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**Report on**

**« The State of the Parliament in Morocco »**

**Author:** Mohammed Melki, Ph.D

**Rabat – Kingdom of Morocco**



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## **Introduction:**

Nothing is more difficult than writing a report with a preset referential framework, as the case of the present report, on “The State of the Parliament in Morocco with regard to the competent Parliament”. Nevertheless, I would like to thank all the persons who perceived the importance of such work and never hesitated in responding and answering the torrent of questions I tackled while interviewing them, among whom the members of both chambers of the Parliament, heads of teams, deputies, counselors, veterans and present members of the Parliament. I also would like to express my thanks to the employees of both chambers of the Parliament whom I interviewed directly or indirectly. I would surely not forget to thank the researchers, my colleagues, who focused for years their researches on the Parliamentary activity, of whom: Nadir El Moumni who prepared the background paper « Does the Moroccan Parliament play a role in elaborating public policies? », Mohammed Al Ghali who helped me gather the data and facts of the questions inserted in the commission speech, and Abdelilah Fonteer who shed a light on some important issues being engaged and a researcher in the parliamentary field.

I shall also thank the Arab Center for the Development of the Rule of Law and Integrity and all sponsoring bodies.

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**N.B:** the analysis of the articles of chapter 2 were analyzed with regard to the commission speech prepared by the Arab Center for the Development of the Rule of Law and Integrity.



## Chapter One: Moroccan Parliament: Background & Context

The Moroccan Parliament ranks second to the monarchy in the constitutional hierarchy. Successive constitutions since 1962 included chapters comprising provisions, which defined the nature of its structure, regulated its competencies and powers and governed its relations with the government. It is worth noting that the Parliament, which is serving its seventh parliamentary term (2002-2007), has **but** a little legislative experience due to objective reasons relevant to its status within the Moroccan politics as well as considerations pertaining to its own situation and the size of its potentials in managing and arranging the prerequisites of representative work. Forty-three years after its inception, the Parliament only lasted **30 years** as its journey was interrupted with the declaration of the exceptional case (1965-1970) and the subsequent complications (1972-1977). This affected the legislative performance of the Parliament and the quality of its monitoring over the government work in addition to the nature of the roles in the context of its representative function.

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This chapter tackles some of the elements that would clarify the background and the context of the emergence of the Moroccan Parliament, whether on the level of its institutionalization (**First**), the factors that influence it (**Second**), its structure (**Third**), its competencies (**Fourth**), or with respect to the policies aimed at its form (**Fifth**).

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### First: From Legislative Work to the Parliamentary Institution

Morocco witnessed the birth of the first bicameral Parliament with the promulgation of the first Constitution after the independence on December 14, 1962 and the first legislative elections on May 17, 1963. After signing the Independence Agreement on March 2, 1956, Morocco witnessed a 6 year transitional phase (1956-1962), during which the institutions of the modern state were built progressively and laws relevant to public freedoms were set (1958), in addition to the elections (1959), the establishment of the Constitutional Council (1960) and the Basic Law of the Kingdom(1961).<sup>1</sup>

<sup>1</sup> The Basic Law of the Constitution was promulgated through Zahir (Law) Sharif, No. 1.61.187 on June 8, 1961 after the death of King Mohammed V and the hand-over of power to his successor Hassan II. This law constituted a referential framework for many constitutional principles, which would be included in the document ratified on December 7, 1962, as defining Morocco as an Arab and Muslim country, where Islam is the official religion of the monarchy, and Arabic its official language.



In the context of the political discussion on the construction strategy of the modern state, the national movement highlighted the necessity of establishing a parliamentary system in which **the Legislative Power would be in the hands of the elected representatives of the nation**, as the legislative work had previously been the absolute competency of the sultan (royal)\* in spite of the attempts aiming at reforming the Moroccan political regime and restructuring the relations of its institution since the draft Constitution of October 11, 1908 was submitted to Sultan Abdel-Hafeez and the condition of declaring loyalty through the endorsement of the Constitution.<sup>2</sup> Nevertheless, the monarchy followed the trend of progression, awaiting the formation of an elected Parliament.

Through the modern law of the National Advisory Council (3 August 1956), the clear will of the authority to establish a framework that **guarantees balance** between political organizations and economic and social sensitivities, as well as its attempt to **control** the mechanisms of legislative work inside it are obvious.<sup>3</sup> Therefore, the basic law determined the nature of council and limits of its competency, as well as the issues that call for the King's review in the political, economic, and social fields. The experience of the council did not last more than 2 years and a half after the mandate of its members was extended on May 23, 1959<sup>4</sup>, during which period four regular sessions and an extraordinary session were held. During these sessions, requests relating to the public policy of the country were submitted. A series of oral and written questions pertaining to different sectors were addressed to the members

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The document also stressed upon the territorial unity of the country and the principle of equality between citizens in rights and obligations. It acknowledged the principle of separation of power and the independence of the judiciary as well. However, it did not include any explicit indication to the Legislative Authority, in contrary to what was the case before the Royal mandate (May 8, 1918). This was perhaps left up to the Constitution to be later promulgated (December 14, 1962).

\* The title of Sultan was commonly used, and the title of the "King" only emerged with the 1962 Constitution.

<sup>2</sup> We would like to indicate that there are conflicts of opinion on who was behind the Draft Constitution of October 11, 1908. Some attribute it to a Lebanese political intellectual, Mr. Farjallah Nammour, while others attribute it to people of the Lisan al-Maghreb (Morocco's Tongue) newspaper which was issued then in Tangiers. The 93-article draft constitution, which was written in a coherent legal style, included a group of main points in terms of: stressing upon the constants of the Moroccan political regime and defining the relation between them, stipulating the establishment of constant foundations of a parliamentary regime that derived its sources from prestigious democracies, enacting the system of rights and obligations and setting rules that would control mechanisms of governance and administration.

<sup>3</sup> The National Advisory Council was formed of 76 members on August 3, 1956.

<sup>4</sup> The Sixth chapter of the August 3, 1956 law specified the mandate of the members of the National Advisory Council in two years. As for the half year extension, it was carried out according to Zahir Sharif No. 1.58.353 promulgated on October 29, 1958.



of the government. The sessions also permitted the possibility to conduct open political discussion.<sup>5</sup>

The proposal of establishing the first Moroccan Parliament with the first Constitution in 1962 did not mean the absence of a system for legislative work inspired from the Islamic religious reference and the prevalent local customs. Since the Islamic conquest and until the issuance of the "judicial reform collection" or the "collection of *zahirs* (laws)" on August 12, 1913, the Moroccan legislative system remained governed in terms of its sources and origins by the principle of the Islamic Sharia'ah and the provisions of Islamic jurisprudence, particularly the provisions, legislations and jurisprudence of the Maliki jurisdiction clerics. It also remained subject to the system of pre-Islamic local customs, especially what was known as the Barbaric Custom, which remained in force even if some of its provisions contravened the provisions of the Islamic Sharia'ah.<sup>6</sup>

As Morocco was under the protectorate in 1912, its general structures had been subject to **strong waves of destabilization** since the 1840's. This destabilization weakened the state and led to the deterioration of the economy, the accumulation of debts, the aggravation of tension, instability, and the domination of foreign forces over the country. Hence, Morocco started to witness a new system of values that affected institutions, the management of the economic system, and cultural structure. As for legislation, it constituted one of the strategic tools to set a framework and legalize the colonial project.

This was how Morocco inaugurated, with the establishment of the protectorate once the Fez Treaty was signed (1912), the implementation of the **positive law** through promulgating the larger codes in 1913<sup>7</sup>, which were aimed at protecting the interests of France and confirming its presence on the ground, in the administration, the army, the judiciary, the economy and finance. It is worth mentioning that the colonial legal ideology, even if it swung between the abolishment of the Moroccan

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<sup>5</sup> Among the most important requests issued during the mandate of the council, we can cite the request submitted in the 1956-1957 session, which asked that power be handed to Prince Hassan. Another one was related to the country's economic and financial situation, foreign policy and bicameralism during 1958-1959.

<sup>6</sup> Among these many customs, we would like to indicate those related to the tribal system and methods of litigation, the Criminal Code, especially the penal code, crimes of adultery, theft and murder, personal status law (marriage, divorce and inheritance), real-estate law and code of civil formalities, such as contracts and loans...

<sup>7</sup> This has to do with the larger provisions promulgated in August 1913 in terms of the *zahir* of judicial regulation, Elnat the criminal code, of the civil status of the French and foreigners in Morocco, the *zahir* of the Code of Obligations and Contracts, the *zahir* of the Code of Commerce, *zahir* of judicial assistance and the *zahir* of real-estate registration.



identity and the recognition of what stands for it, adopted the method of implementing the French or Moroccan Law of French origins, tending to narrow down the work in accordance with the provisions of Islamic jurisdiction. This ideology went beyond that when a law was promulgated on May 16, 1930 that separates between Arabs and "Barbarians" on the level of adopted laws and customs.<sup>8</sup> Though articles 4 and 5 of the Protectorat Treaty (1912) vested the legislative power in the Sultan, his work was limited to ratifying texts proposed by the French General Residence Authority, without the right to object, amend, or review. According to the abovementioned articles, this means that the remaining legislative power, of the Moroccan Sultan with the participation of the elite of jurists **was delegated** to the colonial authorities and the divisions and authorities representing them.<sup>9</sup>

## Second: Factors influencing the Parliament

Ever since its inception for the first time (1962-1963), the Moroccan Parliament was subject to a series of factors that have adjusted its work and limited its performance contrary to what was expected. It can be rather said that **it was originally born restricted in the constitutional paper**. The Moroccan parliamentary experience came in parallel with the fading of parliaments across the world and the deterioration of their role in legislation and monitoring for special considerations relating to the nature of changes that affected the structure of political life in many democratic regimes. The Moroccan experience could find the explanation of these changes in factors that are relevant to the status of the Parliament as set in the strategy of building the national State, as well as in the practices pertaining to parliamentary elections and the roles vested in parties to select and contextualize the components of the parliamentary elite.

1- The experience of the fourth French Republic (1946-1958) forced those who built the fifth Republic to rationalize the Parliament work by determining its competencies exclusively in order to exclude the principle of **sole legislator** and promote the theory of the **legislating Parliament**

<sup>8</sup> Refer among others, to Jaques Ladreit de la Charrière, *les Études berbères au Maroc et leurs intérêts Nord africains, renseignements coloniaux* (Octobre 1924) pp. 320.

- G. Surdon, *institutions et coutumes berbères du Magreb: Maroc, Tunisie, Algerie, sahara, leçons de droit coutumier berbère* (Tanger: éditions internationales, 1936).

<sup>9</sup> It is worth noting that Lyautey was the first general resident in Morocco. In November 1913, he made a decision to form a legislation committee before the General Protection Scribe. The committee was in charge of examining and discussing different texts prepared by different authorities to submit them for the approval of the honorable government.



**in participation with the executive authority.** The French political history comprises enough events to justify why the founders of the fifth Republic adopted the principle of **parliamentary rationale**, but its Moroccan counterpart is void of anything that could subject the Parliament to rationalization since its establishment. This is how the constitutional paper limited the intervention of the Parliament and drew the boundaries of its competence and other competencies that it integrated within the regulatory authority, which the King practices by virtue of different provisions of the Constitution, and which the Prime Minister practices based on the provisions of Article 68 of the 1962 Constitution. Moreover, just like the French legislator, the Moroccan legislator adopted the theory of **delegation of legislation** for the benefit of the government in two cases: the first case is called "**Law of Permission**", when the Parliament permits the government, by virtue of a law, to take legislative measures that fall within the scope of its competence according to the provisions of the Constitution, and this is in accordance with a decree for a definite time and for a certain purpose. In this case, decrees gain a legislative value.<sup>10</sup> The second case was related to the "**provisional governmental legislation**": It enables the government to promulgate, during the period separating the session and in agreement with the adhoc parliamentary committees, decrees that act as laws once published provided that they be submitted to the next session of Parliament to be ratified.

It is worth noting that the Parliament was organized in the third chapter of the constitutional paper after the general provisions, basic principles and royalty. It accounted for a little more than 15% of the total articles in the Constitution<sup>11</sup>, which reflects its **limited status** in the constitutional and political system. In addition to the rationalization that affected its activity since its birth, the legislator **divided** its field of competency between the King and the government. Thus, according to Article 25 of the Constitution<sup>12</sup>, the King chairs the Constitutional Council, where draft laws set by the government are to be approved, knowing that they constitute more than 90% of the overall percentage of legislative production. The King is also in charge of giving the order to implement the law<sup>13</sup>. He also refers a draft-law or a proposal-law to referendum. He

<sup>10</sup> Knowing that the enforcement decrees is in force during the period defined according to the Law of Permission, and its effects are annulled when the Parliament is dissolved as stipulated by Article 47 of the Constitution of December 14, 1962.

<sup>11</sup> The third chapter relating to the Parliament included 17 articles out of 110 in the first Moroccan Constitution (14/12/1962) and 21 articles in the last Constitution (October 7, 1996).

<sup>12</sup> The number of this article remained constant in all Moroccan Constitutions (1962-70-72-92-96).

<sup>13</sup> It is worth mentioning that the authority of the King was not restricted constitutionally to giving orders to implement the law though the amendment of September 4, 1992 and September 13, 1996



is entitled to ask for a new revision of a proposal law and dissolve the Parliament. He practices the legislative power during exceptional circumstances<sup>14</sup>, and decides on a law in case of dispute between the two chambers of Parliament and after the law has been approved by two-thirds majority of Parliament<sup>15</sup>. He also takes legislative measures during the transitional phase.<sup>16</sup>

Moreover, the provisions of the Constitution and relevant laws included a group of definite legislative mechanisms that a Parliament should adopt in terms of the government and Parliament participation in the legislative initiative<sup>17</sup>, the necessity to submit draft laws to the House of Representatives bureau, except for the regulatory draft laws that could be submitted to any of the two chambers, in addition to the acknowledgement of the government right to reject amendments submitted by members of Parliament in case of financial disequilibrium, and other regulations that have weakened the power of the Parliament in exercising the legislation and monitoring function.

2- In addition to constitutional and legal constraints, electoral processes constitute influential factors on the Parliament work and performance. It is worth mentioning that elections in general, and parliamentary elections in particular, remained for around 40 years (1963-2002)<sup>18</sup> a disputed issue among political figures regarding their integrity and credibility. The administration was criticized and its impartiality in elections was

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stated that. Article 26 of the October 7, 1996 Constitution stipulated the following: "The King issues the order to implement the law within the 30 days following its referral to the government after being approved."

<sup>14</sup> This was possible before September 4, 1992, as after this date, a new paragraph was added to Article 35 that is relevant to the exceptional circumstances: "An exceptional case does not lead to the dissolution of the Parliament"... This means that the legislative institution remains existent and work is not restricted to it just like what happened between 1965 and 1970 when the exceptional circumstances were declared.

<sup>15</sup> Article 62 of December 14, 1962 Constitution stipulated that. However, the last Constitution (1996) did not include the phrase "in case of approval, the decision of the law is referred to the King. It states: "... if the draft law is adopted or rejected in each of the two chambers after submitting it to a new revision with the majority of 2/3 of the Parliament members."

<sup>16</sup> Article 110 of the 1962 Constitution stipulated: "Until the Parliament is formed, His Majesty the King takes the necessary legislative and regulatory measures to establish constitutional institutions and to run the affairs of the country." This was confirmed in the latter constitutions (1970-1972). Nevertheless, Article 7 of the 1996 Constitution states: "Until the two chambers of Parliament stipulated in this Constitution are elected, the current House of Representatives retains its powers to enact the necessary laws to establish the two chambers of Parliament, and this is without violating the provisions stipulated in Article 27 of this Constitution."

<sup>17</sup> Except for the planning of draft laws and financial draft laws.

<sup>18</sup> It is worth mentioning that the only time when it was almost unanimously agreed on the impartiality of the administration in running the elections was during the parliamentary elections on September 27, 2002.



questioned in spite of all legal mechanisms (supervising committees on elections) that were reached to guarantee the safety of voting and the neutrality of supervising bodies.

- a- Among the Parliament weak points relevant to elections is the difficulty to **form a balanced majority** that is capable of directing the government work with a sense of collectivity in initiatives and solidarity in responsibility. If we exclude the first parliamentary experience (1963-1965), where the balance inside the legislative institution were close<sup>19</sup>, the consecutive six experiences<sup>20</sup> preserved the mosaic character of the Parliament, with limited majorities, the representation of each does not exceed 1/3 of the Parliament<sup>21</sup>, knowing that the adopted pattern of voting in Morocco since the promulgation of the electoral law in 1959, i.e. the unilateral nominal majority voting in one session, encourages party dualism or, in ultimate cases, it enables moderate pluralism and helps form **balanced majorities** as is the case in Britain for example.
- b- Among the elements that indicate the lack of the electoral integrity and impartiality of the administration is the State's encouragement of the emergence of **a pluralistic party in the wake of every electoral process**. As it supported the emergence of the "Front for the defense of Constitutional Institutions" to control balances inside the first Parliament (1963-1965), it worked to ensure the birth of the **Liberal Deputies Movement** before the emergence of the "**National Liberal Gathering Party**" later on with the third legislative elections in 1977. The same thing took place in 1983 when the State supported the **Constitutional Union Party**, which will constitute the new majority in the 1983-1984 elections. It can be said that the State's policy in backing new majorities after each electoral process is the **major trait of the absence of integrity in elections and the lack of the administration impartiality**.

3- It is necessary to indicate that the Parliament was not only influenced by the constraints in the constitutional paper and the practices that

<sup>19</sup> The Front Defense of Constitutional Institutions Front won 69 seats, while the Independence Party got 41 seats and the National Union for Popular Forces 28 seats. As for independent candidates, they got 6 seats only.

<sup>20</sup> The terms are as follows: 1977-1983 (3), 1984-1992 (4), 1993-1997 (5), 1997-2002 (6) and 2002-2007 (7).

<sup>21</sup> For example, the representation of party blocs in the latest legislative elections (September 27, 2006) came as follows: the Democratic Bloc, formed of 4 parties gained 102 seats in the House of Representatives (31.38%), the Consensus Parties gained 100 seats (30.76%), the Center Party 65 seats (20%); while other parties gained 58 seats with 17.85%.



tarnished the integrity and neutrality of elections, but it was also affected by the nature of the parties, which are constitutionally responsible of contextualizing citizens and selecting the parliamentary elite. Fifty years of party-based life unveiled **defects** that hindered **Moroccan parties from exercising their roles and functions. The phenomenon of divisions** contributed to the difficulty in building strong political organizations that are capable of drawing up political strategies which would gain the support of the electoral body. The weak democratic structure both inside and among them<sup>22</sup> helped deepen divisions and made citizens refrain from belonging to these organizations.

