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3.1.3 When law addresses the environment: a matter of principle or a deep-seated concern?

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Introduction

In the wake of their recent political and social transformation, the three central Maghreb countries have adopted constitutions and legislations that address new and emerging questions and give greater focus to issues that had previously been dealt with on a minor level only. These issues include the environment, an urgent matter on a regional and global level and a theme that the law has seized upon for various reasons, taking account of ecological imperatives but other factors too. Questions of symbolism, respectability, international pressure and even fashionable thinking have pushed the Maghrebin states to reform their constitutions and laws to account for human rights, the rule of law, regionalization, environmental protection and natural resources as well as multiculturalism. Our chapter will take a brief look at the recent constitutional and legal reforms in Morocco, Algeria and Tunisia to see the place these concerns occupy, the type of solutions delivered and their feasibility, and how they dovetail with the challenge of reforms of the law and by the law, their scope and their limits.

Morocco

Morocco is strongly affected by climate change due to its geographic location. The average increase in temperature across the country is estimated at 1°C, combined with significantly lower rainfall (a drop of between 3% and 30% depending on region), extreme events (e.g. droughts and floods), more frequent heatwaves and fewer cold spells, rising sea levels, phenomena all witnessed over the past few decades. Climate forecasts point to a gradual rise in aridity across the country, related to lower rainfall and higher temperatures, with these events occurring increasingly frequently after 2050.

Public policies

An endogenous development policy giving key focus to the availability of water resources has long been implemented. As the world mobilizes to tackle climate change, Moroccan leaders are rightfully upholding the policy of dams promoted by the late King Hassan II for more than half a century.

Morocco has therefore long been aware of and preparing for climate issues and, against this background, has taken a proactive political approach on the international stage. After the 1992 Rio Summit, the Kingdom made a renewed commitment to reform with a concern for sustainable development and environmental protection. In fact, the monarch took every opportunity to speak about the need for sustainable development. For example, during the national debate on the drafting of a Charter for the Environment in 2010, the King emphasized the importance of incorporating the environment into government action and the

need to drive the sustainable development process, making sure ecology plays a central role. The Charter is devised as the basis for "green growth and the new economy, opening up vast perspectives for the emergence of innovative activities likely to create jobs".

Morocco ratified the UNFCCC in 1995. It hosted COP7 in 2001. In 2009, the Moroccan government presented the "National Climate Change Action Plan". In June 2015, a national conference was held, under the high patronage of the King of Morocco and the chairmanship of the head of government, to present Morocco's contribution to the action against climate change. On the fringes of this conference, an agreement to recover household waste for power generation was signed with the cement industry's professional association. In September 2015, King Mohammed VI and French President François Hollande signed the Tangiers Call, a joint declaration for "strong action and solidarity for the climate". The Tangiers Call comes after the Manila Call and the Fort-de-France Call.

An Environment Ministry has also been created, headed by Mrs. Hakima El Haite, doctor in environmental science. She took part in negotiations at the Warsaw (COP19, 2013) and Lima (COP20, 2014) conferences. In the wake of COP21, the Environment Minister was appointed "Climate Champion" for Morocco. She is also a member of the COP22 steering committee. Nonetheless, environment and climate policies are not reserved to a single ministry. They are cross-cutting issues involving various ministries and authorities including the High Commission for Water and Forests and the Fight against Desertification, and the National Electricity and Drinking Water Authority (ONEE). The Moroccan government's policy on climate was set out in a document published my Mrs. El Haite's ministry in 2014[1]. Within the framework of the United Nations Framework Convention on Climate Change, Morocco regularly reports to the United Nations. Its latest report was produced in January 2016[2]. It refers to the drafting of a National Low Carbon Development Strategy and a National Climate Change Adaptation Plan in 2016.

Morocco has set up a coordination tool known as the PCCM (Moroccan Climate Change Policy). The PCCM encompasses various programs and strategies implemented to tackle climate issues, on the basis of which a "National Vision" has been drawn up, combined with a National Adaptation Plan (NAP) to identify priority actions in response to urgent and immediate CC adaptation requirements.

