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*EU democratic rule of law promotion in Morocco*

**Abstract:** *In recent years Morocco has embarked in a proactive process of modernisation and democratisation. There has been undeniable progress in the areas of democratic reform and respect for human rights, in particular the adoption of the new family code, the law on political parties, the law outlawing torture, the strengthening of local democracy, the reform of the justice and prison systems, the new electoral code. In 2011, the new Constitution introduced a stronger separation of powers and somewhat reduces the political authority of the King. In September 2015 Morocco held regional and municipal elections for the first time under the constitutional framework established in 2011 but corruption remains a major problem, despite the government desire to combat this scourge. I will focus on the Rule of Law growth, and some of its subdivisions, within the EU democratic rule of law promotion in Morocco.*

**Keywords:** Democracy; Rule of Law; Morocco; EU promotion; Rights.

*Introduction*

This paper offers an analysis of the strategies of the European Union's democracy promotion in Morocco in the context of the European Neighbourhood Policy (ENP) which established a new framework for relations between the EU and its neighbourhoods of the Southern Mediterranean.

In North Africa the EU's democracy promotion appears to display an active promotion with programmes and projects devoted to democracy and human rights but the Arab spring stressed the European Union's failure to make democratic substantial changes. However, some authoritarian countries in North Africa, such as Morocco, have taken a path, in a positive sense, towards domestic institutional changes related to political participation, civil liberties, respect for human rights, and more generally to the rule of law.

Morocco is a constitutional monarchy with a bicameral system. King Mohamed VI came to throne in 1999. In recent years Morocco has embarked in a proactive process of modernisation and democratisation. There has been undeniable progress in the areas of democratic reform and respect for human rights, in particular the adoption of the new

family code, the law on political parties, the law outlawing torture, the strengthening of local democracy, the reform of the justice and prison systems, the new electoral code. In September 2015 Morocco held regional and municipal elections for the first time under the constitutional framework established in 2011 but corruption remains a major problem, despite the government desire to combat this scourge.

Reforms in Morocco have not yet transformed the fundamentally undemocratic nature of the incumbent regime but reality shows that the EU has been an useful instrument for supporting and reinforcing domestic reform initiatives.

### 1. *EU-Morocco relations*

Morocco was included in the European Construction process already in 1957 but the relations between Morocco and European Economic Community (EEC) were legalized within the framework of the Global Mediterranean Policy (GMP) in 1972.<sup>1</sup> Cooperation under GMP was limited to economic and financial aid in the form of bilateral financial protocols.<sup>2</sup>

Only in 1995, the Barcelona Declaration reiterated the political dialogue of the Euro-Maghreb Partnership establishing the Euro-Mediterranean Partnership (EMP).<sup>3</sup> Promoting democracy and developing civil society are listed as objectives. The 1995 Barcelona Conference concluded with a Declaration that paved the way for a more integrated approach focused on development, trade, political dialogue on human rights and democracy, and cultural exchanges with a view to promoting a Mediterranean “space” of prosperity and dialogue.<sup>4</sup>

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<sup>1</sup> See R. DEL SARTO - T. SCHUMACHER, *From EMP to ENP: What's at Stake with the European Neighbourhood Policy towards the Southern Mediterranean?*, in «European Foreign Affairs Review», 1, 2007, pp. 17-38.

<sup>2</sup> See *EU and Maghreb Countries: Bilateral Agreements*, in <http://www.medeas.be/en/themes/euro-mediterranean-cooperation/eu-and-maghreb-countries-bilateral-agreements/>. See also, E. BICCHI, *Euro-Mediterranean Relation in Historical Perspective*, in *The Euro-Mediterranean Dialogue: Prospects for an Area of Prosperity and Security*, Roma, IE, 2009, pp.14-19.

<sup>3</sup> See S. RADWAN - J.L. REIFFERS, *FEMISE Report: The Euro-Mediterranean Partnership, 10 Years after Barcelona: Achievements and Perspectives*, FEMISE, 2005, available on: [femise.org/Pub-indic/listpub-ol.html](http://femise.org/Pub-indic/listpub-ol.html).

<sup>4</sup> See EUROPEAN COMMISSION, *Barcelona Declaration Adopted at the Euro-Mediterranean Conference*,

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The Declaration defines three pillars of the Euro-Mediterranean Partnership (EMP): a political and security partnership to achieve a common area of peace and stability (pillar 1); an economic and financial partnership to create an area of shared prosperity (pillar 2); a partnership in social cultural and human affairs to promote understanding between cultures and exchanges between the respective Civil Societies (pillar 3).<sup>5</sup>

To sustain these objectives, the EU developed, within the framework of the European Initiative for Democracy and Human Rights (EIDHR) of 1994, the MEDA (the acronym derives from the French *Measures d'Accompagnement*) Democracy Programme (MDP) as a component of the EMP, granting financial support to civil society members and public bodies. EU–Moroccan bilateral co-operation within the EMP was enhanced by the signing of the Euro-Mediterranean Association Agreement (EMAA). The EMAA (2000) opened to a political dialogue season between the EU and Morocco with Association Council meetings discussing matters related to democracy and human rights.

