone in cementing this principle comprises the quality of reforms in the High Council of Magistracy, given its jurisdiction in showing judges their appropriate professional and disciplinary path. For a long time, the judiciary was under the executive authority's direct control, as the president, also represented by the Minister of Justice, presided over it. Furthermore, other provisions constitute guarantees that must be provided to any given judge in order to ensure their independence.

In this framework, the provisions of Article 166, which became Article 172, were revised and expressly stipulated that the state must protect the judge, in the wider sense of protection, and shield him from objection.

The judge shall also be granted the right to complain before the High Council of Magistracy, should he face any behavior or practice affecting his independence. Moreover, judges are given special guarantees, like the provision stating that judges shall be irremovable, or the guarantees to all judges that they shall not be transferred, removed, suspended from work, excused or subject to disciplinary sanctions while exercising their functions, except in cases where guarantees specified by law are applied, based on a reasoned decision from the High Council of Magistracy. Overall, the guarantees are strong and necessary to enable the judge to perform their constitutional mission. However, they might remain no more than words, unless the High Council of Magistracy is freed from the hegemony of the executive authority.

For the High Council of Magistracy, the new article 180 was added in order to recall the higher purpose of that council, which is to ensure the independence of justice. However, the insistence that the president shall continue to head the judiciary, as per clause 2 of the abovementioned article, is rather strange despite vain attempts to justify it by stating that the president chairing the High Council of Magistracy is in itself considered a guarantee, given his legal and political position as President of the Republic. However, it must be noted that the High Council of Magistracy has always been under the president's supervision, and that this was the direct cause of its subordination to the executive authority and therefore the lack of independence of justice. Replacing the Minister of Justice with the First President of the Supreme Court as head of the High Council of Magistracy to represent the president does not change the fact that they both share "the suspicion of loyalty" to the president who also has the power to appoint, as per Article 92, the First President of the Supreme Court.

In the same context, it is noteworthy that the problem does not stop at the presidency of the High Council of Magistracy but extends to the composition of its members stipulated in Article 180, paragraph 3. According to this article, the council shall consist of 25 members, including the president, the First President of the Supreme Court as his deputy, the head of the State Council, 15 judges distributed over different ranks, six national figures and the head of the National Council for Human Rights. It is unlikely that such a composition would put an end to the hegemony of the executive authority, even if the president were to be absent and the First President of the Supreme Court handled the chairmanship on his behalf. The executive authority's influence can be seen through the affiliation of some members with the hierarchical power of the Minister of Justice (prosecution representatives and state governors), and the appointment of some members by the president and the speaker of the Council of the Nation elected by the one-third appointed by the president, as practice has shown. Consequently, the trial judges included in the protection stipulated in Article 172, paragraph 1, cannot form the majority in the composition of the High Council of Magistracy.

Second: Implications of Weak Participation in the Public Referendum

The public referendum on the constitutional amendment, dated November 1, 2020, is tightly linked to the presidential elections of December 12, 2019. It constituted the first legal and political landmark to entrench the bill declared by the new president under the name "New Algeria", with all its underlying connotations of change and modernization. It also constituted a chance to grant the new authority more legitimacy, given the weak participation in the presidential elections held in unusual conditions and characterized by strong public opposition, as well as candidates who were unable to mobilize public rallies for their electoral campaigns.

The public referendum and the presidential elections fit under the authority tasked with organizing the electoral process, hence the National Independent Authority for Elections established by virtue of Organic Law no. 19-7[16]. The authority was tasked with organizing and monitoring the electoral process, hence combining the administration's powers in organizing the elections and the competence of the High Authority for Monitoring Elections, after annulling the presidential decrees[17] which stipulated appointing the authority's head as well as its members without infringing upon the constitutional provisions that determine their prerogatives, mainly Article 194 of the constitution. This clearly indicates that the National Independent Authority for Elections was established as per the stated Organic Law, but in breach of the amended constitution of 2016. Moreover, its actual independence from the executive authority remains debatable, because all its members, including its head, are appointed by the president, in a clear disregard for the key demand of the political class to strip the executive authority of said prerogative.

