



The constitutionalism of socioeconomic rights and public policy making in Morocco

Dr. Abdelhamid Amellal

FSJES, Moulay Ismail University, Meknès

Morocco

Abstract

This article examines the translation of constitutionally enshrined socioeconomic rights into public policies in Morocco, focusing on the gap between constitutional promises and policy implementation. Drawing on Amartya Sen's capability approach, it analyzes how the Moroccan state's public policies—particularly in health, education, housing, and economic rights—either enable or constrain citizens' substantive freedoms. The study identifies the conversion factors that hinder the effective realization of these rights despite a robust constitutional architecture. It further assesses the potential role of the Constitutional Court in safeguarding socioeconomic rights without encroaching on legislative and executive functions. The article argues that while the 2011 Moroccan constitution reflects a commitment to socioeconomic rights, the existing institutional and governance deficits, including limited participatory mechanisms and fragmented policy implementation, undermine their fulfillment. Bridging the gap between constitutional norms and policy outcomes requires enhanced constitutional oversight for greater transparency, accountability, and coherence in public action.



Introduction

The guarantee of socioeconomic rights is one of the missions of the state; they are therefore included in the constitutions of many states in the form of rights (Sunstein, 2004). These rights contribute to the legitimation of the political order and the whole action of the state (Tushnet, M. 2008). Thus, their conscription in the constitution should have a relevant impact on the population, especially in terms of reducing impoverishment and creating individual conditions for economic prosperity (Fredman, S. 2008).

In that sense, those constitutional norms are supposed to be translated into public policies that aim at realizing those objectives (Rodriguez-Garavito, C., & Rodriguez-Franco, D. 2015). However, the existence of a gap between the constitutional announcement and public policy making might limit the objectives of the constitutionalism of those rights (Langford, M. (Ed.). 2008).

The constitution is a reflection of a political answer to a destabilizing problem; it reflects the context where it was written, the intentions of the authors, and the path to follow to achieve the common interest. It is also a reflection of society and its political system. Though, it is designed to limit public power and to guarantee certain rights to the individual or to the private sector in order to operate freely in the markets.

Like almost all the constitutions across the globe, the Moroccan constitution recognizes the rights and liberties, but it has its own specificities that distinguish it from other similar systems. Thus, the constitutional tradition in Morocco is reflected either in the laws and in the policies that aim at guaranteeing the rights and liberties.

In that sense, the fulfillment of socioeconomic rights cannot be analyzed without integrating them into a larger scope that includes the functioning of the political system and other rights, especially the first-generation ones; the latter are considered by their precursor as the source of the value of civilization (Marshall, 1950). In that perspective, the incapacity to respect those rights undermines the whole process of democracy and the ability of citizens to participate in the process of collective public decision making that is more prone to promoting socioeconomic rights; or what is qualified as the second-generation rights (Habermas, 1996). The latest rights are recognized as a moral obligation to help those in need before becoming a political and legal obligation by the constitution.

However, despite this advancement, the fulfillment of these rights is hard to achieve, which requires constant endeavor to conduct better public policies. This could not be done without an effective and efficient public action, and also by integrating different



interests and actors in the process of public policy making, which might attenuate conflicts that mark the fulfillment of those kinds of rights (T. H. Marshall, 1950).

Moreover, the state is obliged to guarantee both the first and the second-generation rights, which requires adaptive rule making; especially, following the adoption of the constitution to these rights, which should be translated into rules that guarantee the exercise of the first-generation rights by individuals. However, for the second-generation rights, the state has the obligation to provide them. This is a tendency that takes the form of public policy, particularly with the emergence of third generation rights that have a more collective interest focus (Vasak, 1977).

Since the constitutionalizing of these rights by many countries, many policies have been conducted to fulfill these rights such as educational policy, health policy, poverty eradication policy, and developmental policy. These policies have been a main focus across the globe in the last decade, including Morocco.