### **Third: The Structure of the Parliament**

Morocco adopted in turn both bicameralism and unicameralism. Indeed, the bicameral system was adopted in the 1962 and 1996<sup>23</sup> Constitutions, whereas the unicameral system was adopted in the constitutions of 1970, 1972 and 1992. Although the Moroccan parliamentary experience adopted the bicameral system in the first parliamentary term (1963-1965) and then relinquished it before adopting it again more than thirty years later, the current experience is different, knowing that the justifications of adopting bicameralism in the Moroccan constitutional system remained the same, i.e. the **representation of local groups, socio-economic sectors and professional organizations.**

On the level of membership in both chambers, the number of deputies increased from 144 members in the first parliament to 325 members in the current parliament. The same thing holds true for the Chamber of Counselors, where the number of members increased from 120 members elected by indirect suffrage<sup>24</sup> to 275 counselors in the current council.

<sup>22</sup> See Mohammed Malki, Democracy inside Parties in Arab Countries (collective) (Beirut: Center of Arab Unity Studies, 1<sup>st</sup> edition, 2004).

<sup>23</sup> The 1996 Constitution kept the same names for the first chamber (House of Representatives) and the second chamber (Chamber of Counselors). However, there was a change in the method of elections, especially with respect to the second chamber, as the voting body of the Chamber of Counselors was no longer formed on the level of provinces and constituencies as was the case in the 1962 Constitution, but rather on the level of the state in the 1996 Constitution.

<sup>24</sup> Article 45 of the 1962 Constitution stipulates: "The 2/3 of the members of the Chamber of Counselors are of individuals elected in each province or constituency by a group that is made up of members of councils of groups, provinces, urban councils and village councils. With respect to 1/3 of its members, the council is composed of parties elected by farmers' chambers, commercial and industrial chambers, traditional industry chambers and representatives of syndicates. Article 38 of the 1996 Constitution states: "3/5 of the Chamber of Councilors is composed of members elected in each region of the kingdom by an electoral body composed of representatives of local communities. The remaining 2/5 is composed of members elected in each region of the kingdom by an electoral body made up of elected people in professional chambers and members elected by an electoral body composed of representatives of workers on the national level."



With respect to competencies, the return to bicameralism in the 1996 Constitution witnessed powers that were not included in the first Constitution (1962), especially regarding the relation of Parliament with the government. It can be noted in bicameral parliamentary systems that the competencies of the second chambers **are nothing compared to** those of the first chamber for objective considerations relevant to the issue of representation. In fact, it is reasonable that the first chamber should enjoy more powers in the legislation and monitoring fields than the second chamber as the members of the first chamber are elected through general direct suffrage, while their counterparts in the second chamber are elected through indirect suffrage. In addition, the bicameral system is adopted in general for historical and inheritance reasons or for federal necessities, or even for considerations relevant to economic and socio-professional representation. However, what happened in Morocco was different from the common experience of bicameralism, where the Chamber of Counselors was given powers to monitor government activities, especially what was mentioned in Article 77 of the 1996 Constitution, which stated: "The Chamber of Counselors may vote on a request to warn the government or on a request to monitor it...". When the conditions are fulfilled<sup>25</sup>, the Prime Minister has six days to submit to the Chamber of Counselors the position of the Government regarding the reasons behind the warning was addressed. On the other hand, the request of monitoring the government, which fulfilled the stipulated conditions<sup>26</sup>, should result in **a collective resignation of the government**. In both cases, the Chamber of Counselors was given powers to exercise monitoring over the government that were rarely available to the second chamber in bicameral systems. Finally, we have to mention that the Parliament with its two chambers is formed of a group of internal structures aiming at organizing its activities, in addition to the elected presidency and the secretary general appointed by the King, the bureau of the assembly, parliamentary teams, permanent committees and the forum of the administrative presidents and departments for each separate chamber. The Constitution regulated some of their competencies and set bylaws for each chamber with regulatory provisions and requirements.

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<sup>25</sup> Among these conditions was that stated in Article 77 of the 1996 Constitution: "The request to address a warning to the government is not accepted unless it is signed by at least 1/3 of the members of the Chamber of Counselors. It is only approved with the absolute majority of the Council members. Voting takes place three days after the request is submitted."

<sup>26</sup> As for the conditions for the monitoring request, Article 77 stipulated in one of its paragraphs: "The monitoring request is not accepted before the Chamber of Counselors unless signed by 1/3 of its members. Approval requires the two-thirds three days after the request is submitted."



#### Fourth: The competencies of the Parliament

It was previously mentioned that the Moroccan Parliament **was born restricted**, as the constitutional legislator derived the technique of parliamentary rationalization from its French counterpart. The nature of the Moroccan political regime added other elements<sup>27</sup> that contributed to the consolidation of the limited sole of the legislative institution so that the latter seemed "as if it were not the main place for exercising power"<sup>28</sup> and that its main function was restricted to definite symbolic and representative roles.<sup>29</sup> Some even considered that the Moroccan Parliament played a representative and symbolic role only in order to build up the Moroccan political scenery.<sup>30</sup>

The Moroccan Parliament shares with many international parliaments, including the most ancient in terms of democratic practice, the limited status in terms of legislation and monitoring. It is similar to them in unbalanced power in comparison with the executive apparatus. Nevertheless, the Moroccan Parliament differs from its counterparts in democratic regimes in terms of its sources of weakness. Changes occurring in many democratic regimes contributed in creating some interaction between constitutional institutions (Parliament-Government), even if the function of the Parliament seems heading for further decline.

As mentioned before, the Moroccan political regime is marked by a special understanding of the principle of separation of powers, where it deviates in its philosophy and aims from the common understanding in democratic regimes; i.e. the aim that was rooted in Montesquieu and enriched by the western constitutional experiences. Therefore, the Parliament's status was humble on the level of powers and competencies.

<sup>27</sup> Among these multiple elements, is the special understanding of the principle of separation of powers, as royal speeches reiterated in more than one occasion that the separation of powers does not matter to the monarchy since it is considered above authorities, institutions and parties, and is rather between the parliament and the government. Some writings tended to formulate "scientific" justifications for this perception when they distinguished between two classes in the constitutional thought in Morocco: a political class that relates to the Prince of Believers (Amir al-Mouminin) and the Islamist State, royal form, religious legitimacy and complete emanation of powers, and in general, they are not codified in the Constitution and originate in the Islamic General Law. Then, there is another lower class that is related to the King and relating apparatuses (Parliament, government). The Constitution stated the regulation of its provisions. This class can be amended contrary to the first, which remains constant.

<sup>28</sup> Abdellatif Menouni, rapport de synthèse, in : l'expérience parlementaire au Maroc, ed. Toubkal, 1985, p.14.

<sup>29</sup> See Abdul-Ilah Fontier: Legislative Action in Morocco, historical origins and constitutional references, authentic and application study, ed. 3, applications of legislative action and rules of legislation, a series of university studies and researches, 4 (Casablanca: New Maarif, ed. 1, 2002), p.98.

<sup>30</sup> A. classe, le parlement : imaginaire, in expérience parlementaire au Maroc... op.cit.



The parliamentary rationalization derived from the experience of the Constitution of the French fifth Republic (October 4, 1958) deepened this situation and hindered its progress, even if Morocco sought within the framework of constitutional amendments in 1992 and 1996 to reconsider the powers of the Parliament by strengthening some and creating others anew.



Arab Center for the Development of the Rule of Law and Integrity – ACRLI  
**Chapter 2: Analyzing the State of the Moroccan Parliament in the light of the principles of the good parliament**

The sixth and seventh parliamentary terms (1997-2002 and 2002-2007 respectively) are considered as timeframes in order to analyze the reality of the Moroccan Parliament in the light of the principles of the good parliament as defined in the assignment speech<sup>31</sup>. This time division is justified and scientifically proven by the fact that both terms come within the framework of an ongoing process of constitutional and political reforms<sup>32</sup> and at the same time as a coalition government between leftists and centrists<sup>33</sup> is formed under the guidance of a shadow leader and his opposition party for almost 40 years<sup>34</sup>. Moreover, these terms were served in an environment of "consensus" between the royal institution and the political parties emanating from the National Movement (originally the Socialist Union and the Independence Party). At the dawn of the 1990s, it had become clear that Morocco was starting to search for "compromises" aiming at developing a spirit of openness in the political system and institutions, and gathering the conditions for the rebuilding of confidence among the key political actors<sup>35</sup>. Therefore, we deem it necessary to take into consideration the data associated to the sixth parliamentary term resulting of the November 14, 1997<sup>36</sup> elections as well as the seventh parliamentary term after the September 27, 2002 elections, in order to examine and evaluate the compliance of the Moroccan Parliament with the four principles of good parliament, namely: **representation and participation, autonomy, efficient performance and integrity.**

## **1 Representation and participation**

### **1.1 Fair and equal representation**

Fair and equal representation is a **true guarantee** of participation. Indeed, when representation is based on diversity and equal opportunities, political forces and organizations are able to express their will to participate efficiently in the management of public affairs.

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<sup>31</sup> The reference here is to the principles of representation and participation, autonomy, efficient performance and integrity as mentioned in the referential framework set by the Arab Centre for the Development of the Rule of Law and Integrity.

<sup>32</sup> The main titles of these reforms include the constitutional amendments of 1992, 1995 and 1996.

<sup>33</sup> The leftist parties include among others the Socialist Union of Popular Forces, the Socialist Democratic Party, the Progress and Socialism Party and the Front of Democratic Forces. The centrist parties include the National Liberals' Gathering and the Independence Party to a certain extent.

<sup>34</sup> The reference is to Abdelrahman Youssefi who headed the government of March 16, 1998 and presented its program on April 17, 1998.

<sup>35</sup> The reference here is to the royal institution on the one hand, and the Socialist Union of Popular Forces and the Independence Party on the other hand.

<sup>36</sup> Indirect elections to form the second chamber (the Council of Counselors) were organized on December 5, 1997.



#### 1.5.4 The effect of the social structure representation on the representation of Parliament

Sixteen parties took part in the parliamentary elections of November 14, 1997, which paved the way for the sixth parliamentary term. Fifteen out of them managed to get represented in parliament with proportions ranging from a minimum of 0.31 % to a maximum of 17.33 %. There were 325 electoral districts and 3319 candidates, i.e. 11 candidates for each district, which is a higher rate than those recorded in previous elections (5 candidates in the 1977 elections and 9 in 1993). Women represented 0.7 % of the total number of candidacies in 1984 compared to 1.1 % in 1993 and 2.07 % in 1997. The overall turnout in the 1997 elections amounted to 53.30 %, of which 14.56 % were void votes. The actual voting rate thus records 38.74 %, **which helps calculate the index of electoral participation and the principle of representation**<sup>37</sup>. With regard to the second chamber, the Council of Counselors was elected on December 5, 1997. 22 political bodies and unions took part in these elections with representation rates ranging between 0.37 % and 15.55 %. Elections for the seventh parliamentary term were organized on September 27, 2002 and witnessed a competition among 5885 candidates spread over 1774 local lists. Women accounted for 5 % of candidates and were allotted 30 seats according to the national lists, which amounts to around 10 % of the overall parliamentary seats in the first chamber (325).

لم تتضمن مدونة الانتخابات الصادرة بقانون رقم ٩٧/ ٧ و المتممة والمغيرة بقانون رقم ٦٠/٠٢ ، أي تنصيب على نظام النسبة أو " الكوتا" ، فقد تركت الترشيح في اللوائح الوطنية حراً بين الرجال والنساء، بيد أن الأحزاب السياسية توافقت فيما بينها على التعامل مع النساء بنوع من التفضيل إستثناءً على النص ، فسمت ذلك " التمييز التفضيلي " ، أي تعطي الأولوية في القوائم الوطنية للنساء عند الترشيح، علماً أن المجلس الدستوري سبق له أن قضى بعدم دستورية قاعدة " الكوتا" النسائية.

يجب الإشارة إلى أن هناك مطالبة نسائية في افق الانتخابات امقبلة [ شتنبر/ايلول ٢٠٠٧ ] بتخصيص ثلث المجلس للنساء. ليست هناك مؤشرات دالة على

<sup>37</sup> Contrary to the Levant, Morocco has no Christian or Jewish minorities as the concept of minorities is inexistent in the general framework of the Maghreb. It is worth mentioning that Jews were never considered a minority in Morocco as they have the same rights as Moroccan citizens from whom they differ only in religion. For this reason, special tribunals were established to organize their affairs in the fields of matrimony, divorce and inheritance. There are no Christian minorities in Morocco. As for the Amazig (and not the Berbers, a term that has pejorative connotations), they are an authentic component of Moroccan identity and are not viewed as a minority. There are no scientific studies evaluating their exact rate in the pyramid of Moroccan inhabitants, but it is an established fact that the majority of them live in Morocco compared to other diaspora countries (Algeria, Tunisia, Mauritania, Libya, Mali and Niger). They constitute around 47 % of Morocco's population, i.e. 14 million inhabitants approximately.



إمكانية تحقق هذا المطلب غير أن الجنعيات النسائية المختلفة ما إنفكت تدافع عن هذا المطلب.

26 parties participated in the 2002 elections, out of which 22 were represented in the Parliament with rates ranging between 0.31 % and 15.38 %. The overall turnout was 51.61 % with 16 % of void ballots: the actual participation thus **did not exceed 35.61 %, a low figure even when compared with the sixth term elections in 1997, which recorded the lowest rates in the history of legislative elections.**

Among the reasons of the low turnout in the 1997 and 2002 elections, one can mention the flaws characterizing previous elections, such as the use of money to buy votes and the drawing of electoral maps beforehand by the overseeing ministry ((the Ministry of the Interior), all of which had a negative impact on the interaction between the electoral body and the voting process with regard to presence and participation. Other factors relate to the phenomenon of renouncing to deal with public affairs for reasons pertaining to the people's collective consciousness and the low image they have of political parties, knowing that the rate of void ballots in both experiences was relatively high. In other words, the annulled ballots of people who indeed cast their votes on election day, and which were not in conformity with the electoral law requirements for reasons unknown to us because of a lack in accurate and clear data, may be explained by voting mistakes made by the voters themselves, such as voting for more than one candidate in the electoral district, writing on the electoral ballot paper (which is thus rendered void by the law), returning the ballot envelop empty, or any other reason causing the annulment of the vote in accordance with the law. In this context, it is worth noting that the November 14, 1997 elections recorded the candidacies of 71 women, two of whom won representation in parliament whereas a quota of 30 seats was assigned on the national women's list during the September 27, 2002 elections.

### **1.5.5 The representation of various political forces by a number of MPs that is equal to their true weight**

There are no scientific field studies about the weight of each party on the Moroccan scene. The archives of most parties themselves lack any clear proof of their qualitative and quantitative power. Therefore, it is difficult to give an accurate estimate of the strength of each political group in order to compare it with its electoral score. Nevertheless, there are general estimates related to the weight of each party based on its history,



program and ramifications in society. Indeed, in the legislative elections for the sixth parliamentary term (1997-2002), the parties emanating from the National Movement (the Independence Party, the Socialist Union and affiliated groups) insisted on the fact their scores did not reflect their historical and societal weight; they denounced the fraud and considered that the figures announced by the Ministry of the Interior did not reflect their political status. Moreover, for the first time in the history of Moroccan legislative elections, candidates who had been declared winners refused to acknowledge the results that the administration had rigged in their favor (this was the case of Mohammad Hafiz and Mohammad Adib, both candidates of the Socialist Union in the electoral districts of Mabrouka and Madiouna in Casablanca.).

The election results for the sixth and seventh parliamentary terms<sup>38</sup> extend to all regions of Morocco. The Constitution<sup>39</sup> guarantees every person's right to participate in the electoral process with no discrimination whatsoever on the basis of race, gender or age to the exception of what was expressly forbidden by the relevant laws<sup>40</sup>. However, there was a noticeable improvement in women's participation rate during the elections for the seventh parliamentary term (2002-2007) compared to the previous one due to the adoption of the national (quota) list. Hence, **a qualitative progress in the political culture and the structure of Moroccan society is expected in order to consolidate this participation and widen its scope.**

One of the obstacles hindering the work of the Moroccan Parliament is the fact that the elections leading to the formation of an elite group were not organized and conducted with the due amount of respect. In fact, as we have mentioned before<sup>41</sup>, they were characterized by many flaws due to meddling by the administration and the lack of neutrality of its agencies, thus negatively influencing the ability of these elections to reflect the actual and effective weight of the various actors on the Moroccan political scene<sup>42</sup>. **One of the striking paradoxes is the fact that, despite the change in the voting pattern (the uninominal**

<sup>38</sup> Refer to the complete results in the annexes to the report.

<sup>39</sup> See chapters 4 and 5 of the 1996 Constitution.

<sup>40</sup> The reference here is to the electoral adult age, which is set at 18 years for voting and 23 years for running, in addition to the groups barred from participating in the elections due to their sensitive security positions or due to legal sentences depriving them of exercising their political rights.

<sup>41</sup> See chapter 1 of the report.

<sup>42</sup> The reactions expressed in the rhetoric of political parties and currents are worth mentioning, especially those of the Democratic Front (the Socialist Union of Popular Forces, the Independence Party, the Progress and Socialism Party and the Organization of Popular Democratic Action). To consult these reactions and all information about the 1997 legislative elections, refer to the publications of the Moroccan Magazine of Local Government and Development – texts and documents series n°18/1998.



**majority vote in one round, which was prevalent from 1962 to 1997, was replaced by the proportional vote according to lists) and the acknowledgement by all political forces of the tangible neutrality of administration agencies, the Moroccan Parliament retained its mosaic structure. The September 27, 2002 failed to bring about majorities capable of forming a homogeneous and harmonious government or governmental coalition that would draft a program based on collective initiative and achievement.**

### **1.5.6 A high electoral turnout**

As mentioned earlier, the turnout in legislative elections is on the decrease. If we take into account the latest two elections (1997-2002 and 2002-2007), there is a substantial decrease in voting rates. Indeed, the November 14, 1997 elections recorded a turnout of 58.30 % with 14.96 % of void ballots, whereas the September 27, 2002 elections barely reached a turnout of 51.61 % with 16 % of void ballots.

