

MOROCCO

INTRODUCTION

Morocco has increasingly been seen as among the most democratic and progressive states in the region, having held regular elections for many years.¹⁷⁹ Despite this reputation, Morocco was not immune to the Arab Spring in 2011, when there were unprecedented protests in the country, leading to a revision of the constitution and a constitutional referendum, as well as changes to the electoral law. For many activists the constitutional reforms did not go far enough, and many Moroccans continued to be skeptical and cynical. Legislative elections under the new constitution and election law soon followed in November 2011. The voter registration system, which was part of the broader 2011 legal reform, was a central area of confusion and, in some cases, disenfranchisement in the previous parliamentary election in 2007 and again in 2011. Voter registration rates, and voter turnout in the country, are also quite low.

INTERNATIONAL AND REGIONAL AGREEMENTS

Significantly, Morocco has acceded to all of the international treaties relevant to democratic elections. These include the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the United Nations Convention Against Corruption.

LEGAL FRAMEWORK

Moroccan Constitution

The new constitution contains several provisions that apply to the voting process. Article 2 provides for free, sincere and regularly held elections. Significantly, Article 11 states, in part, “Free, fair and transparent elections are the bedrock of the legitimacy of democratic representation. . . . The law shall define rules for . . . full exercise of the fundamental rights and freedoms relating to election campaigns and voting. . . . Public authorities shall use all means deemed necessary to promote the participation of citizens in elections.” It is somewhat unusual for such proactive language to be in a constitution; having included such a provision, the government is bound to uphold it.

The constitution goes on to provide the right to vote for Moroccans abroad. Article 30 provides explicitly for this right to vote and adds, “The law shall make provisions to facilitate equal access of women and men to elected office. Voting is a personal and a national duty.”

179 However, there do continue to be problematic restrictions and human rights issues, especially with respect to freedom of expression and association.

2007 and 2011 Election Laws on Voter Registration

In Morocco, there is a 30-day registration period, the dates of which are determined by decree. New registration applications and changes to registration, such as a new address, are accepted during this period. Moroccans abroad can register in the municipality (referred to as a *commune*) where they have property or a professional or commercial activity.

The 2011 law, Bill no. 36.11 “on renewing and computer processing of the definitive general voters lists in view of their updating,” changed how registration is administered. Now, it is implemented by administrative committees composed of a judge designated by the first president of the court of the appeal in the commune or district, a representative of the commune or district council, and the “Pasha, Caid, Khalifa or their representatives,” which are appointed positions. This committee reviews registrations to ensure that the applicants live in the district, establishes a list of those who lost the right to register, marks errors in the list, invites people who registered without the national identity card (CIN) to provide identification before the deadline, and receives request to correct addresses. After this process, the committee is responsible for cleaning the list for accuracy and ensuring only those eligible are on the list. It must notify anyone it removes from the list in writing within three days.

The committee creates a provisional list, a list of deletions and a list of rejected applications. These lists are available for public review for five days and, according to the law, are provided to political parties upon request. There is a process for objections regarding inclusion or exclusion from the list to be made to the committee, and the decisions of the committee are made available for public review for five days. These decisions can be challenged in the administrative court or court of first instance.

A new process was established in the 2011 revision of the law for the computer processing of the list at this stage. Under Article 20, review is to be carried out by a committee composed of the president of a chamber of the Supreme Court, who serves as its president; a representative of each of the political parties; and a representative of the Ministry of Interior (MOI). This committee processes the data at a national, central level to ensure there are no duplicate registrations or other errors. Such problems are sent back to the administrative committees. The new list created by this “national technical committee” is made available for public review at the commune or district level for five days. According to the law, complaints about the list may be made to the administrative committee.

In 2007, the electoral law required election authorities to send registered voters postal notification slips, which included the assigned polling station and voter registration number. Registered voters also received voter cards with their registration number, which they could collect before election day or at the polling station on election day. When they went to vote, voters were required to present: 1) the voter card and 2) picture identification—either a CIN, passport, hunting permit, driver’s license, civil status booklet or professional card.

Under the 2011 law, the process was revised so that the national identity card alone was required for voting. No other documentation was needed or accepted. Notification slips were still sent to registered voters, but no voter cards were issued. When voting, voters were required to present only their CIN.¹⁸⁰

180 *Final Report on the Moroccan Legislative Elections, November 25, 2011*, National Democratic Institute, 2012, <https://www.ndi.org/files/Morocco-Final-Election-Report-061812-ENG.pdf>, 16.

Certain articles of the 2007 Law no. 9-97 forming the Electoral Code remained applicable. Article 2 makes registration mandatory (though as will be seen below, registration rates are nonetheless low). Moroccans who are 18 years of age at the time of registration should register in the commune where they have lived for three months—hence providing for a three-month residency requirement. However, the law also says that “in exceptional cases” one can register where they were born. Government workers may register where they work.