However, socioeconomic rights are difficult to realize and are hardly enforceable (Holmes & Sunstein, 1999). The first difficulty is related to the conduct of public policies that find it hard to converge toward socioeconomic development, and the second is manifested in the non-existence of a legal framework or court that enforces the realization of these rights (SAGER, 1978).

We present therefore two main hypotheses to explain the constraints that might limit the achievement of socioeconomic rights. The first is related to the public policy process, and the second is related to the non-existence of judicial enforcement. Moreover, the two processes are constrained by the budgetary limit, as the realization of these rights requires the mobilization of public funds, which is a domain reserved to the government and is hardly penetrated by the other two branches, whether parliamentary power or judicial power (Stone, 2012).

In Morocco, to fulfill socioeconomic rights, the state has followed many public policies whether economic or social. For economic policies they aim at realizing a high rate of growth and employment. For the social policies, they aim at reducing inequalities and poverty, and also providing access to health and education services to all the population.

However, these kinds of policies might present the problem of institutionalization and feasibility, as the rights should be instituted to fulfill them, otherwise they are not called rights. For feasibility, it is hard to achieve certain goals of those policies as the burden has



to be taken by the state, which has limited resources and budget. All those factors can hinder the efforts to fulfill the socioeconomic rights (Sen, 1999).

In the following we present our methodology to tackle this problem. We are using Sen's Capability Approach to analyze the institutionalization and feasibility of public action in the matter of guaranteeing and fulfilling socioeconomic rights in Morocco. This framework will allow us to conduct an analytical assessment of both institutional design and policy feasibility in the Moroccan context.

This study contributes to the growing body of studies on constitutional politics in North Africa following the 2011 uprisings, which has emphasized the gap between constitutional promise and policy implementation (Grote & Röder, 2012; Cavatorta & Storm, 2024). By adopting Amartya Sen's capability approach as an evaluative framework, it moves beyond formal legal analysis to examine whether constitutional provisions translate into substantive freedoms for citizens (Sen, 1999; Ibrahim, 2018). Thus, this approach is used to analyze different public policies conducted by Morocco to guarantee those rights.

methodology

The capability approach presents a normative framework for assessing human well-being, social justice and development. It focuses on what people are actually able to do and to be. This framework fits our aim in assessing the fulfillment of constitutionalized socioeconomic rights in Morocco through public policies.

This approach allows us to break down the public action in five chained concepts that are related to the processes of public policies, that are: resources, conversion factors, capabilities, functioning and agency. In parallel, we will conduct a critical assessment of both institutional design and policy feasibility in the Moroccan context. The use of Sen's Capability Approach to analyze the institutionalization and feasibility permits us to draw six main questions about the situation of socioeconomic rights in Morocco. This combination is an attempt to present a public policy tool to analyze and assess the effectiveness of public policies in translating constitutional norms into effective public actions.

The following table summarizes the methodology by emphasizing the role of each aspect of capability theory in the processus of the public policy, their manifestations, and the analysis questions corresponding to the public policy process, that we are going to answer based on the evaluations of the different public policies conducted to fulfill



socioeconomic rights. Those evaluations are based on the official reports produced by national institutions, international organizations or by the government itself.

aspects		Role in the analysis	manifestation in policy process	The main analysis questions
Insti tuti onal izati on	Resources	Inputs : spotting the socioeconomic rights in the institutional agenda	Public policies objectives drawn from the constitution	Has the state included socioeconomic rights in its policy agenda?
	Conversion factors	Determining tools to Convert inputs to outputs	Public policies contents	Has the government set adequate public policies to fulfill the socioeconomic rights?
Feas ibili ty	Capabilities	Outputs: assessing the effective access individuals have to socioeconomic rights	public policies implementation	<i>Do public policies reach effectively all the concerned population?</i>
	Functioning	Outcomes: analyzing the extent to which a person can improve his well-being.	Public policies outcomes	What did public policies allow people to achieve <i>what they value in life (their beings and doings)?</i>
	Agency	Framing the use of the capacity of individuals to influence and change public policies	Public policies change	Does the concerned population have a say? Could the existing institutions guarantee the fulfillment of socioeconomic rights?