Over time, the EU support was appreciated by the Moroccan delegation and Moroccan reform projects, such as the the new family code *Moudawana*, measures of bilateral cooperation with projects on human rights, gender equality and the judiciary, have been discussed.<sup>6</sup> In 2006, a Subcommittee on Human Rights, Democratisation and Governance was created but the human rights respect is still a mirage.

## 2. Democratic cooperation. MEDA Democracy Programme

The MEDA programme adopted for the first in July 1996 is the EU' s principal financial instrument for the implementation of the Euro-Mediterranean Partnership. The budgetary resources allocated under MEDA were € 3.4 billion for 1995-1999 and € 5.4 billion for 2000-2006. Morocco has become the principal beneficiary of the MEDA programme, with

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November 27-28, 1995, in [http://ec.europa.eu/external\\_relations/euromed/bd.htm](http://ec.europa.eu/external_relations/euromed/bd.htm).

<sup>5</sup> See *ibid.*

<sup>6</sup> See, EU-Marocco Association Council, *Projet de Procès Verbal de la huitième session du Conseil d'Association UE-Maroc*, UE-MA 2705/10, Bruxelles, December 2010; EU-Marocco Association Council, *Projet de Procès Verbal de la septième session du Conseil d'Association UE-Maroc*, UE-MA 2701/09, Bruxelles, October 2008.

commitments totalling € 1.472 million for 1995-2006, of which € 660 million under MEDA I (1995-1999) and € 812 million under MEDA II (2000-2006).<sup>7</sup> MEDA cooperation touched all socio-economic spheres in Morocco. Several structural adjustment programmes were set up in essential sectors such as finance, taxation, water, transport, health, education, the civil service.

Investment programmes were implemented to support enterprise development, vocational training in the tourism, textile, and information and communication technology sectors, the development of the national road transport infrastructure and the rural network. MEDA funds were also channelled to migration, with the aim of fostering a better management of migratory flows. Financial cooperation also concerned environmental protection and the promotion of human rights and fundamental freedoms.<sup>8</sup>

In addition, a number of projects supporting the development of associational life in Morocco were funded from the MEDA programme, such as a project for an ‘integrated programme for the support of developmental associations’, which was financed for an amount of € 4m and supervised by the Ministry of Social Development, Solidarity, Employment and Professional Training. This project aimed at strengthening the institutional and organizational structure of Moroccan associations, focusing mainly on ‘intermediary’ associations working in the fields of the environment, development and the protection of women, children and youth. With such an operation, Morocco has been the first country to integrate the development of civil society, as an essential recommendation of the Barcelona Declaration. The interaction between the MEDA programme and the objectives of the MDP can also be found in projects such as ‘support for basic education’, aiming at the education of young girls, and ‘support for the Ministry of Social Development’, seeking to contribute to the integration of women in development.<sup>9</sup> The

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<sup>7</sup> See EUROPEAN COMMISSION, *Evaluation of the Council Regulation, MEDA II and Its Implementation*, vol.I, n. 2698/2000, June 2009, in [https://ec.europa.eu/europeaid/evaluation-council-regulation-ndeg26982000-meda-ii-and-its-implementation-2000-2006\\_en](https://ec.europa.eu/europeaid/evaluation-council-regulation-ndeg26982000-meda-ii-and-its-implementation-2000-2006_en); ECORYS-NEI, *Mid-term Evaluation of the MEDA II Programme*, Final Report, July 2005.

<sup>8</sup> See M. NATORSKI, *The MEDA Programme in Morocco 12 Years on: Results, Experiences and Trends*, Barcelona, CIDOB Editions, 2008, pp. 5-54.

<sup>9</sup> See *Projects* nn. 19, 15, and 20, respectively, ‘MEDA au Maroc’, in «Bulletin of the European Commission

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successor of the MEDA is the European Neighbourhood Policy (ENP) of 2003 that opened to a positive conditionality to the progress of political reforms.

### 3. *Democratic conditionality. ENP Action Plan*

The European Neighbourhood Policy (ENP), approved by the EU-Morocco Association Council in 2005, is arguably the most important instrument the European Union has developed to date to engage with the states located on its Eastern and Southern borders without offering a membership perspective.<sup>10</sup> The European neighbourhood policy (ENP) sets ambitious goals based on shared responsibility and the acceptance of mutually recognised common values such as democracy, the rule of law, good governance, respect for human rights, market economics, free trade, sustainable development, poverty reduction and the implementation of political, economic and institutional reforms. The establishment of an area of peace and stability, including crisis management and the prevention and resolution of conflicts in the region, also form part of the ENP. Morocco shares these values and principles, which underlie the formulation of its national and international policies. Importantly, while proposed economic reforms may be adopted rather willingly by neighbouring states, EU norms of democracy and respect for human rights prove more difficult to diffuse.

Morocco can be described as the showcase of EU democratisation strategy. Between 2007 and 2010, the Maghrebi country was the EU's primary aid receiver with a total of € 654 million and it was the first state to attain the "Advanced Status" under the ENP in 2008.<sup>11</sup> Its relations to EU member states are close and Morocco is seen as a stabilising country in the otherwise very volatile Southern neighbourhood.<sup>12</sup> According to the

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Delegation in Morocco», n.165, 1999.

<sup>10</sup> See EUROPEAN COMMISSION, *Communication from the Commission ENP Strategy Paper*, COM (2004), n. 373, May 2004.