The 2007 law sets out the rules around eligibility; a great number of citizens cannot register to vote. For example, under Article 5, “Members of the military of any rank, officers of public force (gendarmarie, police, and auxiliary forces)” and certain other civil servants cannot register. Naturalized citizens cannot vote for the first five years of their citizenship. Others disenfranchised for five years are those with: a criminal sentence; a prison sentence for many different types of crimes, including such matters as public drunkenness; misdemeanors, including for such matters as undercover storage of products; and certain suspended sentences. In addition, individuals deprived of the right to vote by legal decision, condemned by a judge in absentia, subjected to or having undergone court-ordered liquidation of assets, or sentenced to a loss of national rights cannot register to vote for five years unless they have been amnestied or the condemnation has expired.

Article 19 allows citizens to register to vote outside the exceptional registration period that takes place by decree near elections. Given this regular open period from April 1 to December 31, the Moroccan process is virtually a continuous voter registration system.

2014-2015 Voter Registration

In anticipation of local elections expected in 2015, the Moroccan parliament amended the electoral law in late 2014. The changes now allow third parties to help voters register, and the MOI allows individuals to register online as well as in-person. A special registration was conducted between December 22, 2014 and February 19, 2015, bolstered by a public awareness campaign by the MOI and political parties with particular emphasis on encouraging young Moroccans who recently turned 18 and Moroccans living abroad to register. Although no formal independent monitoring took place, no significant issues were noted in the press or by casual observers. According to the MOI, immediately after the registration period, 1,767,280 new registrants were recorded, with over 30 percent of applications coming through the online interface.

2011 VOTER REGISTRATION PROCESS

As has been noted, the MOI is in charge of organizing elections, including the voter registration process. In 2011, it opened the 30-day registration period from September 28 to October 27, with a two-day extension after an initial public display. The ultimate registration list included 13,475,435 voters, representing 67 percent of the total eligible population, a rather low proportion compared to most other countries. According to NDI, “This number represented an overall decrease of approximately

two million voters from the 2007 registry, despite an increase in total population since 2007 and lowered eligible voting age from 21 to 18 years.”¹⁸¹ Indeed, although the government touted a 45 percent voter turnout for the election, the percentage of the voting age population that voted was a mere 28.65 percent, up less than one percentage point from 2007,¹⁸² when the turnout of registered voters was only 37 percent.¹⁸³

In a positive step, the Ministry released voter registration numbers disaggregated by gender, location and age online. Voters could also look up their registration information online and get text messages about their registration status (though it should be noted that while mobile phone technology is widespread across the country, internet penetration remains more limited).¹⁸⁴

The biggest administrative problems in the election revolved around the registration process. Despite increased efforts by parties and civil society and to some extent the government to promote voter registration, there was tremendous confusion due to insufficient public voter education about the process. Much of the confusion stemmed from the change in rules around documentation. According to NDI,

In the absence of publically available information about the changes in eligibility and identification requirements, many voters expressed confusion about the process for voter registration. Some were unsure whether they would have to register again after having registered for the constitutional referendum. Some citizens who knew that the CIN, rather than a special voting card or notification, would be required for voting indicated to observers their understanding that they did not need to register because they already possessed their CIN. Other citizens told observers that they did not know where to register or that the closest registration site was too far away.¹⁸⁵

This indicates a failure to provide broad and understandable voter education in Morocco’s most recent election.

Another problem was that the lists at the polls presented voters in the order of their registration number. The only way a voter would know his or her number would be if he or she had his notification slip, which voters were not required to have. This substantially slowed the voting process.¹⁸⁶ Moreover, in this and other elections, although the administrative committees are required by law to provide the voter registration list to political parties, the parties have found it a challenge to actually obtain the list in final form and in a usable format.

181 National Democratic Institute, *Final Report*, 15.

182 The European Union observation report noted that there were 100,000 more voters on the list than there were for the 2009 local elections, but participation in local elections is normally lower across the globe. See *Rapport Final: Mission d’Experts Electorale de L’Union Européenne au Maroc*, European Union, 2012.

183 “Voter Turnout Data for Morocco,” International IDEA, October 5, 2011, <http://www.idea.int/vt/countryview.cfm?CountryCode=MA>. The European Union posited that this might have been because of the legitimate cleansing of the list or the boycott by several organizations and parties. However, there was also widespread cynicism across much of the population, and the structural barriers outlined here may also have been factors. See European Union, *Rapport Final*.

184 European Union, *Rapport Final*, 27.

185 National Democratic Institute, *Final Report*, 15.

186 National Democratic Institute, *Final Report*, 21.

2007 VOTER REGISTRATION AND ELECTION

The MOI made a major push to increase voter registration in 2007, though it fell short of its goal of 3 million new registered voters, registering 1.5 million. There were complaints throughout the process about the lack of transparency in the revising and updating of the list, including computerized processing, a matter that may have been improved by the 2011 law.¹⁸⁷

The major problem was that voters were required to pick up voter identification cards either prior to election day or at the polling place on election day; however, many polling places were too disorganized to distribute the cards effectively, causing some voters to be disenfranchised. This practice was abolished in 2011, but as referenced above, the new rules led to different problems.