Source: formed by us based on Sen's capability approach to analyze institutionalization and feasibility of public policies.

Within this theoretical framework, we are going to present what the constitution has put as norms, what the government has done as policy, what has been realized, what are the limits of its actions, and how to overcome those constraints.



1. The constitutionalism of socioeconomic rights: Institutionalization

1.1. The rising demand for socioeconomic rights and the origins of the actual constitutional order

Rights are not separated from liberties in the Moroccan constitution; they are fully subordinated in a way that freedom and liberties are a guarantee to the fulfillment of rights, and vice versa; rights, especially socioeconomic ones, support the exercise of liberties. Thus, liberties and rights are reciprocally subordinated and become a concern of the state, especially as Morocco announces a social tendency in its action to realize the objectives of a sustainable and inclusive socioeconomic development. On the other hand, the recognition of a large scope of liberties and rights is accompanied by a reinforcement of state actions, which is marked by establishing control and regulation conducted by public agencies.

This establishment has a double consequence. While individuals are seeking to benefit from what the constitution guarantees for them in terms of their right to exercise their liberties and to prosper, they depend on state actions to realize those objectives. Secondly, while the constitution enlarges the scope of socioeconomic rights, public action is limited by many constraints, especially legal and budgetary limits. This makes it hard to match what the constitution guarantees and what the state can do.

Nevertheless, the Moroccan state plays a huge role in the realization of these rights, especially as it is the main actor in charge of the regulation of socioeconomic activities, either via its important role in the creation of national wealth through its acts as an economic agent operating in the market, or via the allocation of public resources. Moreover, the legitimation of the political order is reinforced by the guarantee of the realization of socioeconomic rights.

In that sense, legitimation through the institutionalization of social and economic rights has been a constitutional answer to uprisings and social and political contestations, especially with the persistence of many socioeconomic problems and the enlargement of inequalities, which requires public action toward the promotion of those socioeconomic rights by the state to legitimate itself.

In North Africa pre-2011 Arab Spring, the unsatisfying socioeconomic development, marked by national wealth distributed unequally and a high rate of unemployment, especially among the youth generation (El-Khawas, 2012), triggered an uprising of the



population, which led later to a process of constitutional reforms and change in Tunisia, Egypt, Libya¹, and Morocco.

Even though the constitutions of these countries before the Arab Spring proclaimed the guarantee of certain socioeconomic rights, and the promotion of socioeconomic development in these countries was always present in political discourse. However, the results of public policies to fulfill them failed to convince the population, which did not prevent the uprising of a large range of the population against the felt injustice originating from the lack of democracy and the spread of corruption (Dabashi, 2012).

This situation was aggravated by the 2008's financial crisis and its repercussions on the vulnerable population (Hanieh, 2013). The popular uprising attacked the political order accused of favoring the interest of a corrupted political elite. When it came to conditions, it was accused of being insufficient at guaranteeing socioeconomic rights. Thus, attempts to alleviate the demands to change the regime took the form of initiatives to revise or change the constitution. Hence, disconnecting from its original role to organize power, the constitution became a way to legitimize the political order (Arjomand, 2015).

The year 2011 was a turning point in this region. The failure of regimes succeeded in Tunisia, Egypt, and Libya in a sort of revolution that deposed the heads of those states. In Morocco it was another story; constitutional change was adopted after what seemed to be a spread of the Arab Spring across the region. Thus, the change in Morocco was no longer a demand of the population, but a change demanded by the monarch (Madani, Maghraoui, & Zerhouni, 2012).

Therefore, socioeconomic rights in Morocco gained an important focus in the constitution adopted in July 2011 by a popular referendum after a nationwide national consortium led by an assigned commission in charge of this revision. It promises in its preamble more prosperous conditions of life and democracy, and it guarantees rights; including socioeconomic ones. Further, it reserves its second title to fundamental freedoms and rights before the titles that organize the power.