<sup>11</sup> See D. SCHMID, *European Community Aid Policy and Practice on Governance and Democracy. Research in Morocco*, Report commissioned by One World Action, London, 2006. See also, EUROPEAN COMMISSION, *European Neighbourhood and Partnership Instrument. Morocco: 2007-2010 National Indicative Program*, 2007.

<sup>12</sup> See K. KAUSCH, *The European Union and Political Reform in Morocco*, in «Mediterranean Politics», 2007, pp. 165-179.

Commission, Morocco has given the ENP as a «very warm reception and has been very cooperative regarding its implementation».<sup>13</sup> Morocco is one of the few countries in the region that has repeatedly benefited from the positive conditionality introduced with the ENP.

In the framework of the ENP, conditionality is enshrined in the Action Plan process. The new Action Plan for implementing the advanced status represents a key step in the ongoing process of strengthening relations between Morocco and the EU in which all the tools, mechanisms and instruments of the advanced status will be brought into action. This instrument will encourage the development and implementation of policies and measures to promote the consolidation of the rule of law, democracy and human rights, economic growth, employment and social cohesion, poverty reduction and protection of the environment, thereby contributing in the long term to sustainable development. Implementation of the new instrument will take account of the necessary balance between speeding up the process of opening and modernising the Moroccan economy and the imperative of sustainable socioeconomic development.

The new Action Plan (2013-2017) for Morocco contains a lot of reform priorities grouped under 8 chapters: political and policy dialogue; democracy, the rule of law and governance; justice and security cooperation; people to people links; economic and social reforms; trade, markets and regulatory reforms; transport, energy, environment, information society research and development; education training and health. Unlike the previous, the new Action Plan, in respect for democratic principles and human rights, and governance, particularly in the context of the implementation of the Moroccan Constitution adopted on 1 July 2011, devoted a whole chapter to democracy, the rule of law and governance with a sub-division in different sections that contain the priority actions that relate directly to democracy.<sup>14</sup> (Table 1)

Despite the good priorities established, some academic observers, such as

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<sup>13</sup> COMMISSION STAFF, *ENP Working Paper on Morocco*, SEC, 529, 2004, p. 5.

<sup>14</sup> See EUROPEAN COMMISSION, *EU-Morocco ENP Action Plan 2013-2017*, n. 2013/0107, Bruxelles, April 2013.

Schimmelfennig and Magen undertook the task of assessing the prospects of the new ENP conditionality model on the basis of the external incentives model and came to very sceptical conclusions about the prospects for the effectiveness of ENP political conditionality, arguing that, in the absence of a membership perspective, incentives are too small, political conditionality, outside the accession context, too likely to be compromised by other goals of EU external governance and, given that the EU deals mainly with authoritarian regimes in the ENP, domestic power costs of compliance too large for ENP conditionality to have a significant effect on political change in the neighbouring states.<sup>15</sup> To sum up, the EU's influence on domestic institutional change related to democracy and human rights in Morocco depends on the regime's willingness to actively engage in the EU's democracy promotion efforts, creating a joint agenda for cooperation.

The ENP Report on Morocco of the march 2015 provides an overview of the progress made in the implementation of the European Neighbourhood Policy (ENP) Action Plan between the European Union (EU) and Morocco after the Action Plan 2013-2017, officially adopted by the Association Council in December 2013.<sup>16</sup> According to the Report, Morocco continued its reform process throughout 2014, including the implementation of the new migration and asylum policy, the reform of the military justice code, the assessment of the rule of law. Other reforms under the Constitution are being drafted, including justice, the process of advanced regionalization and the press code. With regard to draft laws on access to information and the fight against corruption, these include regressions compared to previous versions. Morocco's efforts in terms of democratic principles and human rights to implement the 2011 Constitution will have to accelerate, in particular, to promote consultation with civil society, gender equality and strengthening

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<sup>15</sup> See F. SCHIMMELFENNIG, *European Neighbourhood Policy: Political Conditionality and Its Impact on Democracy in Non-Candidate Neighboring Countries*, EUSA 9th Biennial International Conference, Austin, 31 March-2 April 2005, pp. 9-20; A. MAGEN, *The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?*, in «Columbia Journal of European Law», XII, 2006, pp. 383-427.

<sup>16</sup> The Report is only in french. See *Commission Européenne, Mise en oeuvre de la politique européenne de voisinage au Maroc Progrès réalisés en 2014 et actions à mettre en oeuvre*, SWD, 70, 2015, Bruxelles, Mars 2015.

Freedoms of association, assembly and expression. The various bodies created by the Constitution, national or advisory bodies, to ensure respect for democratic principles and human rights should quickly become operational.

In order for the 2011 Reform Constitution to be put in place, several organic laws should still be adopted by this Parliament in accordance with the Constitution. Civil society in Morocco is very active in the public debate and is seeking to establish itself as an interlocutor with the authorities in order to establish a participatory approach. It is, in all transparency, an important partner for the EU.

From a global point of view, Morocco has made significant progress in implementing the ENP Action Plan towards the consolidation of human rights and fundamental freedoms, especially through the adoption of the very important regulatory texts. This also applies to the reform of the judiciary. Morocco has adopted and implemented an ambitious migration policy that provides for a process of regularization and integration of irregular migrants and refugees. The problem of the fight against corruption remains an important building site.

