



**A look at the evolution of notions of accountability
and responsibility: a study of Moroccan
constitutions from 1908 to 2011**

Hicham LAMHARTI

Doctoral student at Mohamed V University;
Faculty of Legal, Economic and Social Sciences –Agdal (Maroc)

Summary

The notions of responsibility and accountability have undergone a historical evolution with the advent of Moroccan constitutions.

For the purposes of our study we have divided this analysis over two periods: The first from 1908 to 1992 and the second from 1996 to 2011.

The first period from 1908 to 1992 is characterized by a system of non-judicial accountability in matters of higher control of public finances.

This period saw the end of the system of personal protection and the establishment of a system of accountability for ministers who become personally, politically and criminally responsible.

In terms of political control, this period saw the abolition of the chamber of advisors and the appearance of commissions of inquiry.

The second period from 1996 to 2011 is distinguished by a system of judicial accountability, especially with the birth of the Court of Account in 1996.

During this period, the 1996 constitution gave the Court of Account the rank of supreme institution for controlling public finances.

Also, the 2011 constitution capitalizes on the contributions of the 1996 constitution in terms of higher control of public finances and engages the responsibility of members of government and parliament before the law.



Moreover, this constitution offers, on the one hand, new democratic accountability mechanisms, notably participatory democracy and responsibility shared by all in public spending, and on the other hand, even in the existence of parliamentary immunity, the members of both chambers find themselves responsible and violable by the law for certain acts they commit.

Keywords :Accountability; Responsibility;Control;



In democratic constitutions the notion of accountability is correlated with that of responsibility. The latter is the foundation of any accountability system and it determines the rights and obligations of those who oversee the management of public funds.

In a State, the constitution is the supreme privileged text which traces the framework of the relationship between these two concepts and determines the field of intervention of each.

Certainly, States are increasingly integrating new principles of governance and accountability into their constitutions, because of the constant demands and the evolution of citizen thought.

The problem of this study concerns the understanding of the evolution of the two notions responsibility and accountability in order to identify and understand the responsibility control regime and its progression over time through an exhaustive study of the provisions of the different Moroccan constitutions from 1908 to 2011 as well as certain texts of their applications.

The objective of this study is to look at the development of the notion of accountability, especially by focusing on the accountability of ministers, members of parliament and the extent of responsibility in higher positions.

Furthermore, although there are cases that limit the responsibility and inviolability of certain categories of managers of public funds, it was crucial to study the limits of the irresponsibility and inviolability of these officials.



I. The genesis of a non-jurisdictional reporting culture (from 1908 to 1992)

A. Draft constitution of 1908: a modernist style putting an end to the system of personal protection

In accordance with the provisions of the draft Moroccan Constitution of October 11, 1908¹, ministers are now personally responsible² of all matters related to their departments³ and under the authority of the grand vizier who is responsible for managing all government departments.

This draft constitution prohibited illiterate people from accessing state functions and therefore limited accessibility to responsibilities within public administration.

In this project, four articles were reserved for public finances⁴ by specifying the responsibility and accountability of the minister of finance, the approval of the state budget, the implementation of controls and the sanction of mismanagement.

1. Accountability of the Minister of Finance before the advisory council

Article sixty-seven stipulates that as a member of the government, it is the responsibility of the Minister of Finance to present to the advisory council a report on revenues and expenditures⁵. At the same time, he is also responsible to him⁶.

2. Budgetary authorization granted by the advisory council

As for budgetary authorization, article sixty-eight prohibits the government from making any expenditure without the approval of the advisory council. It is up to the latter to authorize the government for the execution of public expenditure and revenue.

3. Extended budgetary control of the council of the nation

Regarding the control of public finances, article sixty-nine establishes a system of systematic inspection initiated by the initiative of the Council of the Nation.

¹It is a project which was never signed by the Sultan. It was published between October 11 and November 1, 1908 in the pages of the Tangier newspaper "Lissan Al Maghrib". Soon, the Fez Convention of March 30, 1912 established the French protectorate over Morocco.

²Article 8 of the draft constitution of 1908.

³Article 61 of the draft constitution of 1908.

⁴Are articles 67, 68,69 and 70.