¹ Libya did not have a permanent constitution after Muammar Gaddafi came to power in 1969. Instead, it was governed by a mix of provisional documents, including the 1969 Constitutional Proclamation and the 1977 Declaration of the People's Authority, which declared the Quran to be the constitution.



1.2. Why does the constitutionalizing of socioeconomic rights matter?

Constitutions may exist not only to limit the power of the state, but also to oblige the state to protect and guarantee the fulfillment of socioeconomic rights (Sunstein, 2004). Such measures serve two related ends. The first is to enrich democracy by framing public action; and the second is to set goals for the state that aim at the realization of socioeconomic development capable of guaranteeing socioeconomic rights. In the Moroccan constitution, this is clearly expressed.

Nevertheless, the constitutionalizing of socioeconomic rights should not be apprehended in isolation from other rights and other measures introduced by the constitution. In that matter, the interrelation between rights is essential to their fulfillment, and the instauration of constitutional mechanisms to embed them in policies and public action is also important. Moreover, the constitutional framework is where rights and public action take form; though, Morocco has established in its constitution a framework that tends toward liberalism with a social intonation (Bendourou, 2012).

In that sense, economic liberties are guaranteed both for capital and labor, but without forgetting the preservation of social cohesion and equity. In contrast, all citizens have to participate according to their economic and financial capacity to finance the effort of the state to fulfill its missions that are supposed to be beneficial for the general interest (Moroccan Constitution, 2011, art. 40).

Seeing this constitutionalizing in a large scope, we can notice that it aims at accomplishing socioeconomic rights for all citizens. This is realized through the guarantee of the economic liberties of the individuals, and also their social well-being. All these are conducted by a political system in which decisions should be made by political organs, that is to say by a democratically elected parliament, and by a government politically responsible to conduct public policies. Nonetheless, what the constitution of 2011 proclaims and the conduct of public policies is not something new in Morocco.

For decades, in addition to the classic policy mix between budgetary and monetary policies, the Moroccan state conducted many sectoral policies to generate economic growth via the promotion of certain economic sectors and activities, especially through the rise of public investment, and it has also adopted many social policies. A continuous public action that has been conducted to achieve socioeconomic development, which is now enshrined in the new constitution as a main mission of the state. In that sense, the



actual constitution is not a response to a revolution, but it is a result of a progressive evolution.

However, the constitutionalizing of rights and their implementation by new public policies has to follow the path traced by the predecessor ones. We witness then two dimensions in the matter of conducting public policies, one is framed by the actual constitution, and the other is traced by an embedded path dependency of the process of public action. Thus, ancient practice continues to affect public policies, and what is offered by the constitution might be reduced by organic laws, ordinary laws, decrees, and public administration practices.

1.3. Socioeconomic rights in the Moroccan constitution: resources

The 2011 Moroccan constitution contains a wide range of socioeconomic rights enshrined in several articles. It affirms in its preamble the supremacy of international law over domestic law, and its commitment to international human rights standards, particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966).

The key article of the Moroccan constitution that defines socioeconomic rights is article 31; it recognizes the equal access for citizens to fundamental social rights, including healthcare, social protection, education, adequate housing, and a healthy environment. This article assigns to the State, public agencies, and territorial communities the mission to ensure the access of all citizens to those rights on an equal basis. Thus, it mandates the mobilization of all available resources to fulfill these rights that are interrelated with each other.

In that sense, the right to healthcare is related to the social protection right that aims at providing social security to all members of society, especially the vulnerable groups (Moroccan Constitution, 2011, art. 34), which will facilitate their access to education and employment. Thus, the right to education and training that aims to provide modern, accessible education and vocational training by assisting youth facing difficulties to access education (Moroccan Constitution, 2011, art. 33) supports the right to work, which leads us to work and labor rights clearly expressed in article 31.

Moreover, fair working conditions that support employment require entrepreneurship and investment by firms, which requires guarantees to investors, especially the protection of the right to property and enterprise. The latter is mandated in article 35, and free



competition is a right protected by article 36 that mandates that public authorities prevent and punish all forms of conflict of interest, influence peddling, and misuse of public funds.