The ruling power's ongoing violation of the constitution's provisions fueled doubts concerning the credibility of the declared political track to ensure peaceful and democratic transition of power, all while basing it on respecting public will and ending tutelage over the people in choosing their rulers, as per the repeated rhetoric of the military institution.

As a result, the turnout in both the presidential elections and public referendum on the constitutional amendment was low. The choice of the first of November as a date to hold the referendum due to its historical significance for marking the anniversary of the revolution mattered little. Its symbolism and value for the Algerian people did not play its expected part.

It is true that the Algerian Electoral Law does not specify a minimum voting percentage necessary to consider the election results, regardless of their nature, legitimate and true from a legal point of view, whether they achieve the declared 23% by the independent authority or get an even lower percentage. However, their legitimacy can still be questioned in adopting a new constitution — one that should have been valid for future generations, rather than undergo a hasty amendment as soon as a new president takes office.

One cannot deny the negative effect of the electoral boycott or abstention on the legitimacy of the constitution, given its importance in the hierarchy of laws [being the most supreme legal document], especially if its purpose is to also achieve national consensus, similar to the one needed in Algeria after the *hirak* of February 2019.

The ruling power's choice to bypass the imperativeness of a national dialogue with key actors in society, spearheaded by the *hirak*, in breach of their pledges, and tasking a committee formed of university professors with drafting the constitutional

bill, does not take into account the necessary requirements to build the sought legitimacy. This was clearly reflected in the low percentage of supporters for the bill which was put to a vote.

Article 208 of the 2016 amended constitution states that the constitutional amendment approved by the people shall become applicable after the president promulgates it, which indicates that the bill's final adoption ought to ultimately be in the hands of the president who initiated it. Nothing in the formulation of Article 208 shows that the president has to sign the amendment bill that passed in voting. Accordingly, and based on the interpretation of related constitutional texts, the president may decide – in light of the final results and the desired goals – the fate of the proposed constitutional amendment. He may either sign and pass it, thus enshrining it as a new and applicable constitutional text, or refrain from signing it, thus rendering it unenforceable. This is actually a political rather than legal interpretation of the message that the boycott of or abstention from the electoral process can carry. Just as the president possesses the right to initiate a constitutional amendment, he is equally entitled to nip it in the bud, should he have enough reasons to make such a decision. The referendum on the constitutional amendment, dated November 1, 2020, falls in that category.

Conclusion

To conclude, it is worth noting that different legal approaches and readings into the track of the constitutional amendment bill in Algeria are only normal, given the legal value of the constitution as the country's most supreme document, in addition to the particularity of the Algerian situation. Nonetheless, two key points must still be highlighted in the content of this study.

First, the debate over the need for a new constitution or the contentment with a substantive amendment of the constitution is not crucial when it comes to the popular movement's demands. Apart from its symbolic value in marking a new era and cementing a final boycott to the former regime, a new constitution might have the same content as deep constitutional amendments. Both might be based on an inclusive national dialogue, away from exclusion and narrow political maneuvers. The point lies in how much of the people's legitimate and crystal clear demands will be met.

Second, although this commentary only focused on three points of the amendments that were voted on in the public referendum on November 1, 2020, it is worth noting that their content did not meet the *hirak*'s expectations. In fact, they were superficial in the main areas that should have changed the political practices that have contributed in the aggravation of the situation in the country. In other words, it is not possible for the proposed amendments to limit the hegemony of the executive power over the

other powers as well as achieve balance among them, knowing that this was one of the key demands of the *hirak* and the "real" opposition to the ruling regime before this movement.

In light of the content of the amendments that were put to a referendum, and the weak approval rating (ranges from 12% of the total electorate, according to the figures approved by the Constitutional Council) for the draft amendment regarding the legitimacy of the constitution if approved by the President, the question remains: will this constitution be valid for future generations, as it is expressed, and enough to help overcome the crisis and change the practices of the ruling power in Algeria?

Endnotes

(1) Gret HALLER, Fredrik SEJERSTED, Kaarlo TUORI, Jan VELAERS. Rapport sur l'amendement constitutionnel, adopté par la Commission de Venise lors de sa 81e session plénière (Venise, 11-12 décembre 2009). CDL-AD(2010)001. p 05.