### **1.5.7 The proportion of voters actually represented in parliament compared to the overall number of voters**

Based on the results of the aforementioned parliamentary experiences, the representation rate compared to the participation rate in elections is low for reasons pertaining to the weakness of participation itself, which did not exceed 43.47 % of correct ballots in the 1997 elections and 35.6 % in the 2002 elections, in addition to the profusion of candidates in electoral districts. For instance, 7,456,996 voters out of 12,790,631 voters legally registered on the electoral lists took part in the November 14, 1997 elections, which means – as we have mentioned in the above – that the participation rate barely reached 58.30 %, out of which 1,085,366 ballots were void, thus bringing the final score to 43.74 %. When adding this factor to other considerations related to the number of candidates and the rate of competition in electoral district, it becomes easy to calculate the representation rate of each winner compared to the overall representation rate. Indeed, the representation rate of a winner fluctuated between 10 % and 15 % of voters in some electoral districts where candidates were abundant.

## **1.6 Equal opportunities**

### **1.6.1 Organization of electoral media in the electoral law**

The law n° 09/97 pertaining to the **electoral code** regulated the electoral use of audiovisual media, whereby all parties have the right to use **the public audiovisual media broadcasters** according to a decree issued



upon a proposal by the Minister of Interior and the Ministers of Justice and Information<sup>43</sup>, knowing that the maximum of time allotted for the use of these media by each party depends on the importance of the party presence in representative bodies. The state has thus joined the political parties in respecting the requirements governing the balanced recourse to the public media during the electoral process, knowing that there are no private media to turn to in Morocco during elections.

### **1.6.2 Organization of electoral publicity in order to guarantee the candidates' equal access to publicity**

Articles 49 to 54 of the electoral code n° 07/97, which were amended and completed by the law n° 64/02, set the formal and objective conditions for the organization of the electoral campaign (hanging electoral publicity posters, electoral gatherings and meetings) and provided for all relevant infringements and sanctions<sup>44</sup> **in order to guarantee equality among competing candidates.**

### **1.6.3 Define the overhead spending in the electoral law**

The same law provided for the **funding of electoral campaigns**<sup>45</sup>. The state contribution in this respect is set by a decree promulgated by the Prime Minister upon a proposal by the Minister of the Interior, the Minister of Justice and the Minister of Finance. A decree promulgated by the same ministers organizes the distribution of the set amounts and the ways of spending them based on the party representation index in institutions, **i.e. their share of seats in parliament**<sup>46</sup>, knowing that the parties having the advantage of public funding are required by law to present proofs of how they spent it. It is worth noting that article 44 of the electoral code (law n° 7/97 issued on April 2, 1997) stated that "the election date, the time allowed for submitting candidacies and the dates on which electoral campaigns start and stop are set by a decree published in the official gazette before the election date".

Hence, the decree n° 2-97-234 (October 22, 1997) set the **maximum value** of electoral spending for candidates in the November 14, 1997 elections at 250,000 dirhams to be spent during the electoral campaign. Moreover, the beneficiaries are required to keep an inventory of the spent

<sup>43</sup> See article 295 of the law n° 07/97 pertaining to the electoral code, which was completed and amended by the law n° 60/02.

<sup>44</sup> See articles 76 to 108 of the electoral code.

<sup>45</sup> See articles 285 to 294 of the same code.

<sup>46</sup> See decree n° 102-188 dated July 2, 2002 regarding the state contribution to the funding of electoral campaigns. To consult the text of the decree, refer to the Official gazette issue n° 5062 dated August 1, 2002, p. 2193.



amounts and provide the electoral spending control committee<sup>47</sup> with proofs of how they were spent within one month of the promulgation of results. This committee, which is to submit a report on the matter, is headed by a judge from the Higher Council of Accounts with the membership of a judge from the Higher Council appointed by the Minister of Justice, a Minister of the Interior representative and a financial inspector appointed by the Minister of Finance. Moreover, the electoral code n° 7/97 contains provisions guaranteeing **fair and equal opportunities among the various competing candidates**. In this context, the Ministry of the Interior the circular n° 190 dated august 29, 2002, **which prohibits the use of local communities' resources for electoral purposes**. Furthermore, the Ministry of Justice and the Ministry of the Interior issued a joint circular aiming at **providing the conditions of integrity, transparency and credibility** for the collective elections on September 12, 2003 by adopting a series of preventive and prohibitive measures, such as suspending the activities of some civil servants (estimated at 429 members) by appointing them in the seats of the administrative units to which they are affiliated or putting them on exceptional administrative leaves of absence due to their family ties with some candidates or to complaints filed against them to public authorities.

#### 1.6.4 Donation for electoral campaigns

The new parties law n° 36/04, which was ratified on December 28, 2005, included a chapter dedicated to the definition and control of parties funding either directly by the state or indirectly through contributions and donations in cash or in kind that the parties receive from legally authorized donors<sup>48</sup>.

Indeed, despite the adoption of legal and regulatory measures to uphold the principle of equal opportunities among candidates regarding the use of media, funding and legal private financial support, **the principle of equality is yet to become a common value in society and politics alike. A collective trend has emerged among the MPs we have interviewed from all walks of the political scene as they unanimously complained that their media quota were limited and improvised. They also referred to the absence of a communication strategy enabling to make the best use possible of available opportunities in order to**

<sup>47</sup> According to the abovementioned decree (October 22, 1997), the control committee is composed of a judge from the Higher Council of Accounts (president), a judge from the Higher Council appointed by the minister of Justice, a Minister of the Interior representative and a financial inspector appointed by the Minister of Finance.

<sup>48</sup> See the new Moroccan parties law n° 36/04, which was ratified by the Moroccan Parliament on December 28, 2005.



**explain electoral programs and convince voters of the credibility of their contents. However, we do not consider that responsibilities are limited to the abovementioned elements as there is a huge gap as well in the modern communications means and techniques used by the political actors (parties) on the one hand, and the traditional methods that were previously adopted by parties on the other hand.**

## **1.7 Free and fair elections**

### **1.7.1 The conformity of the electoral process management with international standards**

The electoral system is based on the Constitution and relevant laws. It is thus normal that the management of the electoral process be in conformity with these laws with regard to neutrality, integrity, transparency or equal opportunities among candidates and voters. Moreover, as Morocco has included the internationally recognized human rights in the preamble of the Constitution since the amendment of September 4, 1992, it has become constitutionally binding to respect the relevant international standards.

### **1.7.2 The supervision of elections by a neutral and trusted body**

The electoral code (law n° 7/97 dated April 2, 1997, amended and completed by law n° 64/04) included requirements and provisions pertaining to the management of the electoral process with regard to "preparing and reviewing general electoral lists" or with regard to voting and election processes, the counting of voted and the announcement of results. The regulatory law of Parliament devoted several chapters to the same purpose as well.

In this context, the controversy regarding the freedom and fairness of elections is an essential feature of the Moroccan political scene despite the creation of national and regional committees in accordance with the political actors and the state (the Ministry of the Interior) in order to guarantee the fairness and transparency of elections. In fact, inasmuch as constitutions since 1962 remained a subject for debate, elections have always represented a source of criticism and contestation since the first legislative elections in 1963. The legislative body that adopted the latest Constitution (1996) almost unanimously<sup>49</sup> seemingly waited until 2002 to acknowledge the neutrality of the administration in the elections for the seventh parliamentary term (September 27, 2002) even if participation in these elections was characterized by weakness (35.61 %), hesitation, and

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<sup>49</sup> All parties, to the exception of the socialist Avant-garde Party and the Organization of Socialist Democratic Action, stressed upon the neutrality of the administration in the voting process.



abstention. During the sixth parliamentary term (1997-2002), which actors refer to as the term of political rehabilitation, a series of essential laws were adopted, the most important of which was law n° 31/97 that was amended and completed by laws n° 6/02 and 29/02. It is considered the regulatory law of Parliament and provided the framework for the adoption of voting according to lists based on direct universal suffrage whereas the uninominal majority vote in one round had been prevalent for more than four decades (1959-2002) ... According to political actors' estimates, this contributed to the lack of respect of the voters' will in addition to meddling in the arrangement of results and drawing maps of parliamentary alliances under the guidance of state organisms and the influence of money<sup>50</sup>.

### **1.7.3 Efficient and neutral body/mechanisms to examine parliamentary contestations**

In addition to the abovementioned provisions, and pursuant to law n° 41/90, the Moroccan legislator empowered administrative tribunals to examine contestations relating to the general electoral lists<sup>51</sup>. It also gave the Constitutional Council the competency to examine conflicts pertaining to the membership of Parliament in order to corroborate the announced results, or reject and abrogate them and call for new elections<sup>52</sup>, knowing that the decisions of this Council are irrevocable and binding for all individuals, bodies and groups<sup>53</sup>. Thus, as we have previously mentioned in this report, the reasons behind the weak participation in the electoral process are numerous and linked to the questioning of the credibility of elections, continuous frauds, the lack in dealing with public affairs and the lack of interaction with the programs and electoral strategies of the various parties. **Hence, does the acknowledgement by parties and organizations of the administration**

<sup>50</sup> To consult the position of the government and political parties represented in parliament regarding this law, refer to the two reports drafted by the Committee of Interior and Decentralization, to the main data about the law n° 31/97, which was amended and completed by laws n° 06/02 and 29/02 for the fifth legislative year 2001/2002 and the sixth parliamentary term (1997-2002) and to the two reports drafted by the Justice and Legislation Commission affiliated to the Council of Counselors regarding the same law for the fifth legislative year 2001/2002 and the sixth parliamentary term (1997-2002).

<sup>51</sup> See articles 36 and 37 of law n° 09/97 pertaining to the electoral code, which was amended and completed by law n° 64/02.

<sup>52</sup> The regulatory law n° 29/93 relates to the Constitutional Council, as it was amended and completed by the regulatory law n° 8/98, Official gazette, issue n° 4627 dated October 5, 1998, p. 2680. The Constitutional Council is composed of 12 members: 6 of them are appointed by the King (including the president of the Council), whereas 3 members are appointed by the Parliament Speaker and the remaining 3 by the Head of the Council of Counselors after 9 years of team consultations.

<sup>53</sup> The last two paragraphs of chapter 81 of the 1996 Constitution stipulate the following: "No text contravening the Constitution may be published or implemented. The decisions of the Constitutional Council are irrevocable and binding for all public authorities as well as legal and administrative bodies."



**neutrality in the legislative elections for the seventh parliamentary term allow to conclude that Morocco has broken free of the history of frauds characterizing its previous experiences and stepped into a new era of free and fair elections?**

**A noticeable improvement can be perceived by making the elections a special moment for the free and fair expression of the voter's will and choice.** There was a clear bet placed on the new electoral pattern, i.e. the proportional vote according to lists, in order to go beyond clientelism, electoral bribe, intentional partiality in favor of the administration, rigging of results to control alliances and other outrageous practices that characterized elections and had a negative impact on the Parliament performance and the course of the political life. Nevertheless, reality has demonstrated the difficulty to reach this perfect situation in the light of the modest democratic political culture within the state and society as well ... indeed, further efforts are needed for the actors and society components to be conscious of the importance of the voter's will being free and fair. For this purpose, the parliamentary elite that we interviewed did not hesitate to assert that the new electoral law and the relevant laws helped narrow down fraud margins without putting an end to these practices, especially in rural and semi-urban regions where the voters' traditional culture and weak perception of the importance of competition based on different programs and strategies contribute to rendering the electoral process vulnerable to influences and permeations. **The responsibility in this context is obviously common and calls for deep quality efforts to highlight the importance of free and fair participation.**

## **1.8 Accountability in elections**

### **1.8.1 The fact of not rendering the voters' choice dependent on partisanship**

More than 45 years have passed since the organization of the first municipal elections in Morocco (May 29, 1960) and the implementation of the first electoral system (September 1, 1959 at noon). Since then, there has been **a noticeable improvement** with regard to the regression of partisan clashes when defining the voters' choices and framing their votes. On the one hand, the concept of national integration became deeply rooted as partisan, tribal and regional tendencies declined compared to what had been the case during the first years after Morocco's independence. On the other hand, regardless of the remarks that can be made regarding party life, it has encouraged the emergence of a new loyalty pattern in which the priority is given to modern figures instead of traditional patterns, especially in large towns and cities. However, this



experience has yet to reach a stage when partisanship would be discarded and a democratic culture established in which the last word would be for the rules of competition based on different programs and strategies.

### **1.8.2 The fact of not rendering the voters' choice dependent on personal relations**

The same abovementioned remark holds true for the influence of personal relations on defining the voters' choices. In this respect, a certain improvement is recorded in large towns and cities as the logic of competition is replacing that of personal and family relations and even clientelism ... In fact, the adoption of voting according to lists to the detriment of the uninominal majority system, which was in place for more than four decades (1960-2002), was intended in order to promote the spirit of competition based on the interaction among programs and the clash of political strategies and orientations instead of people.

### **1.8.3 The fact of not rendering the voter's behavior dependent on clientelist relations**

Morocco is yet to sever its ties with the logic of clientelism in orienting the voter's will and controlling his/her vote. Nevertheless, there is an increasing awareness of the danger that this logic constitutes on the voters' choices. An improvement is therefore perceived in large towns and cities, especially among the most developed social groups on the level of awareness and literacy level.

### **1.8.4 Elections and the composition of the Parliament**

Strikingly, the composition of the Parliament remained virtually unchanged since the first legislative term (1963-1965) and even more so since the third term (1977-1983). Indeed, the Parliament preserved its mosaic composition and structure; thus, no force managed to acquire a majority capable of developing its performance ... It is worth noting that the adoption of the new election pattern (voting according to lists) did not correct this situation as the September 27, 2002 elections brought about a structure similar to the previous ones.

## **1.9 Participation**

The concept of participation refers to the voluntary political action, which is related to the management of public affairs and performed by concerned citizens in order to have a bearing on political choices. In other words, participation is not formally restricted to elections, but rather extends to influence political decision-making, which requires a **direct**



**and regular communication** between the voter and the elected representative.

### **1.9.1 The periodical communication between the voter and the elected representative**

In Morocco's case, it is difficult to give a **quantitative analysis** of the communication rate or the absence of communication<sup>54</sup>. However, it is possible to come out with a qualitative analysis of the state of the relation between the two parties based on the data derived from our interviews with members of the parliamentary elite and on the voters' opinions as expressed in newspapers and audiovisual media.

By and large, the citizens complain of **the lack** of communication with their representatives in Parliament as many MPs do not have permanent offices allowing voters easier opportunities of direct communication with their representatives. Nevertheless, other MPs have offices for this purpose whereas others – instead of turning to public politics - use their party headquarters to meet with voters from their electoral districts in order to listen to their demands and try to help them meet some private interests of a social nature, such as interceding with local authorities, find jobs and search with them for solutions to problems in their district, such as the availability of water and electricity or the paving of sidewalks, lanes or streets. In this respect, **there is a great deal of confusion among citizens between the concept of representation on the national level (the Parliament) and its concept on the local level (local communities)**, which has thus contributed to consolidate the confusion between both functions. The weak party framework and the modest character of cultural and awareness-raising activities further fixed this image in the voters' consciousness and perception of the nature of parliamentary work.

### **1.9.2 Communication with the civil society and experts**

Communication with the civil society is considered **weak, intermittent and irregular**. It also differs from party to party and from one MP to another. However, there is an increasing awareness of the importance of building a culture of communication between MPs and the electoral body on the level of electoral districts and cities, and sometimes indirectly through public gatherings, forums and periodical meetings. With regard to experts, there is an increasing awareness of the importance of relying on experts in the MP's performance of his/her functions. This has yet to

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<sup>54</sup> This is explained by the lack in polling studies based on questionnaires and forms in addition to the limited availability of the techniques used in field researches.



transform into a founding concept as these experts are often chosen among experienced members of the party, especially the cadres, and seldom chosen from specialized offices, such as think tanks, which are few in number.

### 1.9.3 Periodical hearing sessions

The same remark observation applies for indirect communication through hearing the public sessions of the parliament, which are held every Tuesday and Wednesday for the benefit of both chambers (the Council of Counselors and the House of Representatives) and broadcast live through radio and television. The problem with these sessions is that citizens cannot obtain the minutes of sessions in addition to the high level of absenteeism during the broadcasting of public sessions, which sometimes reaches as high as 90 %. The House of Representatives has tried to create a website in order to make this chamber known and publish its various activities and proceedings. However, the effect of this modern technology remained limited for technical and objective reasons. Indeed, on the one hand, more efforts are needed on behalf of the Parliament in order to promote electronic communication capacities and allow greater access opportunities to its services. On the other hand, the citizens need to **accumulate the media experience** allowing to derive the maximum of benefit from the advantages they have to offer. In order to find a solution to this weak point, some MPs created their own websites in order to facilitate communication opportunities with their voters. Yet the result is still limited as citizens connecting to the Internet are just a few and prefer direct communication to any other means.

## 2. Parliament Independence

### 2.1 Institution Parliament Independence

It has been already mentioned that **the Moroccan Parliament was born limited**<sup>55</sup> as the constitutional legislator was inspired the principle of "rationalization" from its French counterpart and as the heritage of the sultanate of Morocco remained present in the philosophical and intellectual heritage that governed the building process of the modern national state after the independence. Therefore, the Parliament only was of a **modest** importance in the first constitutional document of 1962. It remained weak due to the regressions in the second Constitution (1970) and to the fact that subsequent amendments avoided any fundamental change to the repartition of power (the Constitutions of 1972, 1992 and 1996).

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<sup>55</sup> See the first chapter of this report (the Moroccan Parliament: Background and Context).



### 2.1.1 The constitutional guarantee of the Parliament Idenpendence

The constitutional document includes a modest reference to the legislative institution. Indeed, in spite of its coming in the third position behind the "general provisions" and the "monarchy", the 1970 constitutional amendment created a **hierarchy in representation** when chapter 19 gave the King for the first time the attribute of "the highest representative of the nation"<sup>56</sup>, which was consecrated and maintained in subsequent constitutions. The King was thus granted a high status allowing him on the one hand to justify his judgments whenever he is not able to find legal or political justifications<sup>57</sup> according to the other chapters, or to consolidate constitutional powers enabling him to adopt decisions required by functions that are provided for in the constitutional document on the other hand. The constitutional powers sharing the legislative function between the King and the Parliament include what was stipulated in chapter 28: **"The King has the right to address the nation and the Parliament. His speech is delivered in front of both chamber sand its contents shall not be the object of any debate"**. Hence, the King's speech during the inauguration of the regular annual session of the Parliament constitutes an occasion to launch initiatives in the fields of public politics with regard to the legislative and executive powers<sup>58</sup>.