⁵Article 67 of the draft constitution of 1908.

⁶Article 90 of the draft constitution of 1908.



Through its inspectors, this council carries out regular inspection missions on administrative affairs, thus covering the entire territory.

4. The role of the body of inspectors in protective disciplinary sanctions

During inspection missions, article seventy specifies that the body responsible for inspection evaluates and punishes the mismanagement of civil servants by replacing them with others until the Advisory Council has given its response concerning their cases.

B. Constitution of 1962: the renewal of political and criminal responsibility

1. Responsibility enriched by international standards

The initial constitution of Morocco was established in 1962 (1). Its preamble accords capital importance to international organizations. Participation in these organizations⁷ and the implementation of their charters are means of breaking out of isolation and an opportunity to promote high standards of responsibility according to international standards (2).

2. Extent of government political responsibility

According to this 1962 constitution, citizens must contribute to public expenses and national calamities according to their contribution capacities⁸. In exchange, the government answers weekly questions⁹ of parliament and is responsible to the king and the house of representatives¹⁰.

However, after having discussed in the Council of Ministers, the Prime Minister has the possibility of initiating the responsibility of the government before the

⁷Morocco devotes a special budget (special allocation account) to membership in international organizations, namely:

- the Bretton Woods Institutions Membership Account (Article 39 of the finance law for the 2005 budget year)
- the Membership Account for Arab and Islamic Organizations (Article 40 of the finance law for the 2005 budget year)
- the Membership Account for Multilateral Institutions (Article 41 of the finance law for the 2005 budget year).

⁸Articles 16,17 and 18 of the 1962 constitution.

⁹Article 59 of the 1962 constitution.

¹⁰Article 65 of the 1962 Constitution



House of Representatives, whether for a declaration of general policy or for the vote on a text¹¹.

However, in the event of a lack of confidence in parliament towards the government, it intervenes using a mention of censure, which leads to the collective resignation of the government and therefore the demand for its dissolution.

3. Political and criminal responsibility of ministers:

The scope of responsibility of ministers is extended. They are held accountable before the House of Representatives and the High Court of Justice when they commit crimes and misdemeanors while in office.

C. Constitutions of 1970 and 1972: lack of novelty in accountability

1. Constitution of 1970: maintenance of the prerequisites of 1962 and abolition of the chamber of advisors

The Constitution of 1962 replaced that of 1970 (3). It did not bring about any profound transformation with regard to responsibility and accountability. She maintained the government's accountability to the king¹² and the members of the House of Representatives by answering their questions, while preserving the collective contribution to public expenses according to its contributory capacities¹³. Likewise, members of the government are held criminally responsible during their activity¹⁴.

2. Constitution of 1972: Extended domain of the law and consolidated power of the Prime Minister

The 1972 constitution (4) saw the regime strengthened after the attempted coup d'état¹⁵. The structure and content of the articles are included in this third Moroccan constitution.

¹¹Article 80 of the 1962 Constitution

¹²Article 59 of the 1970 Constitution.

¹³Articles 16,17 and 18 of the 1970 Constitution.

¹⁴Article 80 of the 1970 Constitution.

¹⁵Coup d'état of July 10, 1971.



However, the power of the Prime Minister is consolidated and the scope of the law is extended, but without any new provisions regarding accountability.

D. Constitution of 1992: commissions of inquiry, a new mechanism of political control

The responsibility of public managers was not modified by the Constitution of September 4, 1992 (5). However, this constitution gives representatives new powers. Also, it sets up a Constitutional Council as well as an Economic and Social Council.

In addition to permanent commissions, commissions of inquiry are set up to respond to specific situations. Their tasks are temporary. The report is submitted to the initiative authority¹⁶ to complete these steps.

II. Towards jurisdictional accountability (from 1996 to 2011)

A. Constitution of 1996: Reappearance of the second chamber and birth of the court of account

1. House of Advisors: Expanding political control

The reinstatement of the chamber of advisors, abolished in 1970, by the constitution of September 13, 1996 (6) was part of the broadening of the control of political responsibility.