Those articles, along with article 156, require public officials to act with integrity and uphold the public interest over private gains, aiming to combat corruption and ensure transparency. The importance of this article resides in the existence of a large public economic sector that benefits from public funds. Also, the public resources are used to support the private sector, and many private economic operators benefit from partnerships with the state.

In this context marked by the existence of a large economic public sector, and the use of regulation to organize many economic activities make the state the ultimate economic agent and actor that contributes to key economic sectors and supervises the private sector. Furthermore, the state in Morocco aims at the realization of socioeconomic development, so it has a large scope of how to realize it via its policies that justify its intervention in the economy. Thus, this intervention of the state in the economy is legitimized by guaranteeing socioeconomic rights or at least attenuating the factors that undermine them.

This intervention obliges the state to consider the protection and the fulfillment of socioeconomic rights. Hence, it has the responsibility to redistribute the outcomes of economic activities to attenuate inequalities by efficiently redistributing resources. Moreover, the constitution emphasizes that the state should set the conditions that guarantee equality of opportunity, a fight against discrimination, and the application of the principle of solidarity in shouldering national costs (Moroccan Constitution, 2011, arts. 6, 19, 34, 40), which are translated into many public policies.

2. Public policies as a translation of the constitution: Feasibility

2.1. Public policies to implement socioeconomic rights in Morocco: conversion factors

Morocco tries to build a Rawlsian institution that aims at guaranteeing justice and fairness. Following Sen's analytical framework, this institutionalization is not enough to achieve its goals without capability, that is the genuine freedom people have to live the lives they value (Sen, 1999). This scheme is directly applied to the Moroccan context where texts and institutions exist without a link to public policies that aim at the development of capabilities, a situation that we are going to demonstrate in the following.

To guarantee and fulfill these rights, many policies have been conducted since the adoption of the constitution, such as social protection and assistance policy, healthcare



policy, education policy, and housing policy. It is not the first time that such policies are conducted, but they inscribe themselves in a long process that started decades ago and has been oriented more through the realization of socioeconomic development after the succession of Mohammed VI to the throne in July 1999.

One of the important policies is social protection and assistance policy implemented through the Direct Social Assistance Program for persons in need. It is implemented through the creation of the National Agency for Social Support to harmonize public action in this matter, and the establishment of the Unified Social Register (USR) to determine the targeted population. Its main mechanism is subsidizing the poor and facilitating access to health services. In that perspective, healthcare policy supports the population through a Unified Solidarity Health Coverage (AMO-Tadamon), a mandatory health insurance to cover health service charges.

These mechanisms are accompanied by an expansion of hospital infrastructure through the increase of public investment and the health sector budget. This budget raising benefited also to education policy. The latter policy has launched a reform focusing on preschool generalization, the improvement of learning, reducing dropping out of school, and encouraging extracurricular activities, this policy is framed by a law² that provides the overarching legal framework for Morocco's education reforms.

All these policies are the direct mission of public authorities, but the effort to guarantee these rights by public resources alone might affect their effectiveness, and sustainability. In that perspective, developing public resources and population revenues are essential to fulfill these rights, which could not be done without economic activity sufficiently generating resources and revenues, which requires the guarantee of economic rights, especially work and fair labor conditions, freedom of enterprise and freedom to do business, competitive bidding, and legal protection for private property. All these rights are the main objectives of interrelated policies.

To protect freedom of enterprise and fair competition rights, Morocco adopted the law on Free Pricing and Competition that outlaws anti-competitive practices, including

² **Law No. 51-17 on the Education, Training and Scientific Research System** (promulgated by Dahir No. 1-19-113 of 7 hja 1440 / August 9, 2019, published in Bulletin Officiel No. 6944 of December 17, 2020).



abuse of dominance and price-fixing; it serves as the core of competition regulation³. This mission is assigned to the Competition Council, an independent enforcement authority with powers to investigate, issue opinions, and sanction anti-competitive behavior⁴. Also, to promote private investment and facilitate its implementation, the Investment Charter (2022) was adopted⁵; it aims at promoting investment by recognizing principles of free competition, transparency, and equal treatment for both domestic and foreign investors, and it established a system of incentives for investors that aims at promoting employment, which would fulfill the right to work.