Replacing the term "climate change" with the slogan "climate chance", Morocco volunteered to host COP22 in Marrakech in 2016. At the opening session of COP21, King Mohamed VI declared that holding COP22 in Morocco is an opportunity to put the spotlight on Africa "where our planet's fate will be decided". At the same time, the King called for the consolidation of a comprehensive, operational, balanced and universal legal instrument to restrict global warming. Morocco defends an international climate policy with "common but differentiated, historical responsibilities". It endeavors to promote South-South cooperation

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[1] The climate change policy. Ministry reporting to the Minister for Energy, Mines, Water and Environment. March 2014 (document in French).
http://www.environnement.gov.ma/PDFs/politique_du_changement_climatique_au_maroc.pdf

[2] The report or the Third National Communication to the United Nations Framework Convention on Climate Change, January 2016 (document in French). Ministry reporting to the Minister for Energy, Mines, Water and Environment.
http://www.yabiladi.com/img/assets/TCN_web.pdf

on climate issues, most notably with the foundation of a climate change skills center, a structure with African, Arabic and Islamic offshoots.

As a sign of its willingness, Morocco was the first Arabic country – and one of the first countries in the world – to submit its Intended Nationally Determined Contribution, i.e. its national mitigation target on greenhouse gas emissions. It has undertaken to reduce its emissions by 13% by 2030 and would eventually like to achieve a 32% fall with international financial backing, most notably the Green Climate Fund.

Salaheddine Mezouar, the Minister for Foreign Affairs and chair of the COP22 steering committee, presented the Moroccan 2020 action, which focuses on three areas: pushing for climate finance, adapting African agriculture to climate change, and maintaining protective measures against desertification.

In turn, Moroccan civil society has begun to tackle climate issues, taking a critical approach to the State's policy. A Moroccan Alliance for Climate and Sustainable Development (AMCDD) was founded in May 2015. It brings together Moroccan associations and networks active in the fields of climate change and sustainable development. In July, with backing from the MFP/UNDP and the EU, it organized a workshop to analyze and discuss the drafting and implementation of Morocco's public policies and international commitments to tackle climate change. The workshop pointed to the limited integration of Morocco's climate change policy in public policy and most sector plans. ATTAC Morocco criticized the "illusory commitments" made at COP21[3].

Finally, Morocco has entered top 10 in the Climate Change Performance Index introduced by Climate Action Network Europe and Germanwatch, moving up from 15th place in 2014 to ninth in 2015.

Constitutional and legal measures

Morocco's legal development reflects the significant focus placed on the environment and sustainable development. There has been a shift away from one-off measures applied in response to endogenous economic growth or sector-related management issues, towards a policy of integration into the international framework promoting sustainable development and action against climate change. This process is reflected in the latest Constitution, drafted in 2011, where the notion of sustainable development is enshrined[4]. An economic, social and environmental council was established by the new Constitution.

In 1995, Morocco signed and ratified the main international conventions applicable to the environment, including the Convention on Biological Diversity (CBD), the United Nations Convention to Combat Desertification and the United Nations Framework Convention on Climate Change.

From a legislative viewpoint, a framework law (Loi-cadre no. 99-12 in 2014) was adopted, serving as a national charter on the environment and sustainable development. The national

[3] Attac Morocco. Report on Climate Justice in Morocco (in French). http://cadtm.org/IMG/pdf/Attac_Rapport_Justice_climatique_FR.pdf

[4] : "{…} It {the State} works towards achieving sustainable, human development, able to ensure the consolidation of social justice and the conservation of national natural resources and the rights of future generations."

sustainable development strategy was drafted on the basis of the measures set out in this framework law. A comprehensive legal package on environmental protection has been adopted (most notably law no. 10–95 on water promulgated by Dahir no. 1–95–154 dated 16 August 1995; law no. 11-03 (2003) concerning the protection and promotion of the environment; law no. 12-03 (2003) concerning impact studies; law no. 13-03 (2003) on action against air pollution; law no. 28-00 (2006) concerning waste management and disposal; law no. 57-09 (2010) on the creation of the Moroccan Agency for Solar Energy; law no. 22-07 (2010) on protected areas; law no. 22-10 (2010) on the use of degradable and biodegradable plastic bags and sachets; law no. 16-09 (2010) to turn the Centre for the Development of Renewable Energy (CDER) into the National Agency for the Development of Renewable Energy (ADEREE); law no. 13-09 (2011) on renewable energies; law no. 47-09 (2011) on energy efficiency; law no. 58-15 (2015) amending and supplementing law no. 13-09 (2015) on renewable energies; law no. 81-12 on coasts).