In this way, the government is held accountable to the king and parliament rather than to the house of representatives only, while the House of advisors also had the power to vote on motions of warning or censure of the government.¹⁷

2. Birth of the Court of Account: Towards jurisdictional accountability

The Court of Account, which is responsible for controlling the execution of finance laws¹⁸, was a great novelty in the responsibility and accountability regime. Its role is to guarantee the consistency of budgetary operations and to punish

¹⁶The king or the house of representatives.

¹⁷Article 77 of the constitution of September 13, 1996

¹⁸The constitution of September 13, 1996 reserved for the Court of Account the Title (X), and four articles, from 96 to 99.



violations of financial rules¹⁹. It supports the government and parliament and presents accounts to the king every year²⁰.

At the territorial level, the regional courts of accounts are responsible for auditing the accounts and managing local authorities²¹.

B. Constitution of July 1, 2011: consecration of the culture of governance and accountability

1. A responsibility shared by all stakeholders

In its preamble, the Moroccan constitution of 2011 (7) recognizes that the development of Moroccan society is based on the principle of correlation of the rights and duties of citizenship. This implies a common responsibility of all citizens of different positions or responsibilities. It also involves the responsibility of the state and its dismemberments before the people.

2. An increased role for civil society and citizens in the evaluation of public decisions:

The 2011 constitution gives the right to associations and non-governmental organizations to evaluate projects and decisions of public authorities²², and for the latter to create consultation bodies in this matter²³.

Thus, the citizen has the right to present petitions (8) to demand, recommend or propose to the public authorities concerned in order to take appropriate measures²⁴.

At the same time, access to information²⁵ became a sacred right for the citizen towards the state via the public administration, elected institutions and organizations invested with a public service mission²⁶.

¹⁹Article 96 of the constitution of September 13, 1996

²⁰Article 97 of the constitution of September 13, 1996

²¹Article 98 of the constitution of September 13, 1996

²²Article 12 of the 2011 constitution.

²³Article 13 of the 2011 constitution.

²⁴Article 15 of the 2011 constitution.

²⁵Law No. 31.13 entered into force, in all its provisions, on March 12, 2020.

²⁶Article 27 of the 2011 constitution.



3. Political mechanisms for controlling government work:

Article one of the constitution stipulates that the constitutional regime of the Kingdom is based in particular on the principle of accountability.

Moreover, parliament controls the decisions of the government authority in the development and execution of public policies through political mechanisms, notably motions of censure²⁷, government inquiry, oral questions and parliamentary commissions of inquiry²⁸.

4. Irresponsibility and inviolability of members of parliament

a) The irresponsibility of parliamentarians: a guarantee of the principle of separation of powers

The 2011 Constitution gives members of parliament considerable protection against interference from the judiciary and executive. To this end, this sacred principle of irresponsibility exempts them from any criminal, civil, or judicial prosecution arising from the exercise of their parliamentary functions. This broad and significant immunity aims to provide security to parliamentarians in the exercise of their duties, thus creating an environment conducive to the free expression of ideas and decision-making without fear of legal reprisals.

This protection extends exhaustively, with reservation, to all facets of parliamentary activity. It covers not only the drafting of legislative proposals, where MPs (deputies) play a central role in formulating new policies, but also encompasses the amendment process, voting sessions on crucial issues, and even questions addressed to members of parliament. members of the government within the parliamentary enclosure.

This constitutional immunity is of particular importance in preserving the independence of the legislative branch. It aims to guarantee that the representatives and advisors of the nation can act without fear of legal reprisals in the exercise of their mandate, thus promoting the free expression of opinions and the defense of

²⁷According to article 105 of the 2011 constitution, the House of Representatives can call into question the responsibility of the government provided that this motion is signed by at least one fifth of the members of this chamber.

²⁸Article 10 of the 2011 constitution.



the interests of society. However, this protection also sparks debates about the necessary balance between preserving parliamentary independence and the individual accountability of elected representatives.

Indeed, the sanctions applicable to members of parliament are subdivided into three distinct categories, namely constitutional, legislative and regulatory sanctions. It should be noted, however, that this immunity from which they benefit is accompanied by restrictions, particularly when they interfere with aspects such as the monarchy, religion or when they do not respect their duties towards the King.²⁹.