### 2.1.2 The exclusivity of the Parliament in managing itself, its budget and its staff

#### 2.1.2.1 Independence in drafting the rule of procedure

The limited autonomy of the parliament can be perceived through its capacity to draft its own rule of procedure. In fact, chapter 44 of the 1996 Constitution stipulates the following: **"Each of the two chambers drafts its own rule of procedure, which is adopted by voting but does not come into force until the Constitutional Council confirms its conformity with the provisions of the Constitution"**. According to this

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<sup>56</sup> Chapter 19 of the 1996 Constitution stipulates the following: "the King is the Prince of Believers, the highest representative of the nation, the symbol of its unity and the guarantor of its continuity. He is the protector of religion, guarantees the respect of the Constitution and protects the rights and freedoms of citizens, communities and groups. He is the protector of the independence of the country and the integrity of the Kingdom within its rightful boundaries". It is worth noting that this chapter is different from the constitutions of other countries with regard to the terms "Prince of Believers" and "the highest representative of the nation" whereas other functions are by no means characteristic.

<sup>57</sup> We are hereby referring to the instance when chapter 19 was interpreted to convince the Socialist Union Party against threatening to quit the government over its objection pertaining to the extension of the term served by the House of Representatives during the third parliamentary term (1977-1981).

<sup>58</sup> Chapter 40 stipulates the following: "The proceedings of the Parliament are spread over two sessions during the year; the inauguration of the first session, which starts on the second Friday in October, is headed by the King whereas the second session is opened on the second Friday in April".



chapter, the constitutional censorship both before and after the drafting process does not contravene the principle of autonomy since the function of censorship here is merely to ensure the respect of the constitutional legitimacy and as some requirements of the rule of procedure, which ranks lower than the Constitution, may contravene the Constitution ... In this case, censorship would become an important tool for the preservation of the constitutional legitimacy.

According the strict sense of this chapter, the Parliament is the only institution which **rule of procedure was required to be subjected to the prior censorship of the Constitution** in order to prevent any imbalance in the relation between the legislative and executive powers. It is true that article 177 of the House of Representatives rule of procedure gave members the possibility of submitting proposals to amend the rule of procedure according to a defined rule<sup>59</sup>; yet, as a mark of respect of the constitutional legitimacy, it required that these proposals be submitted to the Constitutional Council in order to check their conformity with the provisions of the Constitution.

#### **2.1.2.2 The exclusivity of the Parliament in setting and spending its budget**

The idea of the limited authority of the Parliament is corroborated by its limited role in setting and spending its own budget. **In fact, ever since it was first established in 1963, the Constitutional jurisdiction never acknowledged its moral personality and financial independence as it remained dependent on the government for the its financial and administrative management.** Indeed, article 22 of the House of Representatives rule of procedure stated that "the Bureau sets the budget of the House and manages its financial affairs", that "the amounts earmarked for the budget of the House are to be recorded in the general budget of the State" and that "the Bureau sets the special regulations to organize the administrative and financial interests of the House". On the other hand, upon examining the constitutionality of this article, the Constitutional Council ruled against the autonomy of the House Bureau in setting the budget and that this pertained to the competency of the executive power, which was entrusted with setting the general budget of the state. The same thing was ascertained upon examining the constitutionality of article 39 of the rule of procedure of the Council of Counselors, stressing upon the government obligation to include the budget of the Council of Counselors – as defined by the Council Bureau -

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<sup>59</sup> See the House of Representatives rule of procedure for the year 1998, which was amended on May 24, 2005.



in the general budget of the state was not a matter of the competency of a body affiliated to the legislative power (i.e. the Council Bureau), but rather of the competencies of the executive power<sup>60</sup>. Nevertheless, the Council provided in its rule of procedure a series of requirements **and provisions guaranteeing a free and fair management of budget spending** in order to meet the Parliament needs and demands on both internal and external levels. This translated in the establishment of "the budget spending control commission", which is a temporary special body which members are chosen according to the proportional representation of parliamentary forces; it aims at looking into the correct spending of last year's budget, which shall constitute the subject of a report to be submitted to the relevant council within one month after its establishment<sup>61</sup>. The last paragraph of article 23 of the House of Representatives rule of procedure indeed stated the competency of the Bureau with regard to drafting a rule of procedure that indicates the laws applied to the Council book-keeping and defines the competencies of the commission and the way it exercises its functions. However, **the constitutional jurisdiction still deemed the Parliament an institution that is not financially independent and, like all public institutions, subjected to financial control means in effect within the framework of state institutions.**

### 2.1.2.3 The exclusivity of the Parliament in appointing employees

The limited financial autonomy of the Parliament influences **its capacity to appoint affiliated employees, set their salaries, oversee** and promote them. Despite the fact that the appointment<sup>62</sup> exclusivity was stipulated in article 1 of law n° 32/89 related to defining the statute of the House of Representative administration employees, exercising this competency remains subjected to the control of relevant government financial bodies. Indeed, the Parliament does not have the freedom to use the its allotted resources for the management of its internal and external affairs without the interference of the financial control bodies affiliated to the overseeing ministry (the Ministry of Finance), which means that the final say in implementing the proposals and aims of the Parliament is still for the government rather than for the legislative power ... In reality, the weak role of the Parliament in this context may hinder the availability of

<sup>60</sup> See the judgment of the Constitutional Council n° 21/213 dated May 28, 1998 and published in the Official gazette issue n° 4598 dated June 25, 1998.

<sup>61</sup> Refer to article 23 of the House of Representatives rule of procedure dated May 25, 2004.

<sup>62</sup> Paragraph 2, article 1 of the law n° 32/89 related to the statute of the House of Representative administration employees stated the following: "the House of Representatives Bureau appoints the House employees and is responsible for relieving them of their office, firing them and retire them on pension after consultations with the mixed administrative committees provided for in this law".



conditions allowing the creation of a Parliament "**bureaucracy**" that is reasonable in size and qualitatively competent in order to develop the action of the Parliament and **make its performance modern and efficient.**

#### **2.1.2.4 The responsibility of the Parliament for the preservation of its own security through affiliated security forces**

The limited autonomy of the Parliament is apparent through the lack of its own security forces. Despite the fact that the Bureaus of both chambers are responsible for preserving its buildings and movable property and providing for its internal and external security, article 21 of the House of Representative rule of procedure (May 25, 2004) indicated that the private guard of the Parliament, which is composed of royal armed forces, security forces and firemen, is only commissioned and does not constitute an independent body affiliated to the legislative institution.



### **2.1.3 Setting the dates of Parliament sessions in the Constitution**

Constitutional texts and accumulated experiences reveal the existence of flaws with regard to setting the dates of Parliament sessions and the conditions of its dissolution or of extending or curbing its mandate. Chapter 40 of the 1996 Constitution clearly specifies that two ordinary sessions of Parliament shall be convened each year under the presidency of the King and declared open on the second Friday in October and April in addition to an extraordinary session when the conditions of its organizations are met<sup>63</sup>. However, the Constitution does not provide for the possibility to adjourn The Parliament sessions by any specific body. Yet the absence of any constitutional text does not mean that this possibility is to be discarded. Indeed, the King may rely on the interpretation of the symbolic reserve granted to him by chapter 19 and contented to quote the requirements of interactions on the Moroccan political scene, as has happened before on numerous occasions.

### **2.1.4 Setting the parliamentary term in the Constitution**

From 1962 until the latest 1996 constitutional amendment, Moroccan constitutions have expressly set the parliamentary term at four years in the case of the first experience (1963-1965), six years in the case of the second one (1970-1972), four years in the third one (1977-1981-1983) before settling for five years in the fifth, sixth and seventh parliamentary terms. However, the parliamentary term was extended more than once based on the King's interpretation of chapter 19: this took place in 1981 when the parliamentary term was extended after the 1980 referendum, then in 1983 and 1992 when Morocco lived in a legislative void until 1993.

### **2.1.5 The existence of clear conditions for the dissolution of the Parliament or for shortening its term**

In comparison, the provisions of the Constitution were clear with regard to the dissolution of the Parliament or of one of its chambers. The provisions of chapter 71 allowed the King to have recourse to the option of dissolution<sup>64</sup> whereas the extension or shortening of its term is subjected to the rule of referral to the Constitution as stipulated in chapter 12 of the 1996 Constitution (chapters 103,106,105 and 104).

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<sup>63</sup> Among these conditions as included in chapter 41 of the 1996 Constitution is the demand by the absolute majority of members of any chamber for the Parliament to convene, or the issuance of a decree to call for the extraordinary session ... See the Constitution amended on September 13, 1996 and published on October 10, 1996, Official gazette issue n° 4420.

<sup>64</sup> Chapter 71 of the 1996 Constitution requires two conditions for the dissolution of the Parliament or of one of its chambers: The first is the King's consultation of the House of Representatives and the Council of Counselors speakers, whereas the second consists of delivering an address to the nation.



## 2.2 Parliamentary immunity

### 2.2.1 The Constitution and parliamentary immunity

Parliamentary immunity is one of the main guarantees of the MP's autonomous performance of his/her representative functions. Indeed, it enables the MP to defend his/her opinions freely in the absence of pressures from the executive power or any other party. Chapter 39 of the 1996 Constitution states: **"No MP may be followed, sought, arrested or tried for expressing his/her opinion or for voting during the exercise of his/her functions, except when the professed opinion questions the monarchy or Islam, or is not mindful of the respect to which the King is entitled"**. According to the strict sense of this chapter, it is impossible to arrest, seek or make an MP stand for trial except in accordance with its provisions whether during or outside parliamentary sessions, except **in case of involvement in crime, pursuance of a licensed element in it or promulgation of a final sentence**<sup>65</sup>. Nevertheless, the same Constitution did not consecrate immunity as an unlimited right, but rather restricted it to cases in which the protection of this guarantee is no longer afforded, such as questioning the monarchy or Islam or failing to respect the King. In this context, it is worth mentioning that article 38 of the first constitution of the Kingdom (1962) did not include these provisions<sup>66</sup> that were added in the 1970 amendment, which turned away from the spirit of the 1962 document by broadening the scope of the King's competencies and weakening the importance of the Parliament and the government.

#### 2.2.1.1 Limitation of the possibility of removing immunity in some cases

Chapter 39 was clear with regard to the issue of parliamentary immunity as the requirements of the House of Representatives rule of procedure, particularly article 87, were in keeping with the Constitution. The amendments introduced on May 25, 2004 on the relevant provisions sought to define the rule of immunity in a more detailed manner in order to protect the rights of its beneficiaries and prevent its misuse.

#### 2.2.1.2 The mechanisms for removing immunity

Article 87 of the House of Representatives rule of procedure dated May 25, 2004 included requirements pertaining to the rule of removing an MP's immunity whether by the overseeing authority (the Parliamentary Immunity Commission), or with regard to the MP's right to defend

<sup>65</sup> To consult the complete version of chapter 39, see the October 10, 1996 Constitution, published in the Official gazette issue n° 4420 dated October 10, 1996.

<sup>66</sup> See the December 14, 1962 Constitution.



himself/herself in person or commission someone for this purpose, or even based on a vote by the House Bureau of a decision to request the permission to arrest the MP concerned<sup>67</sup>.

It is worth mentioning that the constitutional practice with regard to removing parliamentary immunity was but little used. For instance, the cases when parliamentary immunity was removed during the sixth parliamentary term (1997-2002) amounted to two only, which calls for many explanations in this context. Indeed, this may be due to the fact that the MPs practice is devoid of any element that might expose them to the removal of parliamentary immunity, thus driving us to highlight the evolution of the parliamentary action and the MPs' righteous conduct. It may be also due to the weak application of chapter 39, which advocates the removal of parliamentary immunity in the Moroccan political and constitutional culture, or to the renunciation of citizens and relevant state bodies (the Ministry of Justice) to turn to the constitutional law and legitimacy. Other explanations may be found in the reluctance of the Parliament to go as far as to divest MPs of the guarantee that they misused, in the search for solutions before having recourse to this rule or in making it slow and inefficient. **Actually, the interviews we conducted with MPs from various political orientations revealed the unanimous acknowledgment of the need to clarify the scope and extent of parliamentary immunity and of the fact that enjoying this constitutional guarantee does not protect the Mp against the consequences of his/her violating the provisions of chapter 39 or committing an act that exposes him/her to judicial pursuits as any normal citizen.** Someone went as far as stressing upon the fact that "**our country is guilty of neglect in this respect, as immunity is perceived as a right to achieve what is forbidden**"<sup>68</sup>, pointing out to neglect by the public prosecution, which is supposed to apply the follow-up rule under the supervision of the Minister of Justice in case an MP's involvement is proven. In reality, it is not performing this obligation for considerations pertaining to the MP's symbolic status. Even when demands for removing the parliamentary immunity are submitted to the House of Representatives in order to request the application of the rule of procedure requirements, particularly the abovementioned article 87, the Parliament is dilatory in answering and taking heed of them, as it is proving impossible to apply chapter 5 of the Constitution, which

<sup>67</sup> To consult the rule, see the House of Representatives rule of procedure for the year 1998, which was amended on May 25, 2004.

<sup>68</sup> We refer to the interview with Mustapha Al-Ramid, parliamentary speaker for the Justice and Development Party between 1997 and 1999 and speaker of the Justice, Legislation and Human Rights Commission between 2002 and 2004 (interview on February 18, 2006).



stipulates the principle of equality of all Moroccans in the eyes of the law. According to the same MP, there were numerous cases in which MPs from many parties were involved in writing uncovered checks or other deeds without any positive intervention from the public prosecution or the Parliament to remove their parliamentary immunity<sup>69</sup>.

### **2.2.2 The constitutional guarantee of the MP's freedom of expression**

The Constitution guarantees the principle of freedom of expression during the MP's legislative mandate, except in fields expressly forbidden by the Constitution (chapter 39), i.e. arguing about religion or the monarchy, or any failure to respect the King.

### **2.2.3 Physical security**

The Constitution and relevant laws guarantee the MP's general security in exercising his/her representation mandate, including his/her physical security. In this respect, parliamentary immunity is a certain constitutional and legal guarantee as it gives the MP the freedom to observe and control the activity of the government and perform his/her legislative function. In reality, there were but very few incidents in which the MP's physical security was jeopardized during the course of his/her parliamentary mandate.

### **2.2.4 Adequate financial compensations for MPs**

Regarding the compensations received by MPs within the course of their representation mandate in order to guarantee the autonomy needed in their legislative action, the interviews revealed that **respondents were unanimous in placing them within acceptable norms**, contrary to what is prevalent among the public opinion. Indeed, this compensation amounts to 36,000 dirhams (around 4300 USD), knowing that it is merely a compensation for the MP's work rather than a salary and that it is gross sum from which each MP's individual contribution to the pensions system is yet to be deducted. In this respect, the citizens' misconception of the high amount of compensations that MPs benefit from is due to the public opinion perception that MPs are not exercising the mandates they were entrusted with (taking part in commissions and public parliamentary sessions that are broadcast by the audiovisual media, undertaking regular field visits and respecting the promises made in the electoral campaigns programs). In this report, we tried to avoid generalizing this evaluation on all MPs and their teams, but objective elements drive us to give

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<sup>69</sup> The parties involved are the following: the Independence Party, the National Liberals' Gathering, the Popular Movement, the Front of Democratic Forces and the Constitutional Union Party.



precedence to the public opinion remarks on this issue. In fact, the phenomenon of acute and persistent absenteeism in the Parliament has already been acknowledged as a dangerous practice by the highest authorities themselves, to say nothing of the nature of discussions and voting method and the level of discipline governing the parliamentary behavior in general. Legislative texts with strategic dimensions related to the destiny of the country, such as the electoral code, **the ????? law**, privatization and parties were voted with low presence rates. Citizens did not perceive through the available communication channels any general discussions or debates confirming the constitutional role of the Parliament in such issues. Nevertheless, some MPs among those we have interviewed feel a certain responsibility with regard to the issue of compensations and the ways of restoring the importance of parliamentary diplomacy. Some said that the issue of compensations was evolving on two parallel levels: the first one ascertains the MPs right to have the advantage of reasonable financial conditions to exercise their functions, including some raises from time to time, whereas the other advocates the imposition of cuts in MPs compensations when they fail from taking part in the Parliament sessions or commissions activities. Actually, the Parliament witnessed two compensation raises in the past three legislative terms (1993-2007) **whereas the phenomenon of absenteeism is still widespread allover the legislative body**<sup>70</sup>.

### 2.2.5 Pressures exerted on MPs

The lack of autonomy is not restricted to the abovementioned elements, but also includes **the conflict of (lobbies) and the volume of pressures exerted on MPs**. The profusion of academic research work on this important and serious element of parliamentary activities is of no help to us on this level. Not without facing many difficulties, we managed to extract some indicators from the interviews we conducted of MPs who reacted positively to the questions included in the assignment speech. They unanimously agreed on the importance of respecting the constitutional requirements pertaining to immunity and highlighted the necessity to define the scope and extent of this guarantee in order to perform their responsibilities within the framework of the mandate given to them by the voters. However, some did not hesitate to mention examples of pressures exerted on them during the exercise of their legislative function, especially in sensitive issues that were rejected by the economic and political actors, such as the draft law on organs transplants and the legality of hospitals specialized in such operations, the draft

<sup>70</sup> Extract from the interview of MP Mustapha Al-Ramid (February 18, 2006).



family law code and the antiterrorist law, which never took its normal course in the legislative institution: indeed, after the Casablanca attacks on May 16, 2003, the law, which had been the object of a debate that was suspended, was passed on May 28, i.e. two weeks after the terrorist attacks<sup>71</sup>. On the other hand, another MP considered that pressures may come in various shapes, from a mere friendly request to adopt or reject a given position to direct pressure. A reference has been made in this context to the draft law for the reorganization of the pharmacy sector as a conflict of interest emerged between those whose children were studying in Russia and others whose children would graduate from other countries, such as France and Spain, the object of the conflict being the lack of questioning of the validity of their diplomas. Other problematic laws include the labor code and the law of penal procedures<sup>72</sup>.