<b>DEMOCRACY, THE RULE OF LAW AND GOVERNANCE</b>		
<b>SECTION</b>	<b>OBJECTIVES</b>	<b>ACTION BY MOROCCO</b>
<b>Rule of Law, Democracy and governance</b>	Strengthen institutions that guarantee democracy and rule of law	<ul style="list-style-type: none"> <li>a) Strengthen the role and capacity for action of the Parliament, Government and political parties, the National Human Rights Council (CNDH) and the Ombudsman's Office;</li> <li>b) Adopt appropriate legislation;</li> <li>c) Strengthen cooperation with the Council of Europe;</li> <li>d) Modernise Public administration;</li> </ul>
<b>Decentralisation and Regionalisation</b>	Consolidate the process of administrative and budgetary decentralisation and devolution	<ul style="list-style-type: none"> <li>e) Implement administrative devolution;</li> <li>f) Introduce the advanced regionalisation process;</li> </ul>

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<b>Reform and Justice System</b>	Ensure the independence and improve the efficiency of the judiciary	<ul style="list-style-type: none"> <li>g) Adopt a Justice sector reform strategy;</li> <li>h) Strengthen the independence of the judiciary;</li> <li>i) Adopt appropriate legislation;</li> <li>j) Modernise the judiciary, inter alia by simplifying and improving judicial procedures;</li> <li>k) Improve training for judges and members of legal professions;</li> </ul>
<b>Promotion and Protection of Human Rights and Fundamental Freedoms</b>	<p>Uphold, Promotion and protect of HR and FF in accordance with international standards</p> <p>Promotions of Women’s Rights</p> <p>Promote the rights of children and the vulnerable, in particular people with disabilities</p>	<ul style="list-style-type: none"> <li>l) Bring Moroccan legislation into line with international human rights standards.</li> <li>m) Complete the process of transposing and implementing the Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).</li> <li>n) Implement the recommendations passed by the Committee on the Elimination of Racial Discrimination (CERD) at its 77th session in Geneva in August 2010 following examination of the periodic report on Morocco;</li> <li>o) Strengthen the mechanisms for ensuring effective implementation of the Labour Code prohibition on the employment of children under the age of 15 in line with International Labour Organisation (ILO) Conventions 182 and 138;</li> </ul>
<b>Freedom of Expression</b>	Strengthen the rights of association, expression and assembly	<ul style="list-style-type: none"> <li>p) Adopt and implement a new Press Code covering the written and online press including the organization of ethical aspects of the profession;</li> <li>q) Continue reforms leading to media pluralism and independence;</li> <li>r) Effectively apply the legislation on the right of association and amend the act on street demonstrations</li> </ul>
<b>Fight against Corruption</b>	Cooperation in tackling corruption	<ul style="list-style-type: none"> <li>s) Implement the act on the protection of victims and witnesses of corruption in institutions;</li> <li>t) Establish and develop the role, independence and capacities of the National Agency of Probity and the Fight against corruption;</li> <li>u) Implement action plans and adopt a national strategy for preventing and combating corruption;</li> </ul>

Table 1 - ENP Action Plan for Morocco (2013-17) – Democracy and Rule of Law Priorities

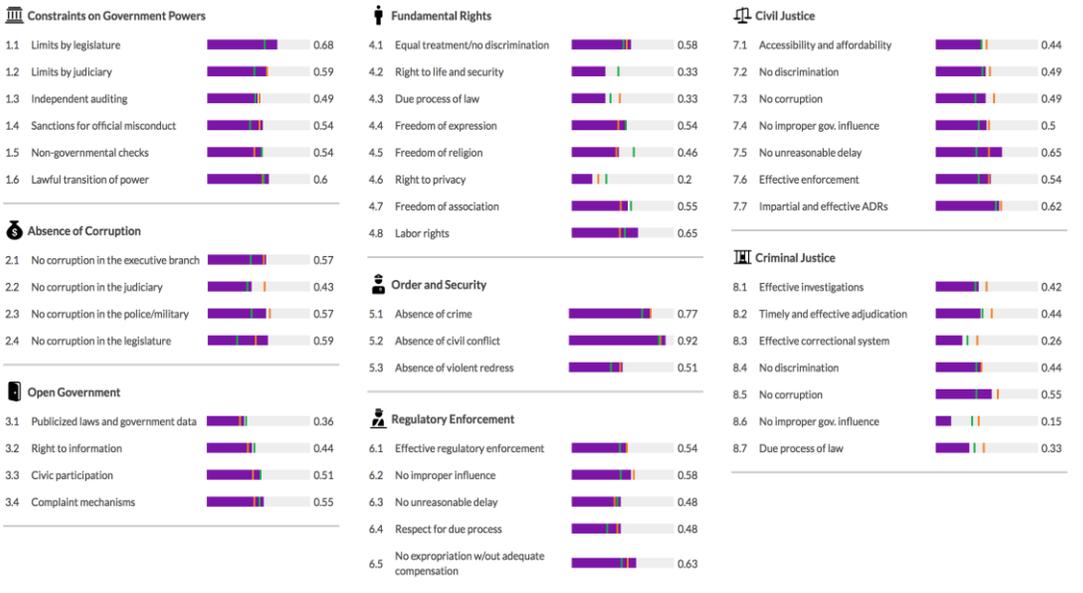
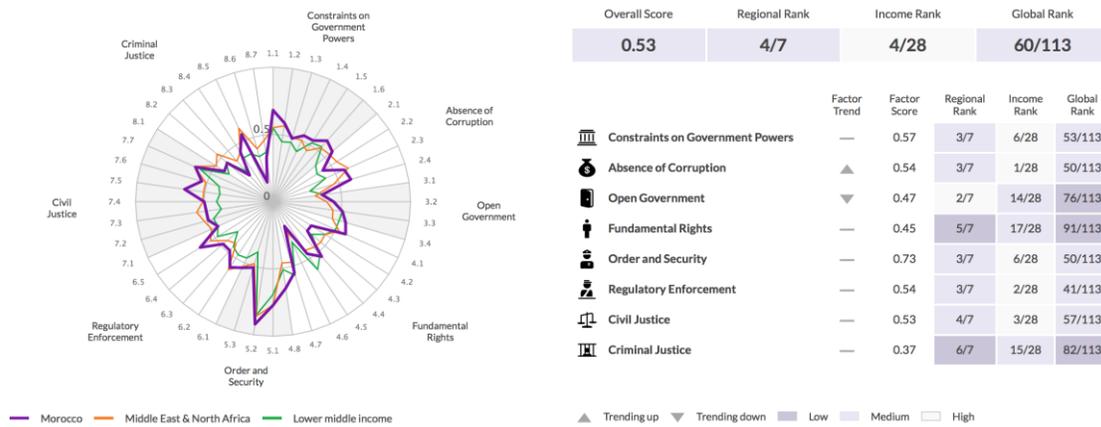
4. *Rule of Law Analysis in Morocco*