Moreover, to enhance the right to work and fair labor conditions, the Labor Code Reform replacing the current code⁶ is promised by May 2026 to address structural difficulties related to contractual engagement between employees and employers in order to guarantee the rights of both and facilitate employment. The latter is included in a larger policy that aims to reduce the rising rate of unemployment, this policy depends on vocational training policy.

Thus, in order to supply the market with qualified workers, it proceeded to the expansion of the offer of vocational training by constructing Cities of Trades and Skills (CMC) and reforms of their curricula to supply the labor market with qualified workers needed by investors, which would in return encourage private investment.

In the same perspective, the National Land Strategy proposed to facilitate investor access to land through the creation of the Sustainable Industrial Zones and the privatization of collective land by conversion of collective rural land to individual tenure for investment. The objective is to empower youth and women, and develop rural areas through integrated projects, which is done with respect for the right to property. Also,

³ Law No. 104-12 on Free Pricing and Competition (promulgated by Dahir No. 1-14-116 of 2 ramadan 1435 / June 30, 2014), as amended by Law No. 40-21 (promulgated by Dahir No. 1-22-67 of 30 rabii II 1444 / November 25, 2022, published in Bulletin Officiel No. 7152 of December 15, 2022).

⁴ Law No. 20-13 relating to the Competition Council (establishing the independent authority in charge of regulating competition and enforcing Law No. 104-12).

⁵ Law No. 03-22 forming the Investment Charter (promulgated by Dahir No. 1-22-76 of 14 jomada I 1444 / December 9, 2022, published in Bulletin Officiel No. 7151 of December 12, 2022).

⁶ Labor Code (Law No. 65-99) (promulgated by Dahir No. 1-03-194 of 24 rajab 1424 / September 11, 2003, published in Bulletin Officiel No. 5210 of May 6, 2004). A reform of this Code was announced for May 2026.



even if the State can expropriate for economic and social development causes it compensates the owners⁷.

Moreover, this right is reinforced by a housing policy that supports acquiring primary decent housing through subsidizing the acquisition of new houses and lodging the inhabitants of shanty towns. Thus, this policy is marked by many programs such as the Direct Housing Assistance Program, the "Cities Without Slums" program, and proposed rental scheme programs. All these programs are based on direct aid that covers several major cities and benefited a large number of families.

2.2. The feasibility of public policies: capabilities and functioning

Despite the achievements of these policies in terms of the realization of certain goals, challenges and weaknesses that might hinder socioeconomic rights remain. For social protection and health coverage, strong enrollment growth is registered for AMO. However, there is a persisting difficulty to access health services because of structural deficits in terms of hospitals and medical staff unequally distributed across the national territory, which oblige patients and their families to move to cities where adequate health services are available, this exacerbates the collateral costs of health; costs that are hard to cover with the AMO. Also, the effective cash transfer is incapable of covering the rising cost of living due to inflation (Haut-Commissariat au Plan, 2024).

The same for education reform, despite the many reforms conducted in the last two decades, there are still persistent access and quality gaps. The latest reform is Pioneer Schools Program, it aims at reducing dropout rates and improving learning, but it is not yet generalized to assess it in a pertinent evaluation. In addition, this reform does not deal with remaining structural issues such as overcrowded classrooms, rural-urban divide, poor rural infrastructure all those factors hinder the quality of education.

For vocational training, the implementation was limited by delays in construction and equipment of these cities. Also, the rising rate of unemployment among those graduating from these entities raises questions about the quality of their training and its inadequacy to the market and its incapability to follow the change in competences that markets demand. The change in the demand for certain branches related to the change in the economic

⁷ Law No. 7-81 on Expropriation for Public Utility (promulgated in May 1982). This law governs the legal framework for expropriation and the compensation of owners. A draft amendment is under review as of 2026.



structure has to be followed by the updating of the curriculum of the institutes (HCP, 2024).