### 2.3 The autonomy of the Parliament in exercising its functions

#### 2.3.1 Giving the Parliament exclusive legislative competency

Important aspects of the autonomy of the Parliament are related to its constitutional functions and its capacity to exercise them in reality as a legislative institution. Despite the rationalization adopted by the constitutional legislator ever since the first Constitution in 1962, some provisions allowed the Parliament, either alone or in cooperation with the government, to undertake initiatives on the level of regular public politics or higher public politics, such as chapter 52 of the 1996 Constitution, which stipulated: "**The Prime Minister and members of Parliament both have the right to present law proposals**", chapter 45: "**a law is passed by the Parliament by submitting it to a vote**", or even paragraph 1 of chapter 103: "The King, the House of Representatives and the Council of Counselors all have the right to undertake to amend the Constitution.". Nevertheless, in all these provisions, the Parliament is not **a fully autonomous power**; moreover, it is not considered **a full-fledged institution** in the philosophy of the Moroccan political system and its understanding of the concept of separation of powers as it is known in democratic parliamentary regimes. According to chapter 19 of the Constitution, **it is a lower ranking power than the King**, who is the highest representative of the nation and consequently the highest ranking legislator. The Parliament also shares with the government its original competencies, namely legislation using the techniques of "**mandating of**

<sup>71</sup> The reference here is to the interview with MP Mustapha Al-Ramid from the Justice and Development Party, which was mentioned in the above.

<sup>72</sup> The reference here is to the interview with ex-MP Abdelkader Azrii', representative of the Labor Democratic Confederation in the Council of Counselors (February 17, 2006).



### legislation" and "the law of permission" ... What does the Parliament have left then?

A study about "legislative action in Morocco"<sup>73</sup> concluded that, during the state of exception declared between 1965 and 1970 in addition to transition periods and the absence of the Parliament between 1983 and 1984, the King promulgated 1416 texts, 942 of which are royal decrees, including 106 that act as laws, 92 **help laws** during the state of exception alone, 391 **help laws** acting as laws during the transitional period and 21 others during the absence of the Parliament. This brings the total of legislative texts promulgated by the King during his exercise of the legislative power **amounted to 518 help laws** and royal decrees acting as laws in addition to 836 legislative texts of a constitutional character pertaining to the legislative and regulatory levels as well as those with chapters and articles tackling both fields at once. **In contrast, the Parliament voted and promulgated 698 laws**<sup>74</sup>, knowing that, according to the abovementioned cases<sup>75</sup>, the King exercised legislative power for one third of the constitutional life span compared with two-thirds in the case of the Parliament (1963-2001).

#### 2.3.2 Extensive legislation competencies

The Constitution and relevant laws include requirements that are binding for Parliament initiatives. According to chapter 56, the initiatives and projects of the government take precedence over proposals made by MPs. Furthermore, chapter 53 gave the government the competency of rejecting any proposal or amendment that is not within the framework of the executive power. Many examples in the successive legislative terms illustrate this fact<sup>76</sup>. **The paradox is that the Parliament retains its autonomy in voting on legislative initiatives, whether they are governmental or coming from one of its members. Why then is it unable to exercise its full sovereignty with regard to voting, such as rejecting the government initiative that takes precedence on its proposal and making the competency of voting a power rather than a function to legitimize government projects by passing them?**

<sup>73</sup> See Abdelilah Fonteer, legislative action in Morocco: historical origins and constitutional references, an applied study of origins, 3 volumes, New Knowledge Press, 2<sup>nd</sup> edition, Casablanca, 2002.

<sup>74</sup> Id., 3<sup>rd</sup> volume, p. 219 (remark of the report writer)

<sup>75</sup> The reference is to the states of exception and legislative void resulting from the dissolution of the Parliament or the expiry of its term without organizing new elections, or to the transitional period.

<sup>76</sup> For instance, MPs presented 131 proposals during the fourth parliamentary term (1984-1992), out of which only 15 were approved, i.e. 11.45 %, whereas 116 proposals remained pending awaiting refusal or withdrawal. This holds true for the sixth parliamentary term (1997-2002) as only 21 out of 27 law proposals submitted to the Commission of Justice, Legislation and Human Rights were programmed in effect, i.e. 78.77 % due to the precedence of projects over proposals.



In order to answer this question, one should look into the factors accompanying constitutional constraints and pertaining first and foremost **to the nature of the parliamentary elite and the socio-cultural contexts from which they come.** In truth, political parties play leading roles in providing the conditions for such situations. **Therefore, the strength or weakness of the Parliament is linked to that of the parties and to the extent of the state will (in the rule of procedure) to achieve the required balance among constitutional institutions.**



### **2.3.3 The absence of illegal pressures on the Parliament**

The Parliament is an institution for conflict of interest above all others. It may be subjected to pressures from various constitutional or legal bodies. In addition to the pressure exerted by the executive organism (the King and the government), it may also be pressured by interest groups, sometimes even the press or any influential party in the socioeconomic structure with interests in certain legislative policies. The Parliament may be the object of pressures exerted one way or another by the security, military and intelligence organisms, but this has yet to be proven as there are no studies, researches and field investigations asserting the hypothesis of pressure, which was broached in the above.

## **3. The performance of the Parliament**

### **3.1 Efficiency in legislation**

Performance is linked to autonomy, and these correlated elements together control **efficiency**, i.e. the MP's capacity to work efficiently in the legislative field. It is difficult to evaluate the efficiency of the parliamentary performance, but some indicators enable to measure the nature and degrees of the performance with regard to efficiency in legislation, control and safeguarding of public finances in addition to the efficiency of the Parliament components, such as commissions, groups and human resources.

#### **3.1.1 The examination by the Parliament of drafts laws and proposals within a reasonable time limit**

The different chapters of the Constitution did not refer to definite fixed term with regard to draft laws and proposals, even if some were decided upon between two sessions provided that they be approved by the next regular session of the Parliament. It is the case of the regulatory laws, which, according to chapter 58, should be submitted to the House of Representatives 10 days before it can discuss and vote them, or the rules of procedure of both chambers, which should be adopted by the Constitutional Council before they can be implemented, or the decrees by laws that should be promulgated according to the law of permission. However, due to political reasons or considerations pertaining to a conflict of interests or due to certain types of government pressures, the Parliament may adjourn the examination of proposals and draft laws, as happened recently with the law related to the amendment of the 1984 law about the locations earmarked for religious ceremonies even though it had passed all stages of debate and negotiation and reached the stage at which merely amendments were to be introduced.



### 3.1.2 Examining and discussing draft laws and proposals

The weak and limited role of the Parliament in the legislation field has already been tackled. Indeed, its initiatives in Morocco's case do not exceed 9 % compared to 91 % to projects emanating from the government. Hence, MPs' proposals stress upon aspects that aim at amending, introducing a slight change, abrogating some articles or completing others. Quantitatively, these proposals barely amount to 20 %, which makes them initiatives that merely complete the government policy. Yet the Parliament had a reasonable (constitutional) possibility to discuss many texts of a strategic importance, especially during the last years of the fifth parliamentary term (1993-1997) and the sixth term (1997-2002). These examples include **the ??????? law**, the electoral law (code), the parties law during the current term (2002-2007) and other draft laws and proposals. **Nevertheless, within the context of the consensual environment prevailing on the Moroccan political scene during the 1990s, these texts were the object of a consensus outside the legislative institution, which transformed into a chamber to approve what has been agreed upon outside it.**

### 3.1.3 The efficiency of the Parliament participation in drawing the public policy

The Parliament participates constitutionally in drawing the public policy along with the King, the government and the judiciary, albeit with constitutional and legal limits to this participation. Indeed, in addition to its limited importance in the constitutional document due to the rationalization that was inspired from the Constitution of the French Fifth Republic, reality has proven the main influence of the royal institution on the Parliament with regard to drawing policies. This translates in the fact that the King heads the cabinet (chapter 25) and declares both Parliament sessions open in person in addition to the vast constitutional prerogatives granted to him in his relation with the Parliament itself<sup>77</sup>.

#### 3.1.3.1 Adoption by the Parliament of framework laws-programs for government implemented plans

Chapter 61 of the 1996 Constitution stipulates the following: "The government implements laws under the guidance of the Prime Minister". This means that the Parliament may theoretically adopt laws-programs to draw general plans ... yet reality shows otherwise as more than 91 % of the legislative production is provided by the government and as the

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<sup>77</sup> Repeated: compare, Dr. Nadir Al-Moumni, Does the Moroccan Parliament play a role in elaborating public policies? (background paper)



framework of public policy is set in the cabinet, which is headed by the King (chapter 25).

### **3.1.3.2 Adoption of development and reform plans in various sectors through laws adopted by the Parliament**

The Parliament assists the executive power in adopting reform plans in various sectors. Since the early 1990s, Morocco has been witnessing an intense activity in this direction on the level of reviewing and amending laws (the laws relevant to the penal, civic and social article, personal status, investment and trade), socioeconomic planning or restructuring the political field and developing public freedoms laws (the parties law, the manifestations of public freedoms).

### **3.1.3.3 The Parliament-government cooperation**

Despite the modest participation of the Parliament in influencing government initiatives by amending, completing or adding to them, it is difficult to measure the amount of cooperation between the government and the Parliament. This may be due to the nature of the initiative that is submitted to debate and voting. For instance, when the initiative is directly supported by the King, it witnesses a record level of cooperation among various government and parliament institutions whereas the exact opposite happens when the initiative is coming from the government **or some parties. Such a duality harms the symbolic status and credibility of the legislative institution, thus limiting its autonomy**<sup>78</sup>.

### **3.1.4 The participation of the civil society in examining draft laws and proposals**

It is worth mentioning that the efficiency of the Parliament performance is by no means consolidated by the participation of the "civil society" **as the role of the latter is limited and openness towards its components is not a general rule of principle in the Moroccan political activity.** The prevalent principle is that voters, whether individually or through their civil organizations, communicate with MPs either directly or through intermediary channels, which the elected representatives wish to organize. We have previously mentioned that communication between **the members of Parliament and the people is weak, intermittent and irregular.** However, the sixth parliamentary term (1997-2002) witnessed a noticeable improvement as the Parliament began deriving advantages from the positive changes on the Moroccan political scene, particularly

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<sup>78</sup> For more information on the history of draft laws submitted to both chambers of the Parliament, see the draft laws.



after the formation of the March 16, 1998 government. The legislative institution thus began consecrating new methodical and characteristic work traditions that aim at going beyond the traditional perception of the relationship among the various powers to the benefit of cooperation when the general interest so dictates.

**In order to illustrate this orientation, it is necessary to indicate that the legislative practice in Morocco witnessed this sort of debate during the phases of examining and discussing a series of laws, such as law 75.00 pertaining to the foundation of associations, law 76.00 pertaining to public gatherings, law 77.00 pertaining to the press and law 22.00 pertaining to the code of the penal rule.** As these laws all relate to the core of freedom and its subsidiary rights, they received a great amount of interest from rights associations and relevant civil society organizations. Hence, the Parliament sought to initiate a public debate about these texts before examining them according to the legislative rule stipulated in the Constitution and relevant laws<sup>79</sup>. We can safely assert that the role of the civil society is constantly increasing, particularly in some sectors with a structure and organization similar to vocational associations and leagues, such as the pharmacy sector, physicians, modern archivists, citrus fruit growers and investors in open sea fishing. Thus, some projects, such as social security, the medication code or the renewal of the sea fishing convention with the European Union, were the object of important debates inside the legislative institution and the relevant associations played important roles in defending their interests.

### 3.1.5 The use of experts

This report has already pointed out to the fact that the use of experts, whether individuals or institutions, did not evolve into a core principle in the parliamentary actors' culture. In fact, the majority of them still rely on party competencies affiliated to or sympathizing with their political formations. However, **there is a growing awareness** of the importance of opening towards special expertise to manage their parliamentary affairs, especially in fields with a technical nature (finance laws) and complicated political issues. This is apparent in the statements of the House of

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<sup>79</sup> For instance, we refer to the symposium organized on March 29, 2002 on the draft law of the penal code with the participation of MPs, experts and representatives of the civil society. For more information about its activities, see the code of the penal rule, activities of the study day organized by the House of Representatives on March 29, 2002, outcome of the MPs' work, seventh parliamentary term (1997-2002), House of Representatives publications, East Africa Press, Casablanca,. The same was noticed during the discussion of the parties draft law n° 36/04.



Representatives speaker and MPs form various parliamentary orientations<sup>80</sup>.

### **3.2 The efficiency of safeguarding public finances**

#### **3.2.1 Examination and discussion of the budget**

Safeguarding the public finances has many shapes and stages starting with the elaboration of the finance law, then discussion and voting prior to implementation, follow-up and evaluation. Due to the importance of the finance law with regard to the financial policy of the state, the government uses all the competencies granted by the Constitution with the aim of mobilizing and inciting MPs to vote, thus rendering the Parliament presence in the field of financial legislation limited. The process of questioning remains the only available means for the Parliament to hold the ministers in charge of implementing the state policy accountable in addition to the meetings held with permanent parliamentary commissions.

Among the reasons explaining the weak role of the Parliament in the discussion of the finance law (the budget) is the constant and regular reference by the government to chapter 51 of the Constitution, which stipulates expressly the rejection of proposals and amendments presented by MPs if acknowledging them entails cutting public resources, inducing public spending or increasing existing spending. The requirements of chapter 51 indeed restrict the possibilities available to the Parliament in order to discuss the finance law and contribute to its amendment through a proposal, a change or an increase. However, it is worth noting that this weakness is also linked to the MP's limited capacities and modest experience in sensitive and purely financial issues, thus calling for the Parliament recourse to the expertise of specialized studies offices, which is not always available as MPs often rely on the expertise and counseling of party members.

##### **3.2.1.1 Transparency in the elaboration of the budget**

Chapter 50 of the 1996 Constitution states that "the budget law is promulgated by voting according to conditions stipulated in a regulatory law". Articles 128 to 131 of the House of Representative rule of procedure tackled the discussion of the finance law in plenary sessions after it is done in the competent parliamentary commissions. The abovementioned provisions show that the budget articles should be transparent and clear so that MPs can discuss and proceed to the vote.



### 3.2.1.2 Checking the accuracy of the budget figures

If the reference here is to checking the accuracy of figures during the discussion and voting process in the finance commission and the plenary session of the Parliament, MPs have the right to ask the government who has presented the draft budget (the Minister of Finance) for clarifications in addition to having recourse to experts in this field. Another constitutional party also has **the right to subsequent control**, namely the Higher Council of Accounts. In this respect, the Parliament does not have a fixed mechanism to check the accuracy of figures in the draft budget, which means that it is unable to perform "anterior control" and that its sole source is the government (the Ministry of Finance) ... Nevertheless, both chambers of the Parliament have the right to request specific information from the Ministry of Finance, which has presented the draft budget, and can halt the debate until this request is satisfied. Moreover, in addition to the elaboration of the draft finance law, the Ministry of Finance is compelled since 2002 to communicate data pertaining to the financial situation, an economic report about the year preceding the draft and a report on government budget accounts and independent state interests. It is worth noting that efforts are being made to submit the final account unlike in previous years when final accounts were running several financial years behind schedule. However, this requires a particular professional competency on the financial level, which is by and large lacking in the new generation of MPs even if other members with economic and financial expertise have had the relative advantage of previous parliamentary experiences enabling them to understand and follow-up budget issues.

### 3.2.1.3 Studying the budget repercussions on the financial and socioeconomic situation

The lack of participation in the elaboration of the finance law entails the lack of follow-up and evaluation. The Constitution gives MPs the opportunity to follow-up on the implementation of the budget by presenting oral and written questions and inviting the minister in question to attend the proceedings of a given commission to answer the questions of its members with regard to the stages of the budget elaboration and the expected repercussions on the socioeconomic situation. Hence, the parliament can resort to chapter 42, which provisions call stipulate the formation of parliamentary fact-finding commissions in charge of collecting information on a case or facts that are worthy of attention. In fact, after the September 4, 1992 amendment settled the debate about the constitutionality of these mechanisms by including the parliamentary commissions in the Constitution, two such commissions were formed



during the sixth parliamentary term (1997-2002) in order to examine the circumstances and details of the irrational management of some public institution, namely the National Credit Institution of Social Security in November 2000<sup>81</sup>, as well as the fact-finding commission on the National Social Security Fund in November 2001<sup>82</sup>. Yet having recourse to this constitutional possibility **has but little influence on the Parliament role in controlling public finances** for objective reasons pertaining to the very nature of commissions and the circumstances attending to their inception as well as the Parliament capacity to use these commissions in an efficient manner and invest the results of their investigations in order to achieve a better control over public finances. Actually, according to chapter 42 of the 1996 Constitution, fact-finding commissions are considered temporary and their mission is over as soon as a judicial enquiry into the fact presiding over their formation is launched. Furthermore, the provisions of the regulatory law n° 5/95, which came into effect by the promulgation of the **honorable decree** n° 1.95.224 dated November 29, 1995, define the creation and activities of these commissions in such a way that their activities – regardless of their importance on the level of control – remain restricted to data gathering and listening to the people concerned. Even when they perform what they are required to (report), the Parliament retains an essential role in investing the conclusions of the commission before transferring the report to the judiciary. However, the two commissions regarding "the tourist and real estate credit" and "the National Social Security Fund" have played an important role in collecting data related to the joint financial management of both institutions. Their report was transferred to the judiciary, which is expected to finish the mission started by the two parliamentary commissions that were created under chapter 42 of the Constitution.

#### **3.2.1.4 Having recourse to experts in financial and economic affairs**

The Constitution and relevant laws do not include any provision preventing the Parliament from having recourse to experts, especially in a technical field such as the budget. The weak performance level of MPs in financial matters may be linked to the difficulty in understanding and getting acquainted with budget techniques and other related issues. Therefore, the government (the Ministry of Finance) initiative remained

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<sup>81</sup> Review the report of the fact-finding commission on tourist and real estate credit (July 2000-January 2001), fourth legislative year of the House of Representatives sixth parliamentary term (1997-2002), Kingdom of Morocco.

<sup>82</sup> Review the report of the fact-finding commission on the National Social Security Fund (November 2001-May 2002), fifth legislative year of the Council of Counselors sixth parliamentary term (1997-2002), Kingdom of Morocco.



clear and directed towards parliamentary work. **Nevertheless, there is an increasing awareness of the importance of having recourse to experts in this field, whether by MPs or employees of both chambers.**

### **3.2.1.5 Studying the accounts section that includes the effective collection and expenditure figures**

The important mechanisms granted to the Parliament in the field of financial control include voting and approving the **clearing law**, which confirms the final amount of received resources and ordered expenditures in the same year. The draft **clearing law** is accompanied by a report prepared by the Higher Council of Accounts regarding the implementation of the finance law and by a public acknowledgement that the calculations of individual accountants are correspondent with the public account of the Kingdom.