Furthermore, in the context of an offense under common law, the liability of the parliamentarian is likely to be called into question. However, any major legal procedure can only be initiated by the public prosecutor or the judicial police after having requested the approval of the chamber to which the parliamentarian is affiliated, in order to obtain authorization to lift immunity. . This formality is essential, except in the case of a flagrant offense where the prosecution procedure is not restricted by this preliminary step.

b) Disciplinary responsibility of members of parliament before both chambers

In addition to financial and criminal obligations, the parliamentarian also assumes disciplinary responsibility towards the chamber to which he is affiliated. The terms of this responsibility are defined by the provisions of the organic law relating to the House of Representatives (9) and the organic law relating to the House of Councilors (10), as well as by the internal regulations specific to each parliamentary chamber.

c) Limits of the inviolability of members of parliament

Parliamentary inviolability is limited by legislative provisions, notably Law 17.01 relating to parliamentary impunity (11).

²⁹Article 64 of the 2011 constitution.



During the duration of their mandates, elected officials are protected against any arrest or action restricting freedom. Except that the legislator has limited this inviolability by measures

According to the provisions of law 17.01, the procedure for prosecuting or arresting a member of the two chambers, for misdemeanor or crime, is only triggered after prior authorization from the president of the chamber concerned.³⁰.

As a result, members of parliament do not have absolute immunity. They may also be subject to prosecution before the ordinary courts of the kingdom in the event that it appears to the King's Attorney General that the facts subject to authorization constitute an offense³¹.

5. The responsibility of members of government

a) Accountability during government mandate

The government consists of the head of government, ministers and state secretaries³². By extension, article 3 of the organic law relating to the organization and conduct of government work and the statutes of its members (12).

The government is accountable to both houses of parliament on the basis of a multi-annual program which sets out the guidelines for sectoral policy in various areas³³. Indeed, with regard to parliament, the members of the government assume a responsibility of a political nature.

Also, ministers hold the administration and therefore they are responsible to the head of government for the actions they take in their sectors³⁴ and they are also responsible for the actions carried out by the organizations under their supervision. This responsibility, for its part, is managerial and administrative in nature. In addition, they report to the governing council³⁵.

³⁰In this case, the King's Attorney General submits the request for authorization to the Minister of Justice who, in turn, refers the matter to the president of the chamber concerned. (Article 2 of Law 17.01). Said authorization defines the facts of pursuit and limits.

³¹Article 2 of Law 17.01.

³²Article 87 of the 2011 constitution

³³Article 88 of the 2011 constitution

³⁴Article 89 of the 2011 constitution

³⁵Article 93 of the 2011 constitution



In addition, the head of government supervises the work of members of the government³⁶(12) and reports before the King on the conclusions and deliberations of the governing council³⁷. Also, the government is required to broadcast a report of said deliberations to the media (12).

The government program engages the joint responsibility of members of the government³⁸(12). In fact, the head of government is required to respond, once a month, to general policy questions and once a week for other members of the government³⁹. Also, an annual session is reserved for questions relating to the evaluation of public policies⁴⁰.

When participating in the work of parliament, members of government present responses to questions from both chambers and possibly during meetings of parliamentary committees⁴¹. The latter have the possibility of hearing the administration officials in compulsory presence⁴² and under the responsibility of the ministers concerned⁴³. The procedure for hearing said officials is described in Article 26 of Law No. 065-13.

Members of government are criminally liable before the ordinary courts of the kingdom⁴⁴. The procedure for their prosecution is determined by law. In addition, the latter is enacted by article 265 of the code of criminal procedure (13) and provided for in article twenty-seven of organic law 065-13 which stipulates a specific law.

However, section ninety-four⁴⁵ of the 2011 constitution abolished the supreme court previously responsible for prosecuting members of government⁴⁶. The latter is now fully liable criminally for crimes and misdemeanors before the courts of the

³⁶Article 5 of Organic Law No. 065-13.

³⁷Article 90 of the 2011 constitution

³⁸Article 9 of Organic Law No. 065-13 for application of article 93 of the 2011 constitution

³⁹Article 100 of the 2011 constitution

⁴⁰Article 101 of the 2011 constitution

⁴¹Article 24 of Organic Law No. 065-13.