Analysing the democratic qualities, according to the Morlino’s TODEM divided into eight

dimensions,<sup>17</sup> Morocco is clearly non-democratic. Nevertheless, I'll focus on the Rule of Law growth, and some of its subdivisions, within the EU democratic rule of law promotion in Morocco. The World Justice Project gives us a full and recent (2016) index evaluation of the Rule of Law in Morocco.

## Morocco

Casablanca, Rabat, Marrakesh  
Region: Middle East & North Africa | Income group: Lower middle income



<sup>17</sup> M. LEONARDO, *Changes for Democracy: Actors, Structures, Processes*, Oxford, Oxford University Press, 2011.

#### 4.1 *Fundamental Rights*

In 2011, the new Constitution introduced a stronger separation of powers and somewhat reduces the political authority of the King. In fact, according to the old Constitution (before 2011) the monarchy was conceived as an “executive monarchy” that governs and reigns and also takes charge of the principal political decisions both domestically and externally. According to Article 19 of the old Constitution, the King was not only the supreme leader, but also the “Commander of the Faithful”, who was charged with protecting the rights and liberties of citizens and is the guarantor of the nation’s independence. Instead the new Constitution, under the Section Fundamental Freedoms and Rights establish that the man and the woman enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural and environmental character, enounced in this Title and in the other provisions of the Constitution, as well as in the international conventions and pacts duly ratified by Morocco and this, with respect for the provisions of the Constitution, of the constants of the Kingdom and of its laws.<sup>18</sup>

National and local elections, although fairly transparent and regularly held, do not and are not intended to produce autonomous democratic institutions. In reality, the results of the elections can be shaped through informal strategies as well as through different administrative means that the ministry of interior controls. Elected officials in Morocco do not possess effective power to rule. Although the constitution was reformed in 2011 and the king is now obliged to appoint the leader of the party winning the largest seats as head of government, effective power still rests with the monarchy. The new constitution does not provide for separations of power and still reserves three areas as the king’s exclusive domain: religion, security and strategic policy choices (not further specified). The king still appoints key ministers such as defence and interior. The king also appoints the secretaries of state of all ministries, all the governors, heads of administrative provinces, directors of

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<sup>18</sup> For the new Constitution see [https://www.constituteproject.org/constitution/Morocco\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Morocco_2011.pdf?lang=en); for the old text see <http://mjp.univ-perp.fr/constit/ma1962.htm>.

public agencies and enterprises, and judges and magistrates.<sup>19</sup>

Civil rights and equality before the law are constitutionally guaranteed. In practice, after an optimistic start in the early reign of King Mohammed VI, civil rights have been increasingly violated. Despite considerable advances King Mohammed VI and his close advisers, often referred to as the Makhzen, hold political, social, and economic power in Morocco. While the palace has engineered a series of constitutional reforms since the first constitution in 1962, the 2011 constitutional referendum was significant as it required the monarch to appoint the prime minister from the party that wins the most seats in parliamentary elections and to consult the prime minister before dissolving parliament. The monarch can dissolve Parliament, rule by decree, and dismiss or appoint cabinet members. He sets national and foreign policy, commands the armed forces and intelligence services, and presides over the judicial system. One of the king's constitutional titles is "commander of the faithful," giving his authority a claim to religious legitimacy.<sup>20</sup>