The existing institutional framework was inadequate and unconducive to the coordination and arbitration of public policies. It became apparent that there was a need for cross-cutting measures involving all sectors concerned if climate policy was to be implemented. The national vision promoted by Morocco most notably aims to strengthen the institutional mechanisms stemming from the Framework Law on the Environment and Sustainable Development, which defines the institutional structures, their roles, specific tasks, composition and resources.

Algeria

Let us provide a few figures, which are more eloquent than any analysis of the scale of the ecological catastrophe in Algeria: 43% of the Algerian population lives in a 50-km-wide, 1,200-km-long strip, with a population density of 281 people per square kilometer (versus a national figure of 12 per square kilometer), where 5,242 industrial units are also located (i.e. 51% of the national total); 1,053,907 m^3 of mixed wastewater is discharged daily in the 11 main ports, 12,000 metric tons/year of oil is discharged by large cargo vessels and only 5% of waste is recycled; more than 8,684 metric tons of solid urban waste is sent to 380 uncontrolled landfills located along the coastal strip, while an increase in illegal extraction is leading to the retreat of sandy coastlines; utilized agricultural area (UAA) is shrinking dramatically (it stands at 0.007 ha/inhabitant in coastal communities).

This is a pretty bleak picture. So what can the law do about it? Amendments to Algeria's legal framework covering environmental protection have been made within a general context of legal insecurity brought about by repeated changes to the systems and models of governance.

National and international instruments

Algeria has ratified the following international instruments: the African Convention on the Conservation of Nature and Natural Resources of 16 September 1968 in Alger[5]; the Convention on Wetlands of February 1971 in Ramsar (Iran)[6]; the 1972 Paris Convention

[5] Decree no. 82–440 of 11 December 1982 ratifying the African Convention on the Conservation of Nature and Natural Resources, signed in Alger on 15 September 1968. JORA (official journal) No. 51 of 11 December 1982, Page 1685

[6] Decree no. 82–439 of 11 December 1982 concerning Algeria's adoption of the Convention on Wetlands, of international importance, especially as a wildfowl habitat, signed in Ramsar (Iran) on 2 February 1971,

concerning the Protection of the World Cultural and Natural Heritage[7]; the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed in Washington on 3 March 1973[8]; the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989; the Vienna Convention for the Protection of the Ozone Layer of 22 March 1985 and the Montreal Protocol on Substances that Deplete the Ozone Layer, agreed on 16 September 1987; the United Nations Framework Convention on Climate Change of 9 May 1992 in New York and the United Nations Convention on Biological Diversity agreed on 5 June 1992 in Rio de Janeiro; the United Nations Convention to Combat Desertification adopted in Paris on 17 March 1994. In addition to these conventions, the country has also signed up to: the Dublin Statement on Water in 1992; the Stockholm Statement; the United Nations Conference on Environment and Development held in Rio de Janeiro on 13 June 1992 (Rio Declaration and Agenda); and the 2002 World Summit on Sustainable Development in Johannesburg.

At COP21 in Paris in 2015, Algeria committed to a 7% unconditional cut in greenhouse gas emissions (rising to 22% with international financial aid and assistance and international technology transfers). A National Climate Committee – with close involvement of the CNES (National Economic and Social Council) – has also been set up to monitor, coordinate and assess these issues.

However, it is not enough to simply ratify treaties: they also have to be incorporated into national law or enforced (by judges in particular) in virtue of the principle of primacy of international treaties over domestic law. The real picture is far less attractive as no one has been bold enough to submit a legal claim calling for the international agreements ratified by Algeria to be applied, and the courts also refuse to comply.

We need to look beyond the hierarchy of laws to determine the prevalence of environmental concerns. The latest version of the Algerian Constitution (dating from 2016) includes two measures: Article 17 *bis* stipulates that “the State guarantees the rational use of natural resources and their conservation for the benefit of future generations. The State protects agricultural land. The State also protects public water resources.” Article 54 *ter* states that “Citizens have a right to a healthy environment. The State works to protect the environment. The law defines the obligations of individuals and legal entities with regard to environmental protection.”