⁴²This obligation is specified in article 26 of law 065-13

⁴³Article 102 of the 2011 constitution

⁴⁴Article 94 of the 2011 constitution.

⁴⁵Members of the government are criminally responsible before the courts of the Kingdom for crimes and offenses committed in the exercise of their functions. The law determines the procedure relating to this responsibility.

⁴⁶Chapter 8 of the 1996 constitution specifies the role of the supreme court



kingdom. In fact, this provision is reinforced by article one hundred and twenty-seven of the 2011 constitution⁴⁷ which does not provide the possibility of creating exceptional jurisdictions.

At the same time, article five of law 38.15 on the judicial organization of the kingdom (14) affirms the principle of the unity of jurisdictions where the orders of the jurisdictions of the territory are submitted to the court of cassation⁴⁸.

At the same time, responsibility is also sanctioned by a system of remuneration and benefits granted to members of government during the exercise⁴⁹ and at the end of their functions⁵⁰.

b) Government Responsibility During Current Affairs⁵¹:

The constitution provides in article forty-seven that “The resigning government carries out current affairs until the constitution of the new government”. Indeed, the principle of continuity of public service implies that the government, during a period of reshuffle, continues to adopt decisions until the formation of a new government⁵², with the exception of decisions binding the future government⁵³.

As a result, the actions of ministers are strictly regulated by law. The latter determines the extent of their responsibilities. Likewise, article thirty-seven of organic law No. 065-13 excludes from the dispatch of current affairs the approval of bills and regulatory decrees and the appointment to higher functions.

⁴⁷Ordinary or specialized courts are created by law. Exceptional courts cannot be created.

⁴⁸Except when the law formally attributes jurisdiction to another jurisdiction, the court of first instance, including the one which is classified, has jurisdiction either in first and last resort, or on appeal, under the conditions determined by the code of procedure civil law, the code of criminal procedure and, where applicable, specific texts. He rules in second degree under the conditions set by the Code of Civil Procedure, the Code of Criminal Procedure or by specific texts. In this case, it sits, being composed of three judges, including the president, with the assistance of the clerk.

⁴⁹Article 28 of organic law 065-13

⁵⁰Article 30 of organic law 065-13

⁵¹Section 37 of the law organic 065-13 limits the dispatch of current affairs in the adoption of decrees, orders and necessary administrative decisions and urgent measures required to guarantee the continuity of public services

⁵²Article 36 of organic law 065-13

⁵³Article 37 of organic law 065-13



6. The framework for the responsibility of managers in senior positions:

In application of the provisions of articles 49 and 92 of the constitution, the organic law relating to the appointment of said higher functions (15) defines them in two categories: the functions of managers of strategic public establishments and enterprises⁵⁴, civilian jobs in public administrations and senior jobs in public establishments and companies⁵⁵.

The council of ministers deliberates on the appointment by dahir to civilian posts⁵⁶. While the government council deliberates on the appointment by decree to higher functions⁵⁷.

Article two of the decree describing the procedure for appointment to higher functions (16) adds to the list of these functions the general secretaries of ministerial departments, the general inspectors of ministries, the general inspector of finances, the general inspector of territorial administration and directors of regional investment centers.

7. Financial and criminal liability of public managers

Likewise, financial offenses relating to the activity of administrations and public bodies, the use of funds, the award and management of public contracts are punishable by law⁵⁸.

In addition, the legislative power holds the mandate of the nation⁵⁹. Indeed, this political mechanism of representative mandate in public affairs attributes to the members of the bicameral parliament a role of representing a form of balance between governmental and political efficiency⁶⁰.

⁵⁴Are provided for in the last paragraph of article 49 of the 2011 constitution.

⁵⁵Article 1 of Organic Law No. 2.12.

⁵⁶According to article 49, senior positions are: wali of Bank Al-Maghrib, ambassador, wali and governor, and heads of administrations responsible for internal security, as well as heads of strategic public establishments and enterprises.

⁵⁷In application of the provisions of article 92 of the 2011 Constitution.

⁵⁸Article 36 of the 2011 constitution.