The Freedom of expression, opinion, thought, conscience is on the article 25 of the new Constitution but the reality is that the state dominates the broadcast media, but people have access to foreign satellite television channels. Although the independent press enjoys a significant degree of freedom when reporting on economic and social policies, the authorities use an array of financial and legal mechanisms to punish critical journalists, particularly those who focus on the king, his family, the status of Western Sahara, or Islam. In fact, numerous journalists were subject to legal harassment despite the article 28 on freedom of press and public communications. The authorities also occasionally disrupt websites and internet platforms, and bloggers and other internet users are sometimes arrested for posting content that offends the monarchy.<sup>21</sup>

Freedom of assembly is not always respected, though frequent demonstrations by unemployed graduates and unions are generally tolerated. Although such protests often

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<sup>19</sup> See BERTELSMANN STIFTUNG'S TRANSFORMATION INDEX, *Morocco Country Report*, 2016, pp. 7-9.

<sup>20</sup> See M. MADANI - D. MAGHRAOMI - S. ZERHOUNI, *The 2011 Moroccan Constitution: A Critical Analysis*, Stockholm, International IDEA, 2012, pp. 27-32.

<sup>21</sup> See FREEDOM HOUSE, *Report on Morocco: Freedom of the Press*, 2015; see also the *Report on Morocco: Freedom in the World*, 2015.

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occur without incident, activists say they are harassed outside of public events, in disagreement with Article 29 that states that the freedoms of reunion, of assembly, of peaceful demonstration, of association and political membership, are guaranteed.

Despite the efforts made, since 2004, with the adoption of the *Moudouwana*, the new family code that significantly increased the rights of women, raising the age of marriage and ensuring property ownership and inheritance, the access to justice through the new family court, women continue to face significant discrimination at the societal level. However, by Arab standards, Moroccan authorities have a relatively progressive view on gender equality, which is recognized in the 2011 constitution.<sup>22</sup>

#### 4.2 *Judicial independence and capacity*

The judicial system is central to respect for the rule of law and the protection of human rights. Both individual and institutional independence are necessary. An independent judiciary means that victims can seek redress, that perpetrators of human rights violations are brought to justice, and that anyone suspected of a criminal offence receives a fair trial. Furthermore, by acting as a check and balance on the other branches of government, the courts ensure that the executive and legislative branches comply with international human rights and the rule of law.

There are no functioning checks and balances in the Moroccan political system. Via royal commissions, the king legislates, and via his right to appoint judges, he dominates the judicial branch. Constitutionally, the legislative, executive and judicial branches of government are ultimately controlled by the king. The king is also the head of the military. In spite of the constitutional reform in 2011, the constitution offers no counterbalance to monarchical power. It is important to stress that the implementation of the new Constitution depends not only on the King, the Government and the Parliament, but also on other actors such as the judges and the Constitutional Court. For this reason, the constitutional provisions in the field of judicial independence and constitutional adjudication should be

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<sup>22</sup> See BERTELSMANN STIFTUNG'S TRANSFORMATION INDEX, *Morocco Country Report*, 2016, cit., pp. 8-10.

implemented as soon as possible. Significant novelties have been conferred to the Higher Council of Judicial Power. This body, which replaces the High Council of Magistracy, is still chaired by the King; however, under the new Constitution, the executive president is not the Minister of Justice (as provided under the 1996 Constitution) but is the first president of the Court of Cassation, thus making this body more independent (Article 115).

It is important to stress that in addition to the *ex ante* review (already provided under the previous Constitution), the new Constitution introduced the concrete constitutional review. In fact, Article 133 provides that «the Constitutional Court shall have competence to look into an exception of unconstitutionality raised in the course of a trial, when one of the parties argues that the law on which depends the outcome of a trial undermines the rights and freedoms guaranteed by the Constitution». The introduction of such *ex post* review thus appears to be extremely important in order to enable the Constitutional Court to reinforce its position as a counter-majoritarian body and may thus contribute to the process of democratisation in a more effective manner than in the past.<sup>23</sup>

As a party to the International Covenant on Civil and Political Rights (ICCPR), Morocco is required to ensure the right to a fair and public hearing by a competent, independent, an impartial court. In Morocco, however, despite guarantees of judicial independence and separation of powers in the 2011 Constitution, the executive branch continues to dominate the judiciary, impeding judicial independence and eroding public trust in the justice system.<sup>24</sup>

In Morocco, several factors obstruct judicial independence, including deficiencies in law and practice, including excessive influence of the king and the Ministry of Justice in the judicial system. King Mohammed VI appoints key ministers and plays a major role in and oversight of the justice sector. The king also has authority over legislation and the judiciary through royal commissions and his right to appoint judges. Although there have been important reforms, the current judicial system remains vulnerable to political influence and

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<sup>23</sup> For all details of the Judicial Reform see INTERNATIONAL COMMISSION OF JURISTS, *Reforming the Judiciary in Morocco*, Geneva, ICJ, 2013.

<sup>24</sup> See *ibid.*, cit., p. 4-5.

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mechanisms through which judges are appointed, disciplined, promoted, and dismissed render them defenceless against political retribution. The Ministry of Justice retains control over the judiciary through the High Judicial Council, and the king exerts indirect influence over the judiciary, as he appoints the Minister of Justice. Because of the prominent role of the Ministry of Justice, the High Judicial Council is unable to offer sufficient protection for the judiciary from executive power, and there is a lack of transparency in judicial disciplinary procedures.