OBTAINING THE NATIONAL IDENTITY CARD

It is now required under Moroccan law to have a national identity card, the CIN, to register and vote. Thus it is important that all Moroccan citizens eligible to vote have access to this document. The system for acquiring the card has become more important as Morocco has moved to a biometric identification system.¹⁸⁸

Normally, a citizen must go to the police department where he or she lives to apply for a CIN at the age of eighteen. He or she must present a number of different documents: a birth certificate, proof of residence (such as a certificate of residence, ownership or rental agreement, or an electricity or telephone bill), two small identity photographs, and a receipt stamp in the amount of 75 Moroccan dirhams (MAD, approximately US\$8).¹⁸⁹

There have been some concerns raised in the press about access to the new biometric identity cards that may be required for upcoming elections. One issue that has been raised is that one needs to provide the version of the birth certificate that can only be obtained at the office where one's birth was registered, which may of course no longer be anywhere near where one currently lives. Additionally, some Moroccans may never have had their births registered.¹⁹⁰

187 National Democratic Institute, *Final Report*, 16.

188 Mark Rutherford, "Morocco Issues Biometric ID Cards," CNET, December 1, 2008, http://news.cnet.com/8301-13639_3-10110050-42.html. Originally scheduled to conclude by the end of 2013, the process was extended by the authorities until December 31, 2014, but most observers suggest that the process was completed in early 2014: "Morocco Issues More than 20 Million Biometric ID Cards," *News 24*, January 13, 2014, <http://www.news24.ma/morocco/story/2014/01/13/morocco-issues-more-than-20-million-biometric-national-id-cards-0213813.html>.

189 *Morocco: The National Identity Card, Including the Information on It and the Process for Obtaining the Card and a Replacement Card*, Immigration and Refugee Board of Canada, January 22, 2007, <http://www.refworld.org/docid/469cd6d01e.html>.

190 Hind Soubai Idrissi, "The Curse of Moroccan Bureaucracy," *Talk Morocco*, trans. Hisham, August 29, 2010, .

ISSUES UNDER INTERNATIONAL LAW

Insufficient Public Education about the Voter Registration Process

International law regarding the state's obligation to make the voter registration process understood by the citizenry could not be more clear. The UN interpretive document regarding Article 25 of the ICCPR says, "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required it should be facilitated and obstacles to such registration should not be imposed. . . . Voter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community."

Given the widespread lack of understanding regarding the registration process and documentation requirements in recent elections, Morocco cannot be said to be adequately fulfilling its obligations under Article 25. The government, in conjunction with civil society, needs to engage in broader and more robust efforts to ensure citizens have the information they need to exercise their voting rights, beginning with the registration process.

Documentation Problems

Identification requirements for voting that are difficult or impossible for some citizens to meet may violate international norms. The UN Human Rights Committee's General Comment 25, explaining obligations under ICCPR Article 25, establishes that, "The right to vote may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements." Even more pertinent, the General Comment also says, "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed." Onerous documentation requirements can be found to be discriminatory, unreasonable and/or an obstacle to registration and thus in contradiction to the ICCPR, especially when such hardship falls particularly on certain groups of voters such as ethnic minorities, the poor or women. Further, NDI guidelines state that,

The legal framework must address a myriad of issues to ensure a genuine opportunity to exercise the right to vote on the basis of equal and universal suffrage. . . . The provisions must ensure, among other things, that: . . . voter identification and related procedures that are nondiscriminatory concerning race, color, religion, language, national origin, other status or political or other opinion, that prevent disenfranchisement of eligible voters and avert illegal voting.¹⁹¹

The confusion and disorganization around the documents needed to vote in the most recent election cycles may have been associated with revised regulations, but nonetheless represent obstacles to voting in contradiction to the ICCPR. Moreover, now that the CIN is the only document accepted for voting, it is necessary that all eligible voters have easy access to it. The fact that there is a fee for the CIN could be construed as an additional unacceptable barrier. General Comment 25 makes clear there can be no property requirements and that poverty should not be an impediment to exercising voting rights.

191 *Promoting Legal Frameworks for Democratic Elections*, National Democratic Institute, 2008, <https://www.ndi.org/node/14905>, 50 .

Eligibility Restrictions

Under Moroccan law, naturalized citizens must wait five years to be eligible to vote. This runs contrary to Article 25 of the ICCPR, as General Comment 25, paragraph 3 states, “Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with Article 25.”

Moreover, a great many groups of citizens are excluded from the franchise, more than in many countries. To comply with international obligations, the Moroccan government should consider making the vote accessible to a broader range of the population. This especially applies to those who have been convicted of minor offenses and those who have been bankrupt. General Comment 25 establishes that the right to vote can only be limited by reasonable restrictions, based on objective and reasonable criteria, and specifically says, “If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.” Under Moroccan law, members of the military, police and “certain other civil servants” cannot register to vote for general elections, though they can do so for national referenda.

Authority over the Process

Under the Moroccan system, the MOI has authority over the registration process. This runs contrary to the increasing practice of states around the world of establishing election management bodies that are wholly independent from the executive branch of government. General Comment 25, paragraph 20 states, “An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.”