The environment is enshrined in the positive legal system in four main laws: (i) Law 83-03 of 5 May 1983 on environmental protection[9] testifies against the preceding socialist era of polluting industries. It makes the conservation, defense and improvement of the environment a public interest issue. It states that nature, habitats and the environment are to be protected against hazardous activities; (ii) Law 01-19 of 12 December 2001 on waste management, control and disposal,[10] which recommends the development of waste recovery, treatment, disposal and management activities; (iii) Law 02-02 of 5 February 2001 on the protection and promotion of the coastline. It organizes coastal use and management (land use planning); (iv) Law 03-10 of 19 July 2003 on environmental protection within the context of sustainable

[7] Order no. 73-38 of 25 July 1973 ratifying the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage.
[8] Decree no. 82–498 of 25 December 1982 on Algeria’s adoption of the Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora dated 3 March 1973.
[9] Official Journal no. 6 dated 8 February 1983, p. 380.
[10] Official Journal no. 77 dated 15 December 2001

development. Its authors set out the following principles: conservation of biological diversity, prevention of damage to natural resources, substitution, integration, prevention and repair of environmental damage caused by the priority source, precaution, polluter pays, motivation, information and participation.

Mechanisms and institutions

We can now look at the mechanisms and institutions tasked with making sure this legal package is effective. There are three techniques: planning, impact studies and tax incentives. The polluter-pays principle is implied in the 1992 budget act, which introduced a tax on polluting or environmentally hazardous activities[11]. It is stated more explicitly in Article 3 as one of the basic tenets of the 2003 law, and defined as a principle "whereby any person whose activities cause or are likely to cause environmental damage shall bear the costs of all measures required to prevent or mitigate pollution or to clean up the site and its environment."

Various institutions are charged with protecting the environment; at government-level, the administration has undergone a series of changes: from the time of establishment of the first environment-related body in 1974 (the National Environment Board) to the creation of a Secretariat of State for the Environment in 1996, the service has reported to various departments, namely the Water department in 1984, Research and Technology in 1988, Education and Higher Education in 1993, and the Ministry of the Interior, Local Authorities and Administrative Reform in 1994. The Secretariat of State for the Environment founded in 1996 only survived three years until 1999 when its prerogatives were transferred to the Ministry for Public Works, Land Use Planning, the Environment and Urban Affairs. Finally, a Ministry for Land Use Planning and the Environment was set up in 2001.

The issue of environmental protection has been partially decentralized, with responsibility incumbent upon communities and the *wilaya*. Order no. 67-24 of 18 January 1967 concerning the communal code, as amended and supplemented by law 81-09 of 4 July 1981, invites the people's communal assembly to "take part in all efforts aimed at protecting the environment and to work towards its improvement across the community's territory" and at "improving of the quality of life and efforts to reduce pollution" (Art. 136). In law 90-08 of 7 April 1990 concerning communities, subsequently supplemented, Article 92 permits the people's communal assembly to carry out prior checks into all projects incurring environmental risks. Law no. 11-10 of 22 June 2011 concerning communities states that "the implementation of any investment and/or infrastructure project or any project that is part of a sector program for development of the community's territory shall require approval by the people's communal assembly, particularly with regard to the safeguarding of agricultural land and impacts on the environment" (Article 109). Concerning the *wilaya*, Article 33 of law 12-07 of 21 February 2012 provides for a permanent commission responsible for "health, hygiene and environmental protection".

In addition, there is an array of administrative structures serving the environmental cause, in the form of observatories, centers and agencies. Algeria has two observatories involved in environmental matters: the National Observatory on the Environment and Sustainable Development, and the National Observatory on the Promotion of Renewable Energies. It also

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([11]) Article 117 of law no.91/25 dated 18 December 1992 concerning the 1992 budget act, JORA (official journal) no. 65, dated 18 December 1991.

has two centers, the National Centre for Cleaner Production Technologies[12] and the Centre or the Development of Biological Resources[13]. Finally, there are four agencies[14], the National Agency for Nature Conservation, the National Waste Agency, the National Earth Sciences Agency, and the National Climate Change Agency.