#### 4.3 *Institutional and administrative capacity*

Rule of law development in Morocco has been an evolutionary process towards democratic governance in the country. While the main conditions essential for democracy exist, institutions and processes are still developing. There is a constitution and framework of laws, elections are held, and a parliament, government ministries, and courts are in operation. Yet, law-making is still not an inclusive process, and there is a perception of inequality in the application of the law.

Inequities in application of the law fall principally into three separate, but related, categories. First, not all judges interpret legal provisions in the same way, especially in commercial court and family law cases. Second, there is a lack of standard procedures coupled with a lack of informational resources that results in unequal application of laws. Third, judges have broad decision-making authority and lack supervisory oversight and accountability resulting in divergent rulings, even on substantially similar cases. Fundamental issues of how laws are interpreted, applied, and enforced result in perceptions of impunity of the wealthy and elite tied to the *makhzen* system, in addition to inefficiency and ineffective processes of applying laws in Morocco.<sup>25</sup>

Strong empirical evidence supports the connection between corruption and the lack of good governance. Opportunities for corruption are greater where there is a lack of institutional transparency, accountability, capability, effectiveness, fairness and access. The

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<sup>25</sup> See TRANSPARENCY INTERNATIONAL, *The Good Governance: Egypt, Lebanon, Morocco, Palestine*, 2010, pp. 5-17.

problem of corruption in Morocco cannot be addressed independently from the political environment. The monarchy's executive and economic networks are extensive entitlements that overlap with the state and the market and cannot be regulated without breaching a law, a norm or an unwritten rule. Moreover, the behaviour of agents within these networks may not even qualify as corruption, narrowly defined, because these networks also provide political stability, generate domestic and foreign investments, and fund social programs.

The monarchy's political supremacy and encroachment on the economic sphere expose the limits of approaching corruption and good governance as management problems. The monarchy's self-proclaimed "executive" vocation means that the king's sovereign domains are multiple, extensive, indistinguishable from those of the state, and not subject to normal regulations and procedures.<sup>15</sup> Furthermore, the king's vast patronage networks in the economic sphere and the state apparatus set the norms of civic behaviour for influential political and economic actors. The trickle-down effect of this political culture should not be underestimated: Corruption has become "normalized" across the political, economic and social sectors.<sup>26</sup>

The state's administrative infrastructure extends throughout the territory of the country and is effective in terms of controlling citizens, but remains deficient in providing basic services. Education, health and transportation are the most deficient areas. They are generally understaffed and suffer from the widespread corruption and low skill level of many public employees. Given the lack of a significant democratic framework, the decentralization that started in the early 2000s has not been accompanied by a substantial devolution of power to elected municipal or provincial entities.

#### *4.4. Effective fight against corruption*

Corruption in Morocco – both financial and misuse of authority and power – is one of the most significant challenges confronting the transition to democracy and results in lack of procedural fairness for citizens. While there have been some campaigns against corruption

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<sup>26</sup> See A. MAGHRAOUI, *The Perverse Effect of Good Governance: Lesson from Morocco*, in «Middle East Policy Journal», XIX, 2, 2012, pp. 50-52.

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and impunity, they are short-lived and perceived by the community as a show for the outside world.

Corruption is not limited to the judiciary; it is also a significant factor constraining economic investment and growth, thereby limiting access to fair and equal opportunities and justice for ordinary Moroccans.

In recent years, the Government of Morocco has increased its work on anti-corruption legislation and rule-making. In line with most other countries, the Kingdom has adopted a national anti-corruption strategy and established a preventive anti-corruption steering committee to oversee work on the national strategy. In particular the Morocco Anti-corruption Action Plan provides to a Consolidation of transparent government and a sense of responsibility, an Improvement of the conditions of access to public results and a reinforcing of the institutional cadre and prevention of corruption.<sup>27</sup>

In 2008, the government created an anti-corruption agency, the Central Instance for Corruption Prevention (CICP), which advises public, private and non-governmental actors on corruption policy issues. Lacking the investigative and sanctioning powers to adequately pursue corruption charges, it has remained toothless. However, the CICP has been behind a number of initiatives, one of which was implemented in 2012. In this case, the Moroccan parliament passed a law to protect trial witnesses and experts, as well as whistle-blowers who report corruption. However, the Morocco Transparency Association argued that the law in fact made the situation worse for complainants; if they fail to prove the veracity of their allegations, they now risk being convicted for false accusation or false testimony. Another of the CICP's key concerns, the impunity of corruption, has been taken up by the new Justice and Development Party-led government, following the party's focus on corruption during the electoral campaign. A new legal initiative by the Islamist party seeks to double penalties for corruption. The relevance of both laws will greatly depend on the degree of judicial independence.<sup>28</sup> Although the new constitution of 2011 defines the Court

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<sup>27</sup> See *Action Plan for The Fight Against Corruption*, promulgated by the Ministry for the Modernisation of the Public Sector, 2005.