(2) Using the description "transitional or interim" does not concern the debate regarding the demand for a transitional stage, which was largely confusing, misinterpreted and devoid of all considerations of scientific objectivity most of the time. Instead, this description indicates that the president of the Council of the Nation would handle the presidency in the wake of President Bouteflika's resignation, then his term would be extended through a fatwa from the Constitutional Council, after the *hirak* foils holding the presidential elections in the constitutionally set periods due to lack of candidates because of public pressure refusing these elections.

(3) Perhaps this contradiction stems from the absence of a unified leadership or representation for the popular movement, which insisted from the start on its popular character that rejected the representation of elites or an extremely elusive political class during the rule of President Bouteflika that was no longer capable of building trust with the people.

(4) It should be noted in this regard that adopting a new constitution does not necessarily mean changing all the articles. The amendment might involve reviewing the system of rule or making important changes in the state institutions, such as the structure of the legislative, executive and judicial authorities, without infringing upon the principles stipulated in Article 12 of the 2016 constitutional amendment. Legally, nothing prevents the president from taking the initiative, if all conditions calling for adopting a new constitution for the country are met. However, this does not happen according to the amendment procedures stipulated in Article 208 and the following articles, but based on a special political process established in light of the circumstances prompting the proposal of the initiative.

(5) Gret HALLER, Fredrik SEJERSTED, Kaarlo TUORI, Jan VELAERS. Op.cit, p 15.

(6) ibid, 06 نرجس طاهر ودنيا بن رمضان ص

(7) No constitutional amendment shall undermine:
1. the Republican character of the State; 2. the democratic order based on a multi-party system; 3. Islam as the religion of the State; 4. Arabic as the national and official language; 5. the fundamental freedoms and the human and citizens' rights; 6. the integrity and unity of the national territory; 7. the national emblem and the national anthem as symbols of the Revolution and the Republic; 8. the re-eligibility of the President of the Republic for a second term.

(8) Bouteflika suffered from a stroke in April 2013, and his health significantly deteriorated after that. After receiving treatment for a long time in the Val-De-Grace Military Hospital in France, he was unable to recover properly and regain his capacities. This was clearly reflected in his absence from the political arena. He only appeared sitting in a wheelchair and did not address the nation during the six years during which his regime remained.

(9) President Tebboune decides to pass the constitution through a public referendum. Algeria Press Service. Jan. 8, 2020.

(10) Article 16 of the constitutional amendment stated that "1-The state shall be founded on the principles of representational democracy, separation of powers and guarantee of rights, freedoms and social justice…"

(11) For more details about the panel, see the presidential decree no. 20 (3), dated January 11, 2020, which stated that a panel of experts shall be formed and tasked with drafting suggestions for reviewing the constitution. Official gazette, issue no. 2.

(12) عبد الله هوادف «مسودة التعديل الدستوري في الجزائر: سياقاته وانعكاساته على المشهد السياسي» ص 04. المركز العربي للأبحاث ودراسة السياسات، قطر، جويلية 2020

(13) Preliminary Draft on Constitutional Change, May 2020, p. 7.

(14) In the inaugural speech, the incumbent Algerian President promised to amend the constitution, fight corruption and reform the economy.
Link: /https://www.aljazeera.net/news/politics/2019/12/ الجزائر-عبد-المجيد-تبون-اليمين
Accessed on 3/12/2020

(15) As per the same provisions of the 1996 constitution, President Liamine Zeroual called for holding early presidential elections following the decision to reduce his presidential term. The elections were held in 1999 and resulted in Bouteflika becoming president.

(16) Organic Law no. 19-7, dated Sept. 14, 2019 on the National Independent Authority for Elections, official gazette no. 55.

(17) Presidential Decree no. 19-93, dated March 11, 2019 terminating the tasks of the head of the High Authority for Monitoring Elections.

(18) Presidential Decree no. 19-94, dated March 11, 2019 terminating the special presidential decrees to appoint the head and members of the High Authority for Monitoring Elections.

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