There are three dimensions to the green economy: firstly, green or sustainable entrepreneuring; secondly, sustainable consumer habits and production methods; and finally, corporate social responsibility. Recent studies point to extraordinary entrepreneurial potential because 99% of the energy used is from finite, fossil sources causing pollution and requiring subsidies. 40% of that energy is for household use. It causes significant environmental damage (discharge and storage of hazardous chemical waste). As concerns the second aspect, sustainable consumer habits and production methods, let us take the example of the plastic bag. It is firmly embedded in Algerian society: the average person uses 200 every year. The country's total consumption is estimated at 7.7 billion units a year. Old habits die hard, despite the alarm signals being rung across the world to warn of how dangerous this type of packaging is for public health and the environment. As for corporate social responsibility, ISO standard 26000 describes this as "the responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behavior that contributes to sustainable development, including health and the welfare of society." Seventeen public and private companies have introduced ISO 26000 on social responsibility and innovation. A pool of 14 national experts has been formed while 17 voluntary organizations have signed up to implement the principles of social responsibility, compliant with the terms of the standard and as part of the CR MENA (social responsibility for the Middle East and North Africa) project.

Tunisia

Under the presidency of Zine el Abidine Ben Ali (1987–2011), environmental protection appeared to be one of the flagship issues in public policy. It came within the protective scope of the authoritarian state and, in the urban environment, was symbolized by the green and flower-decked boulevards that crisscross most Tunisian towns. As part of a highly controlled step towards political openness, the authorities accepted the legalization of a small ecology party, the Green Party for Progress, in 2006. From 1991 onwards, public policy resulted in the creation of a fully-fledged Ministry of the Environment (and Sustainable Development as of 2005). The ministerial structure has twice been downgraded to the status of secretariat of state, first in 2002–2003 when current prime minister Habib Essid, was minister, then again after the revolution, from January 2014 to February 2015, headed by Mounir Mahjdoub under Mehdi Jomaâ's interim government. The present minister is Nejib Derouiche.

In 1993, compliant with the recommendations of the 1992 Rio Summit, a National Sustainable Development Commission was founded to coordinate the various stakeholders in environmental policy. In addition, the government was supported by a number of agencies, first and foremost the Environmental Protection Agency (ANPE), founded by law on 2 August

[12] Executive decree no. 02-262 of 17 August 2002 concerning the creation of the National Centre for Cleaner Production Technologies.
[13] Executive decree no. 02-371 of 6 Ramadhan 1423 (11 November 2002) concerning the creation, organisation and operations of a Centre for the Development of Biological Resources, JORA (official journal) no. 74 of 13 November 2002, pp. 6–9.
[14] Executive decree no. 91-33 of 9 February 1991 concerning the reorganisation of the National Museum for Nature to create a National Agency for Nature Conservation.

1988, then the Coastal Protection and Development Agency (APAL) in 1995, the Tunisian Waste Management Agency (ANGED) in 2005, and other public establishments such as the National Sewerage Board (ONAS), founded in 1974 and restructured in 1993, and the Tunisian International Environment Technology Centre (CITET), opened in 1996. There are several agencies involved in environmental policy that report to other ministries, including the National Energy Management Agency (ANME), under the Ministry of Industry, and the Urban Rehabilitation and Renovation Agency (ARRU), under the Ministry of Infrastructure.

In addition to this denser institutional network, environment law has been strengthened via a series of legislative and regulatory measures – the law of 17 July 1995 on water and soil conservation; the law of 10 June 1996 concerning waste management and disposal; the law of 4 June 2007 on air quality – often following on from the international conventions ratified by Tunisia.

On the basis of this framework, judges are able to make a judicial contribution to the drafting of environmental law in Tunisia. [15] However, although the government in place promoted environmental protection, it failed to implement the two actions required to bring environmental law into being: its constitutional enshrinement, necessary despite the numerous overhauls of the constitution under the presidency of Ben Ali, and its codification with the drafting of an environment code.

Constitutionalization

The constitutionalization of environmental protection finally began with the law dated 16 December 2011 on the provisional organization of public powers, serving as a "temporary constitution" during the interim period. Its Article 6 stipulates that the basic principles on the environment and land use planning, together with the basic tenets of energy management, are a matter for law. However, environmental protection was enshrined in the constitution in a much more remarkable way on 27 January 2014. The preamble to the Constitution states the need to contribute "to the preservation of a healthy environment that guarantees the sustainability of our natural resources and bequeathing a secure life to future generations". Article 12, included in the section on general principles, declares that "The state shall seek to achieve social justice, sustainable development and balance between regions based on development indicators and the principle of positive discrimination. The state shall seek to exploit natural resources in the most efficient way." Special focus in put on natural resource management in Article 13: "Natural resources belong to the Tunisian people. The state exercises sovereignty over them in the name of the people. Investment contracts related to these resources shall be presented to the competent committee in the Assembly of the Representatives of the People. The agreements concluded shall be submitted to the Assembly for approval."