It is worth mentioning that the creation of the Higher Council of Accounts was but lately included in the Constitution. Its activation to the best of its abilities remains sketchy, not to mention the obvious delay in submitting the **clearing laws** to the Parliament. The government and the Parliament still started to care for this form of control as three **clearing laws** were passed during the fourth parliamentary term (1984-1992) and five others during the sixth term (1997-2002). **Even so, the Parliament still does not have the technical and financial capacities and means to enrich its follow-up and evaluation role with more autonomy and efficiency**, thus rendering it dependent on the administration headed by the government for obtaining information or driving it to have recourse to experts in case it is so convinced and has the necessary financial resources.

### **3.2.2 Transparent voting on the budget**

The House of Representatives rule of procedure (May 25, 2004) included many provisions pertaining to plenary sessions, their organization and the provisions to be respected during the discussion and voting process in general, including the finance law (the budget). A series of rules can be derived from chapter 3 (articles 70 to 78) asserting the principle of transparency in voting, which is considered an inalienable right (article 70) and happens by show of hands or by means of an electronic device designed for this purpose (article 71).

### **3.2.3 Global control over the budget**

Both chambers of the Parliament examine and discuss the budget within competent commissions before it is submitted for voting in a plenary



session. The subsequent control is entrusted to the Higher Council of Accounts as the competent constitutional institution.

### **3.2.3.1 Efficient and effective control over the execution of the budget**

According to chapter 50 of the Constitution, the finance law (the budget) should be elaborated by the Parliament. Nevertheless, the execution is entrusted to the government according to chapter 61, which grants it the competency to implement laws, including the finance, under the supervision of the Prime Minister, whereas the Higher Council of Accounts is responsible for financial control. As we have previously mentioned, the government (the Ministry of Finance) is considered the primary source of the Parliament in financial matters. The latter has no opportunity for subsequent control, which is entrusted to the Higher Council of Accounts. However, MPs may demand budget-related information and data from the Minister of Finance in the manner that was previously mentioned in this report.

### **3.2.3.2 Having recourse to the Higher Council of Accounts in order to control public expenditure**

The Higher Council of Accounts, which was established on December 19, 1979, is the constitutional institution in charge of exercising higher control over the implementation of financial laws in order to check the legitimacy of resources and expenditure processes of the controlled organisms and take punitive measures when necessary. In fact, according to chapter 97 of the Constitution, the Higher Council of Accounts helps the Parliament and the government in the fields within the scope of its legal competencies. It also submits to the King a report on all its activities. For this purpose, the Council prepares a report on the implementation of the finance law added to a general acknowledgment of agreement according to chapter 47 of the financial regulatory law and presents it to the Parliament, which can ask for clarifications on this subject.

## **3.3 The efficiency of control over the government and holding it accountable**

With regard to the parliamentary control over the activities of the government, one can highlight the constitutional amendments of 1992 and 1996, which introduced some positive changes to the capacities of the Parliament in this context.



### **3.3.1 The presence of an organized and efficient opposition in the Parliament**

Morocco is one of the few Arab countries with a multiple party system since before the independence and chapter 3 of the 1962 Constitution has prohibited the one party system. Hence, the first parliamentary experience in the country (1963-1965) witnessed the emergence of a majority and an opposition as in the subsequent parliamentary terms. Yet the opposition lacks a series of conditions that would help it acquire more organization and efficiency, such as broadening the scope of its constitutional rights and the acknowledgment of the principle of power alternation. The opposition itself needs a tremendous amount of self-organization through restructuring and drafting political programs and strategies.

### **3.3.2 Efficient accountability of the government**

Article 56 gave MPs the right to hold the government accountable<sup>83</sup> once a week in order to obtain information regarding the various aspects of public policy. Ministers are called upon to submit all the data related to the questions asked by the representatives of the nation and that are matters of interest to the public opinion. The House of Representatives rule of procedure (2004) defined four sets of questions pertaining to "oral questions, questions followed by a debate, immediate questions and written questions". Indeed, article 155 of the House of Representatives rule of procedure grants every MP the right to address questions to the Prime Minister or the ministers with regard to government general policies and specific policies in certain sectors. Article 156 of the same source stipulates that the question is to be submitted in writing to the speaker of the House and signed by the MPs presenting it prior to its referral to the government, which is required to provide an answer within 20 days of the presentation. Chapter 56 of the Constitution stipulated that one session per week should give the priority to the MPs' questions and the government answers. In fact, MPs are taking an increasing interest in questions as a government control mechanism. During the third legislative year (2004-2005) of the seventh parliamentary term (2002-2007), the legislative activity witnessed many questions, whether in the House of Representatives or in the Council of Counselors. 654 questions out of a total of 1140 concerned the first chamber while the share of the Council of Counselors amounted to 486 questions whereas 4487 written questions were recorded, out of which 3781 were answered by the government. The third legislative year (2003-2004) of the same term had

<sup>83</sup> Paragraphs 2 and 3 of article 56 state the following: "One session per week is set by order of priority for MPs' questions and government answers. The government should give back its answer within 20 days following the presentation of the question ..."



witnessed the same pattern with quantitative indicators proving the government interest in answering the questions that were addressed to it (93.83 % for written questions compared to 79.91 % for oral questions). It is worth mentioning the Moroccan Constitution, which was first promulgated in 1962, did not take into account the system of questioning as a government control mechanism. The minister in question can still be asked to appear before one of the permanent parliamentary commissions to explain and clarify pending matters. Moreover, permanent parliamentary commissions can send some of their members on temporary enquiry missions in some state administrations<sup>84</sup> regarding the implementation conditions and circumstances of a given law, a matter of interest to the society or a matter related to a government activity in accordance with the Parliament Bureau. The MPs in charge of this mission should prepare a report to be submitted to the commission for discussion and referral to the House of Representatives Bureau. Amendments introduced to the rule of procedure (May 25, 2004) include the creation of the enquiry mechanism through the members of permanent commissions. A concrete example illustrating the application of article 35 is found in the Justice and Legislation Commission when it entrusted some of its members with an enquiry mission about the implementation of the new family law provisions in some Moroccan tribunals.

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<sup>84</sup> See article 35 of the House of Representatives rule of procedure (May 25, 2004). For instance, when the Family Law was amended, the House of Representatives Justice and Legislation Commission initiated a temporary enquiry mission to examine the implementation conditions and circumstances of law n° 07.03 as the Family Code.



### 3.3.3 The efficiency of the Parliament in the case of a vote of confidence

In addition to the abovementioned elements, the Parliament has other control mechanisms, including its right to table a motion of censure in order to oppose the government carrying out its responsibilities. As an acknowledgement of the bicameral system, the new 1996 Constitution gave the Council of Counselors the right to table a **cautioning motion** to the government according to which the Prime Minister is compelled to explain to the second chamber of the Parliament the position of his government with regard to the reasons behind this motion<sup>85</sup>. **Despite the existence of such mechanisms, they were but rarely used by the Parliament due to the high quotas required by the Constitution for this purpose and to considerations pertaining to the mosaic structure of the Parliament, which cannot reach the required majorities in order to bring the abovementioned mechanisms into effect**<sup>86</sup>. Therefore, the control motion was invoked only twice in the history of the Moroccan Parliament: the first time was during the first parliamentary term when the opposition tabled a motion of no confidence in the government of Hajj Ahmad Bahnini on June 15, 1964, whereas the second came against the government of Sayyed Ezzedine Al-Iraqi in 1990. **the debates accompanying this mechanism reveal that it was not a matter of discussing the government responsibility in a political system with predefined rules, but rather a matter of questioning the responsibility of the whole political system in place due to the absence of clear and predefined political rules.**

### 3.3.4 The efficiency of the Parliament in checking the government respect of international conventions

The diplomatic authority of the Parliament within the Constitution is considered weak. According to chapter 31, the Parliament ratifies treaties only when they are binding for the finances of the state. Furthermore, the Constitutional Council does not have the right to look into the constitutionality of treaties contrary to other countries (France, etc.), which means that the diplomatic authority in all its aspects is in the hands of the executive power, i.e. primarily the King and then the government. Nevertheless, the Parliament is entitled to discuss the treaties submitted to it and require explanations from the competent ministry (the Ministry of

<sup>85</sup> See chapter 77 of the 1996 Constitution.

<sup>86</sup> According to chapter 76 of the 1996 Constitution, the signatures of at least 1/4 of MPs are required in order to table a control motion whereas an absolute majority is needed to pass such a motion. Chapter 77 stipulates the vote by 1/3 of the Council of Counselors members in the case of a cautioning motion, which is passed only through an absolute majority.



Foreign Affairs). Within the framework of controlling government activities, it also has the right to submit oral or written questions with regard to abiding by international conventions. The same prerogative holds true for permanent commissions (the Foreign Affairs and Borders Commission, the Legislation and Human Rights Commission).

#### **3.3.4.1 Submitting questions and enquiries to the government regarding international conventions**

The Constitution does not provide for the process of enquiry within the framework of parliamentary control over government activities in general, and its respect of international treaties in particular. However, MPs may address oral or written questions regarding the respect of international conventions, which the competent ministry is required to answer orally or in writing during the publicly broadcast questions part of plenary sessions. Yet the competency of the Parliament on this level is constitutionally limited as chapter 31 of the Constitution granted the King broad diplomatic authority. Indeed, in addition to appointing ambassadors to foreign countries and organizations and accepting the credentials of foreign ambassadors and foreign organizations representatives, the King signs and ratifies treaties and agreements that are not binding for the finances of the state whereas those that entail a financial obligation for the state have to be ratified by the Parliament. In this respect, it is worth noting that nothing prevents the Parliament from broadening the scope of the debate by asking the government to provide all the data and details of international conventions, whether within the Foreign Affairs and National Defense Commission or during the plenary sessions. This has happened indeed in the case of some conventions, such as the sea fishing agreement with the European Union and, to a certain extent, in the case of the free trade agreement with the United States.

#### **3.3.4.2 The follow-up by the Foreign Affairs Commission of the government respect of international treaties**

The competencies of permanent Foreign Affairs and National Defense parliamentary commissions include the follow-up of the government respect of international treaties. This has been implicitly granted by the Constitution and expressly guaranteed by the rule of procedure in the provisions tackling the competencies and nature of activity of these commissions. This has held true for some labor-related international conventions, especially those that were signed by Morocco.



### **3.3.4.3 The follow-up by the Human Rights Commission of the government respect of international human rights and public freedoms conventions to which the state has adhered**

The permanent Justice, legislation and Human Rights Commission is constitutionally and legally in charge of following up the government respect of international human rights conventions. Relevant laws do not contain any hindrance to the adoption of follow-up mechanisms (requiring explanations from the competent ministry). Its members or any MP may submit oral or written questions related to this matter as well. Yet reality shows that the Parliament remains silent in this respect: this may be due to the MPs' conviction that another institution is responsible for international human rights conventions, namely the Consultative Human Rights Council, and that the structure of its members allows the participation of all parties and organisms in the discussion within the framework of ??????????

### **3.3.5 The constitutional prerogative of the Parliament to accuse the ministers, the Prime Minister and the head of state**

Chapter 8 of the Constitution includes provisions pertaining to the penal responsibility of government members who commit crimes and misdemeanors during the exercise of their functions (chapter 88). It granted the Parliament the right to accuse them as well and refer the decision to this decision to the Supreme Court (chapter 89), this right being also guaranteed in chapter 7 of the rule of procedure.

#### **3.3.5.1 The ease and clarity of the accusation mechanism**

The provisions of the House of Representatives rule of procedure (May 25, 2004) include clear provisions pertaining to the issue of accusation. Article 171 states that the accusation proposal should be signed by a quarter of House members. The proposal should be referred for discussion to the Supreme Court, and is passed by the secret vote of two-thirds of House members.

#### **3.3.5.2 The number of accusation cases**

**In reality, the accusation mechanism was never applied for considerations pertaining to the nature of the Moroccan political system and the alliances inside the legislative institution.** On the other hand, according to the philosophy of the political system, the government is the King's auxiliary in his quality of constitutional king, prince of believers and highest representative of the nation. As a second-class representative ever since its first term (1963-1965), the Parliament has never been capable of activating this mechanism due to its structure and



to the strict rates required to accept a criminal accusation according to the Constitution (chapter 90) and to the Supreme Court regulatory law n° 1.77.278, issued on October 8, 1977 and amended by law n° 63.03 (2004)<sup>87</sup>. Here, it is worth noting that cases pertaining to the embezzlement of public finances started emerging in Morocco towards the end of the 1960s, but the legal rule did not reach very far in this respect for numerous reasons, the most important of which is the avoidance of a confrontation between the Parliament and the government as the accusation of one minister implies that the whole government stands accused according to the principle of governmental solidarity. However, as the Constitution provided for fact-finding commissions and both the two commissions regarding "the tourist and real estate credit" and "the National Social Security Fund" were formed, it has become possible to seek the activation of the requirements related to the criminal accountability of government members.

### **3.3.6 The constitutional prerogative of the Parliament to participate in the trial of accused government members or heads of state**

According to chapter 91 of the 1996 Constitution, "the Supreme Court" is composed of members of whom half are elected among House of Representatives members and the remaining half among Council of Counselors members with the president appointed by an **honest decree**". In other words, the trial is performed by elected MPs themselves. As for the head of state, i.e. the King, his person is protected by various constitutional provisions and his decisions are irrevocable according to the Higher Council, thus entailing no responsibility whatsoever.

#### **3.3.6.1 The ease and clarity of the trial mechanism**

The Supreme Court regulatory law and the House of Representatives rule of procedure include clear requirements and provisions pertaining to the trial mechanism. The Constitutional Council clearly entrusted them with the mission of removing all confusion and ambiguity that could picture these organisms as unconstitutional.

#### **3.3.6.2 The number of trial cases**

The constitutional experience and the Moroccan political life do not provide any outstanding or repeated examples of this kind of trials. Indeed, such cases were very few in number in Morocco with the exception of the trials of some high figures, including government

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<sup>87</sup> Chapter 60 of the Constitution stipulates that a quarter of House members should sign the accusation proposal and two-thirds of the members should approve it in order for it to be receivable.



personalities during the late 1960s and the early 1970s, within the framework of public finances embezzlement cases.

### **3.4 The efficiency of parliamentary commissions**

#### **3.4.1 The existence of a sufficient number of permanent and temporary parliamentary commissions or commissions specialized in a given mission**

The Constitution did not clearly provide for the number of parliamentary commissions, but chapter 6 of the House of Representatives rule of procedure included provisions setting permanent commissions at six in number in addition to fact-finding commissions, which can be established based on the King's initiative or on a request by the majority of members of both chambers (chapter 42). These are added to the forum of speakers, which – according to article 49 of the House of Representatives rule of procedure – is composed of the speaker of the House, the speakers of parliamentary groups, the speakers of permanent commissions and the vice-speakers of the House of Representatives. According to article 31 of the House of Representatives rule of procedure, "the House of Representatives elects the speakers of permanent commissions for a one-year mandate by means of a secret ballot during the opening of the first session in each legislative year". It also prevented speakers to head two commissions at the same time. With regard to membership, article 32 indicated that "each MP has the right to be a member of any of these commissions, but it is forbidden to sit on more than one permanent commission."

12 commissions were established throughout the various legislative terms, except in 1970-1971 when there were 10 compared to 6 commissions during the sixth and seventh terms (1997-2002 and 2002-2007 respectively). This was due to the rationalization of financial resources and human competences, knowing that human resources are both quantitatively and qualitatively limited.

#### **3.4.2 The efficient and transparent role of commissions in the legislative field**

The commissions play a central role in the field of legislation as they represent a parliament on a small scale. Indeed, they discuss texts, whether emanating from the government (drafts) or from the Parliament (proposals), and introduce the necessary amendments before submitting them to the plenary session for voting and adoption. The table below gives an idea of the legislative role of permanent commissions during the sixth parliamentary term (1997-2002).



<b>The competent permanent commission</b>	<b>The total number of initiatives studied by each commission</b>	<b>Number</b>	<b>Proportion</b>
The Foreign Affairs and National Defense Commission	48 draft laws and 1 law proposal	49	25 %
The Justice and Legislation commission	30 draft laws and 14 law proposals	44	22.45 %
The Interior and Decentralization Commission	22 draft laws	22	11.23 %
The Finance and Development Commission	41 draft laws and 3 law proposals	44	22.45 %
The Production Sectors Commissions	10 draft laws and 1 law proposal	11	5.62 %
The Social Sectors Commission	25 draft laws and 1 law proposal	26	13.27 %
Total: six commissions	176 draft laws and 20 law proposals	196	100 %

### **3.4.3 The efficient and transparent role of commissions in the field of control**

The Constitution and relevant laws set parliamentary mechanisms of control over the government work, which are questions of all kinds, the vote of confidence on the government program, the motion of control and the establishment of fact-finding commissions. However, commissions can exercise a form of control over the ministers' work through the meetings they hold during the first four days of the week (article 37 of the rule of procedure) or on an exceptional basis when necessary. In such cases, ministers or their appointed delegates are present, and – in every matter of particular interest - the commission has the right to request through the House of Representatives speaker to hear a government



member, a representative of one of the higher councils, a high commissary or the director of a public, semi-public or state institution in the presence of the minister in charge of the sector in question (article 41).

#### **3.4.4 The efficient and transparent role of commissions in the field of enquiries**

Article 35 of the House of Representatives rule of procedure enabled permanent commissions to entrust some of their members with a temporary enquiry mission about the conditions and circumstances of implementation of a given legislative text, or a matter that is of interest to society or that is related to a government activity in coordination with the House Bureau. Chapter 42 of the Constitution still provided for the establishment of parliamentary fact-finding commissions in charge of gathering information pertaining to certain events and keeping the Parliament abreast with their findings. Two such commissions were formed in Morocco during the 1990s, the first regarding the tourist and real estate credit institution and the second on the National Social Security Fund.

#### **3.4.5 The participation of involved civil society organizations in the meetings of commissions**

The House of Representatives rule of procedure does not contain any provisions regarding the presence of civil society organizations in the meetings of commissions as participation is only allowed for members, ministers or their appointed representatives.

#### **3.4.6 The recourse by commissions to recognized experts**

The provisions of relevant laws do not prevent commission members from having recourse to experts to manage their cases. The Prime Minister and the government need expertise in drafting and elaborating draft laws whereas MPs are entitled to ask for the support of cadres and employees of parliamentary institutions on the level of law proposals. MPs can also have the advantage of competencies within their own parties.

### **3.5 The rule of procedure compatibility with the Parliament performance**

#### **3.5.1 The rule of procedure guarantee of the diversity of orientations and loyalties within the Parliament**

The rule of procedure should be compatible with the spirit and provisions of the Constitution. Since the Constitution in its various chapters



guarantees the right to equality, a multiple party system and the right to join or be affiliated to a parliamentary group, it is only logical that **the diversity of loyalties should be accepted in the structure of the parliamentary map.** The mosaic structure of the Parliament is certainly a characteristic of the Moroccan case.