⁵⁹Article 60 of the 2011 constitution

⁶⁰<https://doi.org/10.4000/cjm.385>;The mandate, Guillaume Richard



However, the exercise of this mandate requires protection of those mandated during the exercise of their voting or opinion functions while respecting the principle of equality of citizens before the law.



Conclusion

In Morocco, the notion of responsibility and accountability has undergone historical evolution from 1908 to 2011.

Indeed, the notion of accountability claims a non-judicial connotation then, in 1996, it moved towards a judicial conception.

The judicial notion of accountability provides further support for the genesis of this concept by preserving its constitutional status framed by the Moroccan legislature.

This judicial function, under the aegis of the Court of Accounts and the regional Courts of Accounts, makes behavior responsible towards the management of public finances. It is a binding and sanctioning control according to the provisions of Law 62.99 relating to financial jurisdictions.

Also, the contribution of constitutions in matters of equality before the law and the abolition of exceptional jurisdictions made it possible to extend the scope of responsibility and therefore the possibility of implementing a balanced and egalitarian system of accountability before the law. .

The levels of responsibilities and therefore accountability differ depending on the status of the person responsible. At each level there is an appropriate type of control, either a political type control, or a criminal or disciplinary one.

The institutional role played by the judicial accountability mechanisms, in particular the Court of Accounts, is the cornerstone of the foundation of a self-respecting democratic state governed by the rule of law.



References

1. Constitution of December 19, 1962 promulgated by the Dahir of December 14, 1962 (BO n° 2616 bis).
2. Vision and objective of OECD global relations. [Online] [Citation: 08 03 2024.] [https://www.oecd.org/fr/rerelations-mondiales/strategie-relations-mondiales/](https://www.oecd.org/fr/rerelations-mondiales/strategie-rerelations-mondiales/).
3. Constitution of 27 Jomada I 1390 (July 31, 1970) promulgated by Dahir No. 1.70.177 (BO No. 3013 bis of 01.08.1970).
4. Constitution of 23 Moharrem 1392 (March 10, 1972) Bo n° 3098 of March 15, 1972.
5. Constitution of 1992 promulgated by Dahir No. 1.92.155 of 09.10.1992 (BO No. 4172 of 14.10.1992).
6. Constitution of 23 Jomada I 1417 promulgated by the Dahir of October 7, 1996.
7. Constitution of 2011 promulgated by Dahir No. 1-11-91 of July 30, 2011 Official Bulletin No. 5964 bis of 28 Chaâbane 1432 (July 29, 2011).
8. Organic Law No. 44-14 establishing the conditions and modalities for presenting petitions to the public authorities concerned, as it was modified by Organic Law No. 70.21 promulgated for its execution on Dahir No. 1.21.101 in date September 08, 2.
9. Organic Law No. 27.11 relating to the House of Representatives, promulgated by Dahir No. 1.11.165 of 16-kaada 1432 (October 14, 2011); BO n°5992 of 6 hijja1432, of 03.11.2011.
10. Organic Law No. 28-11 relating to the Chamber of Advisors promulgated by Dahir No. 1-11-172 of 24 Hija 1432 (November 21, 2011).
11. Law No. 17-01 relating to parliamentary immunity Promulgated by Dahir No. 1.04.162 of November 4, 2004; BO n° 5266 of Thursday November 18, 2004.



12. Organic Law No. 065-13 relating to the organization and conduct of government work and the status of its members promulgated by Dahir No. 1-15-33 of 28 Jomada I 1436 (March 19, 2015); BO n° 6348 of 02/04/2015 (in Arabic).

13. Law No. 22.01 relating to criminal procedure, promulgated by Dahir No. 1-02-255 of 25 Rajab 1423 (October 3, 2002) as amended.

14. Law 38-15 promulgated by Dahir No. 1.74.338 of 24 Jomada II 1394, of July 15, 1974.

15. Organic Law No. 02-12 relating to appointment to higher functions in application of the provisions of Articles 49 and 92 of the Constitution promulgated by Dahir No. 1-12-20 of 27 Chaabane 1433.

16. Decree No. 2-12-412 of 24 Kaada 1433 (October 11, 2012) implementing the provisions of two articles 4 and 5 of Organic Law No. 02-12 concerning the procedure for appointment to higher functions.