With regard to this sensitive issue that has led to several political mobilizations over recent years ~~(*winou el petrole?*)~~, the Constitution provides for parliamentary monitoring of the executive's decisions, and for the mechanisms enabling redistribution of income at national level (Article 136).

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[15] See the Administrative Tribunal of Tunisia's document, *Les sources du droit de l'environnement en Tunisie,* Cartagena conference, 2013 report from Tunisia (in French), http://www.aihja.org/images/users/114/files/Congres_de_Carthagene_-_Rapport_de_la_Tunisie_2013-TUNISIE-FR.pdf.

All citizens have the right to a "healthy and balanced" environment, which entails an obligation for the State, according to Article 45 in the section on rights and freedoms: "The State guarantees the right to a healthy and balanced environment and the right to participate in the protection of the climate. The State shall provide the necessary means to eradicate pollution of the environment." A broad interpretation of this obligation justifies Tunisia's contribution to action against climate change via the United Nations Framework Convention on Climate Change. This right is clearly exercised when it comes to water (article 44)**: "**The right to water shall be guaranteed. The conservation and rational use of water is a duty of the state and of society."

Finally, the Constitution confers an intrinsic guarantee on environmental protection, with the creation of an independent constitutional body, the Commission for Sustainable Development and the Rights of Future Generations (Part Four, Article 129)[16].

Deteriorating environmental conditions and inadequate legal framework

In the long institutional transitional period experienced by Tunisia since the fall of President Bel Ali, the constitutional enshrinement of environmental protection has not prevented the ongoing deterioration of environmental conditions. "The environment is the first victim of the revolution," believes ecologist militant Abdelmajid Dabbar[17]. This divergence has been maligned in the press, which has highlighted issues with high visibility such as waste collection. It has given rise to a far-reaching critical approach from civil society organizations, for example at the social environment forum held in Monastir from 6 to 8 February, ahead of the World Social Forum. Most notably, participants called for the development of special laws on the environment and the definition of an environment code.

When it comes to environmental protection, one of the main tasks for the public sector is waste collection and treatment[18]. Yet this job is primarily delegated to local authorities, which have been thrown into chaos since the revolution. Municipalities have been dissolved and replaced by special delegations, which are not elected and are therefore of questionable legitimacy[19]. They have insufficient human resources and there have been long strikes in the cities. Financial resources are all the more limited since taxes (especially housing tax) are not being collected. Catastrophic images of the consequences of the authorities' incompetence in the area of waste collection means that the debate has been entirely focused on this question.

State institutions are not running as smoothly as they should be either. This affects communication campaigns and the statistical analysis and control of types of pollution that

[16] This body was omitted in the text of the penultimate draft constitution in April 2013. It was reintroduced after strong protests from ecological groups and the Network for Nature and Development in Tunisia (RANDET), and the group known as Eco-Constitution Alternative.

[17] It should be noted that the green parties did not make much headway in the revolutionary context. The main party, Tunisie Verte, founded in 2004 but not recognised under the previous regime, became part of the *Front Populaire* for a time (left-wing alliance) but split from it in 2014. The green parties are conspicuously absent at presidential and legislative elections.

[18] For a comprehensive analysis of the waste collection and treatment issue, see Lilia Blaise for Inkyfada (in French), *Poubelles, les points noirs de la Tunisie*, https://inkyfada.com/2014/08/enquete-dechets-tunisie-partie1-poubelles-points-noirs-infographies/.

[19] Electoral legislation for municipal elections is still under review by parliament.

are less visible than waste but just as dangerous[20]. Since the revolution, many areas have been taken on-board, including wastewater and drinking water quality, the conservation of forests, action against urban air pollution, and so on.[21] Yet the different authorities do not communicate and agencies no longer publish annual reports, meaning environmental policy is increasingly unintelligible. Another issue is the monitoring of Tunisia's application of the international conventions it has signed concerning the environment[22].