### **3.5.2 The rule of procedure guarantee of freedom of expression and debate for all MPs**

The Constitution grants MPs **the right to freedom of expression and debate and gives them immunity to exercise their right.** The rule of procedure is thus compatible with it in this respect. However, the same Constitution imposes restrictions on this freedom with regard to prohibiting discussion of the Islamic system, the monarchy and the King's person.

### **3.5.3 The rule of procedure guarantee of the MPs' right to be members of a given commission**

The House of Representatives rule of procedure provided for the number of commissions and that of their members. Therefore, every member has the right to attend meetings of his/her commission and is not allowed to participate in more than one commission. MPs who are not affiliated to a parliamentary group may be appointed within the limits of the number set by the House Bureau for permanent commissions. Hence, the rule of procedure did not expressly provide for the possibility of MPs attending meetings of a permanent commission in which they are not members, but article 41 allows ministers to attend the meetings and resort to outside assistance on this level.

### **3.5.4 The facilitation by the rule of procedure of the Parliament activity in the execution of its missions**

The rule of procedure should be compatible with the spirit of the Constitution, and its provisions should facilitate and guarantee the efficiency of commission activities. It also calls for the Constitutional Council, which examines its compatibility with the Constitution, to improve and adapt its provisions. However, when the 1996 Constitution restored the bicameral system, Morocco witnessed the discovery of differences between the rules of procedure of each chamber. Despite the revision of both rules of procedure on April 14, 1998 so that they become in keeping with the restored bicameral structure of the Moroccan Parliament, there remained limits in practice: indeed, it seemed to state political actors and higher authorities as if two parliaments were in place instead of one with two chambers. The May 25, 2004 amendment was



thus initiated with the aim of making both sets of rules as compatible as possible either to curb the number of articles, or to avoid their repetition and rephrase them in a harmonious manner.

### **3.5.5 The clarity of the rule of procedure**

The My 25, 2004 amendment sought to clarify the House of Representatives rule of procedure and bring it in conformity with that of the Council of Counselors. The Constitutional Council succeeded in this endeavor as a body that specializes in examining the constitutionality of their provisions and requirements.

### **3.6 The efficiency of parliamentary groups**

The Moroccan Constitution lacked any reference to the term "bloc". In Contrast, chapters 37 and 38 mentioned the word "group". As the constitutional document did not tackle this issue in details, it was left up to the rule of procedure to define the requirements pertaining to parliamentary groups.



### **3.6.1 The organization of parliamentary groups based on a rule of procedure for each of them**

The Constitution and the rule of procedure do not contain any provision compelling parliamentary groups to establish their own rule of procedure. Yet a few groups have done so, such as the Justice and Development group.

#### **3.6.1.1 Abiding by the groups rule of procedure**

Parliamentary groups, albeit to different degrees, suffer from the lack of respect of their members for the commitments included in the House rule of procedure and the commitments on which their candidacies were based, i.e., those they promised their parties. In this respect, there is a clear difference between historical parties (those emanating from the National Movement) and those established within the framework of the construction of the modern national state, which are characterized by a flexible structure and lack of discipline. This is manifested by the extent to which they attend Parliament sessions and participate in legislative production control over the government. In this context, the presence of the Justice and Development party members and their respect of the rule of procedure is worth mentioning.

#### **3.6.1.2 Regular participation in periodical meetings**

It is objectively impossible to address this matter due to the absence of relevant studies and field researches. Nevertheless, the prevailing impression has been mentioned in the above as the situation differs from one party to another depending on its organizational structure.

#### **3.6.1.3 The participation in the groups meetings on the basis of an agenda**

Parliamentary groups should function according to principles and methods, the most important of which is the organization of their periodical meetings according to an agenda that defines priorities, follows up achievements and develop strategies. It is worth noting that parliamentary groups meet based on an invitation and the coordination of the group head, who plays an essential role in setting the agenda of the meeting, which is often compatible with that of his own party.



### 3.6.2 The respect of decisions by group members

In addition to the restrictions included in relevant laws, the performance of parliamentary groups suffers from failures **linked to the groups themselves**. In fact, parliamentary groups in democratic systems are characterized by the fact that they belong to a common intellectual framework, their collective defense of a program that reflects their visions and choices and their respect of the rules governing their activity as a group or a bloc. However, the Moroccan case does not have all these ingredients as groups are sometimes formed in order to **have the advantage of the privileges granted by the relevant laws to the parliamentary groups in the fields of legislation and control, or the material and technical privileges, such as a group headquarters, its requirements and appointed employees**. This performance also lacks the political commitment, which is a result of **the weak ideological structure** and the weak group members' weak awareness of the party concept. This explains the **phenomenon of nomad parliamentarians**, which characterizes the Moroccan Parliament, i.e. the behavior of MPs who transfer from one group to another with no consideration whatsoever for the intellectual and organizational commitments linking them to the party or body that chose him/her and supported his/her candidacy at the outset. This phenomenon has proliferated on the Moroccan parliamentary scene as the sixth parliamentary term (1997-2002) recorded 121 transfers of MPs from one group to another, i.e. 1/3 of members of the House of Representatives (out of a total of 325 members). In other words, 38 % of MPs have switched loyalties from one group to another, which harms parliamentary performance and limits its efficiency<sup>88</sup>, knowing that the new parties law that was approved on December 28, 2005 prohibited MPs from switching their political loyalties during the legislative term, thus preventing them objectively from wandering among parliamentary groups<sup>89</sup> for the first time in any constitutional text or relevant laws.

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<sup>88</sup> It is worth noting that this nomadic pattern harms the stability and continuity of groups as well as the budget earmarked for each group, thus leading to the squandering of financial and technical efforts.

<sup>89</sup> See article 5 of the new parties law.



### **3.6.3 The rule of procedure encouragement of the establishment of organized and efficient parliamentary groups**

The House of Representatives rule of procedure as amended on May 25, 2004 consecrated a fifth chapter of 6 articles (articles 24 to 29) for parliamentary groups, explaining their formation, the number of members that is required for this purpose and the requirements organizing their relation with the House speaker, including the information to be fed to him with regard to resignation, removal of functions, admission and membership in addition to the financial and human resources needed for their efficient performance and prohibited actions, such as the establishment of associations to defend their personal and professional interests inside the Parliament, etc.

### **3.7 The efficiency of administrative and technical bodies**

#### **3.7.1 The existence of technical units within the Parliament**

If what is meant by "technical units" are divisions and departments, then the Moroccan Parliament as a constitutional institution includes many such divisions and departments. Yet one of its weaknesses is the absence of an organization chart, the development of which started only recently in order to organize and rationalize its internal administrative components. As for financial, economic and IT analysis units, they are virtually absent from the structure of the Parliament except the sporadic activities of some groups with regard to the follow-up and drafting of reports pertaining to certain issues. However, there is a ministry in charge of the relation with the Parliament and which keeps track of the quantitative follow-up of parliamentary activities.

##### **3.7.1.1 The adoption of scientific and objective appointment standards**

The process of appointing human resources is somewhat dominated by **personal considerations** instead of competency and efficiency requirements. Even if this is hard to prove, there is a prevailing conviction that appointment conditions were quite often based on the logic of pleasing groups and MPs rather than on competency, equal opportunities and free and open competition, knowing that the provisions of the rule of procedure allow both chambers of Parliament through the Bureau to organize the administrative and financial departments affiliated to them<sup>90</sup>. If need be, they may have recourse to the expertise and competencies of civil servants by attaching<sup>91</sup> them to the Parliament.

<sup>90</sup> See article 27 of the Council of Counselors rule of procedure (1998) and article 22 of the House of Representatives rule of procedure (May 24, 2005).

<sup>91</sup> See article 37 of the abovementioned Council of Counselors rule of procedure.



### 3.7.1.2 A sufficient number of competent employees

The parliament suffers from a lack of employees in general and competent ones in particular. If we consider the administrative and technical framework of the House of Representatives as a sample due to the accumulated practice in this chamber since 1963, we notice the abovementioned **weaknesses** that cripple the efficient performance of the legislative institution. Indeed, according to the available recent estimates, the House of Representatives records 261 employees in around 20 departments in addition to parliamentary groups and commissions, some of which are related to the House activities while others are restricted to the provision of technical and logistical support pertaining to transportation, typing, publishing, telephones, equipment, maintenance, accounting, etc. However, the subject that is of interest to us relates to the human resources, which contribute directly in the preparation, follow-up and coordination of the House activities in the fields of legislation and control. A quantitative analysis of the human resources distribution over the main departments reveals the following:

Department	Legislation	Questions	Commissions	Plenary sessions	Media	Studies and translation		
Number	06	07	32	12	08	03		
Proportion	2.3	2.7	12.26	4.6	3.1	1.14		

This weakness is further confirmed by the qualitative analysis of technical and administrative human resources in the following table:

Education level	BA/B S	MBA/M BS	State engineer	Primary/intermediate/secondary education	total
Number of cadres	63	8	2	188	261
Proportion %	24.13 %	3.06 %	.76 %	72.03 %	100 %

### 3.7.1.3 Compulsory training sessions for Parliament employees

The concept of constant formation has yet to evolve to become an integral part of the culture organizing the administrative activity of the Parliament. Nevertheless, there is an increasing awareness of the importance of formation and reformation in the development and building



of employees' capacities within the legislative institution. In this respect, the parliament administrative staff has had the advantage of a series of training sessions within the framework of the international cooperation program, such as the sessions organized within the framework of the agreement between the Parliament and USAID pertaining to the support of the Parliament activities.

#### **3.7.1.4 The salaries of Parliament employees**

Parliament employees do not have a single and unified point of view with regard to their salaries and their contentment as to their value. Indeed, a survey among a number of employees revealed different evaluations as higher cadres (mainly heads of departments and divisions) expressed their satisfaction of salaries (with some even indicating that they had the most generous compensations on the scale of civil servants) whereas average and small employees had a different opinion since they complained of low salaries that are barely enough to meet living requirements.

#### **3.7.2 The existence of a modern library/a studies and documentation center/a databank in the Parliament**

The library of the Moroccan Parliament is considered **modest in comparison with its counterparts in many countries**. While surveying the opinion of its previous director, we indeed noticed that it needed an extensive amount of support and development on the level of provision of relevant sources, references and periodicals, by rebuilding it as a scientific space that would make a good investment for MPs and researchers or by computerizing and linking it to information and communication networks. On the other hand, there is no studies or documentation center, but researchers and other people working within the scope of the parliamentary institution are thinking of establishing a center for studies or an observatory of parliamentary activity. Moreover, there is no databank, but the abovementioned cooperation program with USAID has created a database including the fields of expertise that the Parliament may consult when necessary.

#### **3.7.3 The existence of the necessary buildings and equipments**

The current Parliament is considered **insufficient** in terms of the buildings and equipments needed to perform its functions. This problematic issue grew worse with the creation of the second chamber in the 1996 Constitution and the election of the second council in December 1997. The pressure resulting from the lack of buildings is expected to weaken with the inauguration of the new additions that were recently



built. However, relevant estimates indicate that the Parliament needs a new headquarter and larger buildings with more modern equipments. The Parliament is supposed to have the advantage of what modern technology has to offer in the field of communication. Indeed, institutional work can no longer disregard the large choice of opportunities made available by digital knowledge. Nevertheless, despite the extensive efforts of the past few years, the Moroccan Parliament remains in dire need of developing its structure on the level of publication, documentation, the media and computerization in addition to the simplification and availability of internet access for its members and citizens alike. In this respect, based on the criteria adopted by the Inter-Parliamentary Union in its Amman conference (April 2000), a website and legal database were created including the texts published since 1912 in Arabic and French in addition to the levying and taxation laws stretching over the same period. These fields of information are available for MPs and staff members.

#### **3.7.4 The publication of the laws adopted by the Parliament in its own periodical**

Laws should be published in the Official Gazette in order to come into force and acquire a compulsory character. Yet the parliament adds to its reports the laws that were ratified in addition to summaries of debates and amendments, the ministers' propositions and data pertaining to relevant meetings. Furthermore, internal and public periodicals describe the Parliament activity in the fields of legislation, control and parliamentary diplomacy.

#### **3.7.5 The publication of parliamentary reports in a special periodical**

Each commission in both chambers of the Parliament issues reports on the legal texts including the information mentioned in the previous paragraph.

### **3.8 The competency of MPs**

#### **3.8.1 The extent of MPs' understanding of their roles**

Mps are required in principle to understand the roles they are called upon to play as representatives of the people. Yet this is not in practice linked to their political awareness and to the extent their political parties and organisms seek to promote this spirit of understanding and watch over its implementation in their function.

##### **3.8.1.1 Understanding constitutional texts and laws**



The level of understanding constitutional texts and laws is considered **weak in general and varies from one MP to another and from one group to another** for a vast array of reasons pertaining to the MPs' educational background, their level of preparedness to reformation in order to meet the requirements of their parliamentary function, the framework of their parties and their openness to the modern capacities in the field of expertise, especially in matters of a delicate technical nature, such as specialized financial and scientific issues.

### **3.8.1.2 The mechanisms of the Parliament activity**

The rule of procedure and relevant laws are important document when it comes to understanding parliamentary activity and its mechanisms. Yet practice plays an important role in the development of the MP's practice and tuning of his/her experience. The Moroccan parliament seems to be **in need of elaborating its performance in order to accumulate traditions allowing the establishment of a parliamentary culture that assimilates** work mechanisms and the relevant organizational texts. This has yet to be seen in live broadcast plenary sessions and the articles published by the press, which sometimes covers the activities of the legislative body.

### **3.8.1.3 The work methodology in democratic systems**

The visits made by MPs within the framework of "parliamentary diplomacy" should represent an opportunity to get acquainted with and derive benefits from the experiences of democratic systems. However, this has no positive effect if the culture of the concerned (the MP) does not assimilate and understand the accumulated experience of his/her counterpart.

### **3.8.2 The legislator's capacity to have access to the information needed for the exercise of the legislation and control functions**

Citizens have a right to access information to say nothing of the MP's right in the performance of his representation function. However, reality contains no indications that the conditions of exercising this right are made available. Therefore, the government seems more in control of information sources in practice even if the Constitution and relevant laws have granted this right to MPs.

### **3.8.3 Regular training sessions for MPs**

The House of Representatives rule of procedure does not provide for this opportunity, which nothing excludes anyway. Nevertheless, the idea has yet to be developed in the awareness of the parliamentary institution for



reasons pertaining to the MP's opinion of himself/herself and his/her readiness to undergo training as well as to his/her awareness of the benefits to be derived from such formation. Some parties have organized training sessions for members of their parliamentary groups or dialogue sessions about issues of current importance within the framework of the Parliament cooperation with some international organizations.

#### **4. Integrity**

Integrity is part of the vigorous principles for establishing the good parliament, however, differentiating between the materialistic and standard side of integrity is difficult, for there surely is something which helps measuring the level of application of such principle rather than its non application.

#### **4.7 Parliament ethics**

##### **4.7.1 Clear and enforced parliament ethics rules.**

There are no defined written rules promulgated by the parliament.

##### **4.7.2 Defined duties and responsibilities of parliamentarians**

In the Moroccan case, there are no defined or written ethics or honorary pact which can be a reference to which we have recourse in order to measure the Parliamentarians behaviour while executing their representative tasks. Yet, there are the constitution, the regulatory laws in addition to the internal status and other related texts which define the legal framework within which the representative tasks and missions work. As aforementioned in some of the present report, political parties and professional organizations are asked to play the major role in matching their representatives' behaviour with their obligations.

##### **4.7.3 An independent institution to monitor the respect of the Parliamentary ethical principles and rules**

The absence of a public institution entitled the competency to monitor the respect of the parliamentary ethical principles and rules, leaves the Parliament Member and his party to their own consciousness, and pledged to the "Parliamentary impunity commission", when it refers to the requests of arresting or confining a member of the Parliament, or the stopping of the disciplinary procedures which can be taken by one of the Parliament members during a general assembly (cursing, swearing or violence) or through the commission's work.

##### **4.7.4 Clear, effective and enforced sanctions**



The House of representative rule of law encompasses clear demands regarding the “warning” (m 81) or the “banishment (m 82), or the impunity raising (m 86-87-88-89-90-91). However, the application of these requests in the **Moroccan case is very weak**, a matter which effect can be restricted within the development of the Parliament members behaviour.

#### **4.7.5 Official and non official mechanism to gather information on the behaviour of parliamentarians**

Nothing in the internal status indicates the presence of mechanisms for data gathering on the behaviour of a Parliamentarian. Yet, the State has its own bodies to do so, considering the Parliamentarian a citizen first and then a representative. The party can also inquire about the Parliamentarian behaviour, for the party is considered as the school of political and moral formation, however the media does sometimes refer to some behavioural manifestation of the Parliamentarians such as the taxes elusion, the non respect of laws, the issuance of insufficient funds checks, or the exploitation of their status as parliamentarians.

#### **4.7.6 Access of citizens to information regarding the parliamentary ethics**

Citizens can only have access to information regarding the parliamentarians’ ethics through their behaviour and what citizens suffer in their region or city, or through what can be read in the press, if the latter is always up-to-date.

### **4.8 Conflict of interest settlement**

#### **4.8.1 Rules adopted in the conflict of interest**

The Parliament should be, in theory, a framework of the national representation and not a constitutional institution to express the community interests or those of a category, religion, part, or political party, or professional organization, for the real meaning of the parliamentary representation requests that the voice of the parliamentarian be the expression of the entire nation. Therefore, Article 29 of the internal status of the Parliament (25 May 2004), stipulates that the Parliamentarians shall establish associations to defend their personal or professional interests within the Parliament, as it has forbade any private meetings other than those called for or organized by the Parliament bodies.

#### **4.8.2 Relation of these regulations with clear, effective and enforced sanctions**



No text of the internal status stipulates sanctions, as Article 29 of the internal status of the Parliament (21 May 2004) had only pointed out the forbidding of establishing associations to defend personal and professional interests and the forbiddance for calling for private meetings, and has allowed the meetings between all Parliament members having common interest and that with the personal permission of the Parliament **president** , however, it did not mention any sanction regarding the violation of this article requirements.

#### **4.8.3 Publishing the information regarding the conflict of interest**

Publishing is impossible due to the inexistence of a written Parliamentary ethics and clear texts of the Parliament power in pursuing its activities. Therefore, the public cannot have access to the important information, all they can have access to is what is mentioned in the press and mainly the independent and non political one.