<sup>28</sup> See B. MICHAEL - A. NOUAYDI, *When EU Law Meets Arab Law: Assessment of Anti-Corruption Law in Morocco and Some Proposed Amendments*, in «Arab Law Quarterly», XXIII, 4, January 9, 2009, pp. 6-19;

of Auditors as the supreme institution of public finance control of the kingdom, it continues to lack independence.

Corruption is systemic and allows the political system to function. A recent whistleblower protection law has not led to successful prosecution of office abuse. Presently, Morocco's anti-corruption agency, the Central Instance for Corruption Prevention (CICP), which has an advisory role towards public, private and non-governmental actors in policies to prevent corruption, still lacks power and independence from the executive to adequately pursue corruption charges. In June 2014, it was announced that the CICP will be replaced in 2015 by the "Instance nationale de la probité, de la prévention et de la lutte contre la corruption" (INPLC, National Authority for Integrity and the Prevention and Combating of Corruption). Its prerogatives are not yet defined, but the right to investigate corruption is supposed to be a key novelty. It is, however, unlikely that this body will have a much greater impact.<sup>29</sup>

### *Conclusions*

Regarding to the Democratic Quality, Morocco is still far from the ideal of a liberal representative democracy with a meaningful competition for political power, the incumbent regime allowed very different degrees of pluralism and a controlled participation and contestation through media, civil society and political parties. In fact, Morocco enjoyed significantly more political liberties than other African Countries.

Democratic institutions formally exist and elections are held regularly, but the political system remains undemocratic and guided by archaic conceptions of political rule. The directly elected parliament cannot legislate independently from the monarchic institution. Informal politics and different forms of pressure and influence on members of the

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G. DENOEU, *Corruption in Morocco: Old Forces, New Dynamics and a Way Forward*, in «Middle East Policy Journal», XIV, 2007, pp. 134-151.

<sup>29</sup> See BERTELSMANN STIFTUNG'S TRANSFORMATION INDEX, *Morocco Country Report*, 2016, cit., p. 10. See also, GLOBAL CORRUPTION BAROMETER, *People and Corruption. Middle East and North Africa Survey*, 2016, in [http://www.transparency.org/research/gcb/gcb\\_2015\\_16](http://www.transparency.org/research/gcb/gcb_2015_16).

parliament are typical methods the regime uses to control the legislative institution. Cooptation of the members of the parliament is also common.

Importantly, the king continues to convene, preside over, and set the agenda for the council of ministers. This body has to approve a bill before parliament can consider it. He also appoints the secretary-general of the government who can block laws even after parliament's approval. If the king puts his weight behind particular laws, political parties do not risk contesting these laws, as was shown in the Islamist party's approval of the reform of the personal status code in 2003, a bill that it had opposed vigorously before it became a royal initiative. The same applies to municipal governments where policies and budgets have to be approved by the governor – who is appointed by the king. At the same time, democratic institutions are weaker than they could be from a constitutional point of view, a result of co-optation and infighting of coalition parties.

At the level of discourse, the Moroccan regime is committed to an unspecified democratization process and judicial independence. This continues to be true after the monarchy introduced constitutional reforms in 2011 and that the latest reforms are again not touching on the real distribution of power in Morocco indicates a weak commitment to democratic reforms from Morocco's most powerful actor. Most Moroccan parties have become ineffective in terms of providing alternative political projects – they are structurally weak and have become an integral part of the system. This political reality helps sustain an undemocratic system, since the major parties benefit from the political status quo. The main leftist parties have also become instruments of the monarchical state. Political parties from different ideological stripes have become unable to propose alternatives to what the monarchy offers, and have therefore become more subservient to the regime. In 2012, the last potential organized reform actor – the Islamist Party of Justice and Development (PJD) – was co-opted into government, following the path of historical opposition parties. While in government, they have not been able to follow through with substantial reforms. The only remaining actors pushing for democratic reform come from outside of the mainstream

parties, with the February 20th movement activists being a good example.<sup>30</sup>

According to a poll conducted by the Arab Democracy Barometer in 2013, support for democracy remains high in Morocco. Specifically, two-thirds of Moroccans agree that democracy may have its problems but is better than any other form of government. This confirms data from early surveys in the mid-2000s, namely the Arab Barometer and the World Values Survey according to which large numbers of Moroccans approve of democracy as a form of government. The recent survey data also indicates a growing awareness that democracy is not the form of government in Morocco, with a majority of Moroccans indicating that Morocco was not democratic. Together with high abstention rates in both the latest parliamentary (2011) and municipal elections (2009), this indicates an awareness of the flaws of these elections and unwillingness on the part of the citizens to legitimize authoritarian rule through their vote. The fact that large segments of Moroccan society went to the streets to ask for constitutional reforms was indicative that there are presently changing perceptions about politics. More and more Moroccans in both rural and urban areas are engaging in different forms of civil resistance to claim their rights.

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<sup>30</sup> M.D. EL-MAAROUF - M. EL FAHLI - J. KUCHEJDA, *Morocco*, in K. GRABOW - G. WAHLERS - A. BÖSL - P. HEFELE - H. BOHNET - G. ELSNER - M. DÄUMER, *KAS Democracy Report on Morocco: Parties and Democracy*, vol. II, 2011, pp. 257-267; See also M. DAADAOU, *Party Politics and Elections in Morocco*, in *Middle East Institute Policy Brief*, 29, May 2010.