Since 2011, there has been little room for environmental issues on the agenda of the legislative bodies – the national constituent assembly then the Assembly of the Representatives of the People – as the program has been dictated by the constitutional and electoral calendar. The constitutional debate may have raised a number of environmental issues, as mentioned above, but discussions have remained consensual across the political spectrum. They were only dealt with from a legislative angle with regard to another priority, the country's security situation, when the ARP adopted the organic law dated 7 August 2015 on the fight against terrorism and money laundering. Article 13 of that law includes the following in the list of terrorist actions: actions that "impact food security and the environment, upset the balance of the ecosystem or natural resources, or endanger the population's lives or health"; "intentionally opening flood control barriers or spilling toxic chemical or biological products into dams or water facilities with the intent of harming the population". As for the drafting of an environment code, no date has yet been set. An initial diagnosis was conducted in 2013 within the framework of international cooperation (Tunisian-German environment program).

Conclusion

An examination of the constitutional and legal texts and the institutional adaptations required for implementation in the three Maghreb states reveals a general context of legal voluntarism but also its limits. In all three countries, we witness the emergence of concerns for the environment resulting in the introduction of a far-reaching legislative package, with the danger of falling into the trap of what the Egyptians call *al-hall bi-l-tashri'* or "legislative opportunism". In other words, every time an environmental issue arises, the law-makers are called on to put forward a solution with a new piece of legislation. Such legislative opportunism tends to neglect one important principle: thrift with words, with a subsequent impact on the effectiveness of the law. This trend is not specific to the Maghreb states and their environmental law. In fact, the law-making machine is a key characteristic of modern states. Nonetheless, when it comes to the environment, there is a huge gap between the content of an all-encompassing law and the actual conduct of individuals and businesses,

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[20] On this subject, see: Yassine Bellamine, *L'écologie en Tunisie, entre absence de considération et défi structurel*, http://nawaat.org/portail/2014/04/25/lecologie-en-tunisie-entre-absence-de-considerations-et-defis-structurels/ (article in French). On the question of excessive media coverage of household waste disposal (also in French): Habib Ayeb, *L'écologie en Tunisie entre environnementalisme de mode postrévolutionnaire et urgences environnementales et sociales*, http://www.huffpostmaghreb.com/habib-ayeb/lecologie-en-tunisie-entr_b_9304348.html.

[21] With regard to these issues, see the 2016 report from the Tunisian Observatory on the Environment and Sustainable Development and the related coverage in the Tunisian press on 8 June 2016. The Observatory was founded in 1995 and integrated the National Environmental Protection Agency in 2000.

[22] This is true of the Stockholm Convention on Persistent Organic Pollutants, for which Tunisia embarked upon a process of revising and updating its implementation plan, with financial support from various international organisations.

who are frequently unfamiliar with that content. The outcome is that the law remains unheeded.

However, this trend towards legislative inflation brings about a considerable benefit for states at an international level. A country's compliance with its international commitments is largely based on the drafting of texts showing that they have transposed the rules set out in the conventions into its own laws. In this respect, it does not matter whether or not the law is applied properly or at all: the signatory State's willingness has been established and, with it, the related benefits in terms of image, funding and geopolitical positioning. To sum up, the law fulfils a function but not necessarily the one expected. Environmental law is obviously not intended to be instrumentalized in this way. The same applies to human rights, democracy and the rule of law.

Nonetheless, environmental concerns have been enshrined in the legal and institutional mechanisms of the central Maghreb states for the long term. This can be seen in the three constitutions: citizens are entitled to expect a healthy environment and the State is required to protect it. While this may be ~~a~~ something of a fad, there is more to it than that. Enshrining this kind of principle in the basic law means it may later be invoked before the courts, including the constitutional jurisdiction. We are aware that this kind of appeal is conditioned by the political context specific to each State and, of course, involves sometimes huge economic implications. At the same time, this can trigger a virtuous circle – however small at first. If we take a skeptical stance and assume that the State wants to continue to benefit from its international environmental commitments, it cannot overtly oppose appeals for its own law to be upheld. It may be able to turn a blind eye to practices that fail to comply with its law, but it is more difficult for the State to disregard civil society's appeals founded on the law that it has drafted and upholds, especially when those appeals are echoed beyond the strictly local context. If we take a kinder stance, we assume that the State is seriously committed to protecting and improving its citizens' living conditions. This assumption is somewhat naive since there are numerous conflicts of interest in this domain, but it should not be immediately dismissed. The equation is quite simple: the more the State grants its population, the more consideration it gives to its quality of life.