#### **4.8.4 Monitoring the respect of these rules by Parliament**

It is hard to know the exactness in pursuing the application or the absence of application of clear rules and regulations. For the Parliament can have a positive interpretation of the summarized requirements mentioned in this article (Art 29), and that is what is not palpable while in effect due to the weakness in the deepening of its principles and Parliamentary regulations, and mainly the accountability.

#### **4.8.5 Explicit legal obligation to declare financial assets and interests**

أخضع قانون إشهار الذمة رقم ٥٤ لسنة ٢٠٠٦ في مادته الثانية رئيس مجلس الأعيان ورئيس مجلس النواب وأعضاء المجلسين وذلك بتقديم إقرار عن ذمته المالية وذمة زوجه وأولاده القصر خلال ثلاثة أشهر من تاريخ تزويده بالنماذج المشار إليها في القانون ونص القانون في المادة السادسة من على أنه يعتبر إثراء غير مشروع كل مال، منقول أو غير منقول، منفعة أو حق منفعة يحصل عليه أي شخص تسري عليه أحكام هذا القانون ولنفسه أو غيره بسبب استغلال الوظيفة أو الصفة، وإذا أجرات زيادة على ماله أو على مال أولاده القصر بعد توليه الوظيفة أو قيام الصفة وكانت لا تتناسب مع مواردهم وعجز هذا الشخص عن إثبات مصدر مشروع لتلك الزيادة فتعتبر ناتجة من استغلال أو الوظيفة أو الصفة.

### **4.9 Transparency of Political financing**

#### **4.9.1 Clear regulations for political finance**

The election rules and regulations as well as the last draft number 97/9 contained special requirements regarding the political financing of parties and political organizations and that during the election campaigns. There has also been special provisions regarding the support of media, nevertheless, the experience revealed difficulties in estimating the transparency in spending the political fund values, a to which the new law



04/36 regarding political parties certified by the part of the Parliament on December 28, 2005, has sought to introduce new requirements which can clarify the funding and audit their spending. We surely think that activating these requirements and authorizing the justice to examine the violations will help in making the political funding of parties more transparent and rational than it used to be.

#### **4.9.2 The enforcement of clear laws regarding the income, wealth and properties**

The internal status of the Parliament stipulates special requirements regarding the declaration of properties, wealth and incomes. The third paragraph of article 6 binds the parliamentarians to “present to the President of the Parliament, upon the opening of the legislative term, a detailed list of their properties, movable and non-movable properties and those of their minor sons while declaring the honour, the list shall be written and signed by them, in application of the requirements of articles 1, 2, 3, and 6 of the law related to the declaration of Parliamentarians of their real estate properties.

#### **4.9.3 Adoption of clear and effective sanctions**

The internal status hasn't stipulated any possible sanction in the case of unfaithfulness in the application of the requirements mentioned in the report, and the party having the authority to examine the appropriate sanctions.

#### **4.9.4 Monitoring the implementation of the rules and policies of political funding**

There is nothing in the non-relevant laws which allow the Parliament to fulfil the application of the laws and special policies of political funding. The electoral laws encompassed, mainly the document 97/09, clear provisions regarding the definition of the state contribution in funding the electoral campaigns. The same matter was tackled by the articles 28 and 29 of the new Parties law number 04/36, as the latter embraced a number of strict provisions regarding the transparency of the financial expenditure of parties and their spending and, thus obligating the parties to abide by. Yet, neither the election document nor the new Parties law had mentioned the role of the Parliament in this field, they however, had authorized relevant judicial parties to apply that, noting that the new Parties law, certified by a part of the Parliament on December 28, 2005, did not organize any elections within this field, and they will be waiting for the legislative elections in 2007 so that the new provisions regarding the Parties law, shall be taken into consideration.



#### **4.9.5 Access of citizens to information on funding rules**

The access of citizens to information regarding the political funding is available in theory through procedures comprised in the special texts related to the fund sources and the expenditure of sums, however, there are several difficulties in reaching and accessing these information regarding the limited educational background of the citizens (the illiteracy factor and the humble powers in knowing), as well as the weakness of logistics which facilitate the access to information procedure.

#### **4.10 Transparency of parliamentary activity**

##### **4.10.1 Transparent process for debate and adoption of laws**

The constitution and relevant laws comprise several procedures which can allow the Parliament activity in a clear transparency in the debate and voting, be it in the legislation (enactment of laws) or in the monitoring of the government activities. Yet the Parliament had witnessed during the past years an action which can limit the transparency application, a matter regarding the agreement between the political actors outside the Parliament. And it was noted that the Parliament was transformed into a registration bureau in some essential laws, due to such activity, and thus the Parliamentarians power was weakened during the debate and voting process.

##### **4.10.2 Broadcast of Parliamentary sessions on television and radio**

The general meetings of the Parliament are broadcasted on television and radio, mainly the oral question session as it gives the media actors to have, once in a while, summaries regarding the general public session, as well as the activities of the Parliament diplomacy.

##### **4.10.3 Allowing citizens to attend parliamentary sessions and committee meetings**

The 43<sup>rd</sup> chapter allows the public holding of both Parliament Chambers sessions, unless the Prime Minister and 2/3 of the members ask for close hearings. Therefore, citizens shall only have the right to attend public sessions activities, and not the Committee meetings, for the 42<sup>nd</sup> chapter allows only the ministers or their representatives to attend these meetings.

##### **4.10.4 Publication of minutes of sessions and debates**

The 43<sup>rd</sup> chapter of the 1996 Constitution stipulates the publication of the minutes of meeting in the national gazette, and article 69 of the House of



representative rule of law asserts the publication with regards to the provisions (m 43), as it declares to publish through electronic means and media all the reports related to the general assembly discussions, and distribute them in conformity with the conditions of the office.

#### **4.10.5 Access of citizens to parliamentary archives**

The House of representatives rule of law requirements do not mention anything regarding such access. However, what the law does not mention clearly the restriction of such access, it will not be therefore restricted. In theory, citizens have the right to examine the archives of a public institution which is highly respected, thus the fact reflects the difficulties in achieving such right.

### **4.11 Equal treatment of citizens**

#### **4.11.1 Impartiality in the decision-making ( no preference to one faction of citizens over another)**

The Parliament is considered as representing all factions of citizens and not an institution which works for one faction rather than the other. Therefore, it is required to be a legislative body of public interest relevant laws. Hence, the case is different, where Parliaments in various political systems are considered as a space for interests conflicts and competition, among which are those which create agreements and common basis regarding the legal texts.

#### **4.11.2 Absence of discrimination in legislation**

The Parliament role is to define the absence of discrimination in legislations, yet there is a common awareness of the importance of esteem rehabilitation for some of the society factions, women, children and handicapped, in the legal texts issued by the Parliament, in conformity with the international treaties which have been ratified by Morocco in this regard, and with respect to what is mentioned in the introduction of the Constitution since 1992, i.e. the holding of Morocco to the International Human Rights.

#### **4.11.3 Legislation to prevent discrimination**

Many laws were the incentive for Morocco to ratify international treaties relevant to children and women, and others relevant to the activities and work (the treaties of the World Trade Organization “WTO”, and the Arab Trade Organization “ATO”). Hence, a great number of treaties still needs ratification and some laws have to be issued for application.



## **4.12 Respect of the Constitution**

### **4.12.1 Constitutional review mechanism is a safeguard against legislations in violation of the Constitution**

Morocco has since its first constitution in 1962, considered the principle of monitoring the constitutionalization of laws through the Constitutional Chamber (1962-1992). After the constitutional reform of 1992, a new independent body was established for the purpose of monitoring, that is the constitutional council to which a special chapter was drafted, the 46<sup>th</sup> chapter of the 1996 Constitution (art 78-79-80-81).

In addition to the independence of the Council from the Higher Council of Justice, to which the Constitution Chamber was affiliated, the Constitutional Council competence broadened with regard to monitoring the laws constitution through drafting the constitutional monitoring of regular laws, and the broadening the reference scope to gather in addition to the king and the Prime minister,  $\frac{1}{4}$  of the Parliament members and  $\frac{3}{4}$  of the Council of Counsellors. However, its role needs some development in the monitoring field to encompass international treaties, and the Parliament shall change from the content to assert the form and legal form of the insured.

### **4.12.2 Effective compliance of legislation with the Constitution**

The Parliament activity should respect the Constitution, thus respect the Constitution legitimacy, and when it does not comply with the latter, the king has, according to article 19, to right to right to put it back on track, as it is the Constitutional Justice duty to notify that. It happened in many occasions when the constitution internal requirements and regulations were not respected or it issued regular laws comprising provisions in non conformity with the constitution, and they were not referred to the Constitutional Council, among which chapter 4 of the new Parties law (nb 94/36) which contradicts the content of the chapter 3 of the Constitution.



### Chapter 3 Some titles of the reform of the Moroccan Parliament

The importance of the Parliament reform is derived from the Parliament itself, the nature of its experiences and the hopes that are set upon it. It is worth noting that, inasmuch as the perception of the Parliament is witnessing a steady decline in people's collective awareness, they are increasingly counting on the role the Parliament can play in furthering their situation by participating in the drafting of public policies, monitoring government activities and achieving the main objectives of representation.

One of the main aims of the reform process is to render the Parliament efficient not only with regard to the acquisition of new competences, but also with regard to the competencies and opportunities granted to it by the Constitution. Indeed, the achievements of the legislative institution on the level of legislative production are quite modest compared to those of the government (the rate of proposals it presented did not exceed at best 9% compared to 91 % for the government). Moreover, the Parliament is still making little use of constitutional control mechanisms (monitoring request, questions, vote of no confidence, fact-finding commissions) due to the nature of the relevant constitutional procedures and conditions<sup>92</sup>. Yet the Parliament is called upon to take its performance away from **the traditional patterns of legislative activity to a stage of creativity, efficiency and rational use of available and allowed possibilities. However, this requires a new culture that puts on the top of its scale of priorities the concept of representation and its aims.** The efficient and rational Parliament of the future calls in its turn for a parliamentary elite with the same values. This will be achieved only when a spirit of competency and responsibility governs the process of choosing candidates who can understand the aim and dimensions of representation and who are ready to stand accountable for their actions within their political bodies and in their ethical relations with the electoral body they represent.

**The reform of the Parliament takes place on two levels.**

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<sup>92</sup> For instance, when the government is formed, it is not invested by both the King and the Parliament as it acquires legitimacy as soon as the King announces its formation according to chapter 24 of the Constitution. The Parliament is also bound to set its own rule of procedure, which needs the approval of the Constitutional Council before it comes into force (Chapter 44). Moreover, the Parliament is not a true power in the financial field, and its mosaic structure makes it difficult to assemble the absolute majority required for the control request to come into effect, i.e. the resignation of the government.



**First: The structural level:**

The first level is related to **the core of the parliamentary idea**, the roles it plays and achievements expected from it on the Moroccan political scene. With regard to this crucial point, **there was no important reform, which can change the repartition of powers as it was consecrated in the first 1962 Constitution.** The practical performance after the failure of the first parliamentary experience (1963-1965) and the declaration of the state of exception (1965-1970) led to the decline of the Parliament functions for the benefit of consolidating the royal institution and strengthening the hegemony of the government over the legislative institution except for the ameliorations introduced by the amendments of September 4, 1992 and September 13, 1996. **For more than 4 decades, the Parliament remained subject to uneven division, which was consolidated by the first Constitution (1962) in the name of parliamentary rationalization imported from the experience of the French Fifth Republic.** This was also due to the interpretation of the principle stating the separation of powers, to the dishonorable practices during electoral processes and to the decline of the system of values according to which the parliamentary elite is chosen within the political parties. Therefore, any positive development on this level is considered to be highlighting the importance of the representation concept with the Parliament as its main implementation framework. The report suggests 3 main titles reforming the status of the Parliament and stressing upon its importance within the Moroccan political system. This requires qualitative political and societal conditions, which are still insufficiently available, as their full achievement is related to the political actors' capacity to develop a new social contract based on the even distribution of power and wealth.



## 1. The need for a new repartition of power in the Constitution

Morocco has never witnessed a qualitative change in the repartition of power despite the multiple amendments of the first Constitution (1970, 1972, 1992 and 1996), which kept the same repartition with some minor changes comparing to the December 14, 1962 Constitution. Therefore, the Parliament remained rationalized (bound), and this imported characteristic was added to dishonorable practices (lack of neutrality in electoral processes, the progressive decline of the parliamentary elite), which deepened the Parliament lack of capacity to propose new laws and led to the decline of its image in people's minds. This report does not aim at stating the constitutional changes needed to stress upon the importance of the Parliament yet again. However, it highlight the importance of **strengthening the basic elements of the Parliament in its relation with the King (reconsider the concept of representation and separation of powers) and forming the government based on the parliamentary majority while taking into account all the ensuing political and legal results in the relation between the two powers, which entails on the political level the transformation of the Parliament from a mere services institution to an effective power.**

## 2. The need to democratize the activities of parties

Parliamentary activity is embodied par excellence in the activities of parties. Therefore, the effect of amending the **Constitution is linked to the importance in which the value of democracy is held in the performance of parties.** Not only is the Parliament required to regain its natural position within the constitutional and political system and orient its competencies towards the King and the government; the parties are also called upon to assimilate value of this change and **consolidate it by providing the Parliament with an elite that is able to understand the concept of representation and strive for initiatives, actions, follow-up and evaluation, all of which call for a drastic and qualitative change in the parties political practice.** In its relation with the successive parliamentary experiences, the existence of multiple parties in Morocco has proven **that essential elements behind the weakness of parliamentary activity are intimately linked to the reality of parties activity and the limited character of democracy to be fond both within and among these parties.** Many factors contributed to crippling the concept of representation and divest it of its political and cultural meanings, the most important of which is the difficulty to make the principle of positive neutrality prevail in our electoral culture. Nevertheless, some parties share with the administration the **blame for impoverishing the concept of representation and turning it**



**into an opportunity for getting rich for no reason at all.** This has consequently promoted the deterioration of the Parliament image in the collective awareness of the electoral body, thus leading to the fact that the effective participation in the latest legislative elections in Morocco (September 27, 2002) did not go beyond 36 %.

### **3. The need for a parliamentary elite with a democratic political culture**

The democratic culture is an essential condition for establishing the Parliament of the future, and not the hypothetical or imaginary Parliament. The report highlights the weakness of the democratic political culture as one of the factors explaining the poor performance of the Moroccan Parliament. **We consider both the state and various political actors to be responsible, albeit to different degrees, for the current situation of the legislative institution.**

**The state contributed to the emergence of a new concept of values transforming the Parliament into an enrichment institution by buying consciences, using the power of money and arranging the construction of alliances within the legislative institution. Yet the state did not create this example alone as it found partners ready to help it in this process. Those forces that opposed the lack of integrity and neutrality of the state discovered as they grew more experienced within the opposition that democratizing the state and its institutions started with democratizing "oneself", i.e. the party as an entity that is independent of the state and its system of values. Therefore, the difficulty of implementing the value of democracy within the parties led to the difficulty of shaping a professional parliamentary elite capable of accumulating a democratic political culture that can preserve the profound aim of the representation concept and its political and cultural dimensions.**



## **Second – The horizontal level:**

The second level is linked to **the horizontal reforms pertaining to the Parliament relation with the government and which do not tackle the core of the power as it was distributed in the first Constitution (1962)**, especially with regard to the status of the royal institution and the latter accumulating practices due to the interpretations of some constitutional provisions and key principles relevant to the political life. Indeed, the legislative institution has witnessed a series of reforms that backed away from the spirit of the 1962 Constitution (as in the July 28, 1970 Constitution) or sought to return to it (as in the March 10, 1972 Constitution), which was noticeable in the 1992 and 1996 amendments. **In reality, most of the reforms on this level remained under the ceiling of the founding 1962 constitutional document, i.e. a rationalized (bound) Parliament with regard to competencies, having limited roles and functions and lacking the constitutional opportunities and objective conditions allowing the accumulation of an efficient, rational and creative practice in its relation with the various political institutions.**

The report stresses upon the fact that the Parliament did not **make the best use of its constitutional competencies. It is required to implement them so that the Parliament is seen as the guardian of the constitutional legitimacy, i.e. to impose the implementation of the Constitution. Nothing prevents the use of all needed competencies through dialogue, discussion, difference in opinion and search for consensuses that do not harm the natural status of the Parliament as a force of proposal alongside other constitutional institutions. It is worth noting that, even as the perception of the Parliament progressively deteriorated throughout the successive parliamentary experiences including in the most democratic countries, MPs remained aware of the value of the representation concept and sought to defend the greatest causes of the nation thanks to the help of their parties and political organizations and the support of the public opinion that kept in touch with their actions through criticism and evaluation.** Among the elements worthy of being stated within the framework of the horizontal reforms that do not reach into the core structure of power as stipulated in the 1962 Constitution, we mention:

- 1. Respecting the provisions of the Constitutions and laws (mainly the rule of procedure) relevant to parliamentary activity, whether with regard to rules and procedures, or the MPs' rights, duties and commitments, such as highlighting the status of the legislative institution in the proposal, discussion and passing of laws within commissions, in plenary sessions or in**



between sessions. The same holds true for the respect of MPs' presence in the Parliament and the implementation of the relevant organizational provisions, thus helping transform the Parliament into an efficient legislation and control power instead of a mere services institution.

2. **The horizontal reforms include consolidating the capacities of parliamentary activity with regard to human resources and the resources needed for this purpose. The Moroccan Parliament needs bureaucracy in the positive sense of the word that is capable of granting it the strength to develop its administrative and technical activity. This requires the following:**
  - a. **The creation of an organization chart that sheds a light on its various departments and divisions, and clearly defines the functions and responsibilities of its constituent parts.**
  - b. **The promotion of the human capacity of its employees on all levels while submitting the system of choosing candidates to the standards of worthiness, competency and quality of the performance.**
  - c. **The consolidation of the Parliament communication opportunities by enhancing the possibility of benefiting from the opportunities made available by the digital revolution and new technologies.**
  - d. **The promotion of the Parliament image among citizens by facilitating access to its archives.**
  - e. **The introduction of the constant formation and capacity-building concept in the parliamentary culture and the promotion of openness to people of expertise and competencies that can help the legislative institution acquire the skills needed in cases of a highly technical and complex nature.**



### **Conclusion**

**If the structural reform of the Moroccan Parliament is seen as a difficult and complex process that is perhaps impossible to achieve on the short and medium term, then the horizontal reform is possible and necessary as it may be a bridge allowing access to the Parliament of the future, namely the efficient and rational Parliament.**



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