However, market pressures marked by surging home prices and rents in major cities due to scarce land and speculation rises the prices of the estate to far-reaching level of many states of the society, which pushes them to opt for indecent alternatives or pay a higher price which hinder the financial stability and their possibility to prosper and benefit from other rights.

Certain economic rights are limited by conversion factors related to the limits of social rights. In that sense, the fulfillment of the right to work and fair labor conditions passes by the rise of the rate of employment through vocational training; however, as we have seen above, the latter has not fully realized its goals. With the combination of other factors related to the economic structure, unemployment remains above 13%, and youth unemployment exceeds one-third (HCP, 2024). To counter this, the new employment policy focused not only on the market but expanded its mechanisms to include education and health action toward the encouragement of employment; however, the budget for an ambitious action remains trivial.

Even more, the conditions of work established by the labor code are not fully respected because of weak enforcement. In that sense, conversion factors failure is manifest as the formal right to work does not convert into capability for decent employment, especially when enforcement is weak and informality excludes workers from protections, which is clear in the newly adopted organic law of strike⁸.

This organic law tries to stop the anarchy of strikes and their effects on economic activities, but they make it complicated to call for a strike for workers. The new legislation curtailed strike rights by trading formal rights for "economic stability," narrowing workers' substantive freedoms by setting rules to conduct a strike.

On the other hand, this reform tries to guarantee freedom of enterprise and fair competition, which is a principal aim of economic policies, especially investment policy. Even so, the rate of growth of private investment remains low with the dominance of public investment, which created a situation of crowding out effect (IMF, 2023).

⁸ Organic Law No. 97.15 on the Right to Strike (fixing the conditions and modalities for exercising the right to strike, published in Bulletin Officiel No. 7389 of March 24, 2025; enters into force September 24, 2025).



This conversion effect, added to the existence of monopolies, rent, and a large informal economy, hinders the competition and fair mechanism of the market, especially with accusations from the opposition to the government of the existence of conflict of interest. Though, forbidden by the constitution, there is no law to determine precisely the cases of conflict of interest and to establish measures that might stop it, which makes it a perception of reality that obscures the market and the vision of investors (Transparency International, 2023), especially with the existence of other practices such as speculation.

The latest practice affects more the real estate market, which hinders the right to property and housing. Despite the Direct Housing Assistance Program, subsidy for acquiring a home for non-owners and strengthening the legal framework, the state sector is still marked by speculation practices and difficulties in the land registration system. This led to market pressures that caused surging prices in major cities due to scarce land and short-term tourist rentals. Also, property rights are constitutionally guaranteed, but indigenous communities cannot convert formal ownership into livelihood security when expropriation proceeds without consent, especially when communities see land taken despite constitutional protections (CNDH, 2019).

Therefore, the existence of opportunities and policies might be limited by capabilities, which leads us to the public policy problems, especially the governance of this process and the role of the actors in setting the institutional agenda.

3.1. The dilemma of public policy making in Morocco

The Moroccan constitution is a reaction to socioeconomic demands and to political revendications. Though, its answer is a combination of recognition of socioeconomic rights and the creation of institutions in charge of making public policies. The organization of power within this constitution is constructed in a sense that makes the monarch the ultimate protector of those rights (Bendourou, 2012; Madani et al., 2012). Nevertheless, the government has the obligation to make and execute public policies. This process suffers from many governance issues, especially the implication of other actors. Those limitations of this process are manifest, which are worth mentioning to clarify the actual situation of socioeconomic rights in Morocco.

First, the realization of public policies is marked by a hegemony of the executive, especially by the government, at the expense of parliament. The role of the legislative power is limited to the approbation of legislative texts, and its participation is eclipsed by



the technicality of policies that are the domain of the government and public administration.

Secondly, for the judicial power, its role is limited in that matter with no such power to intervene in the process of public policy making. Nevertheless, the constitutional court has the possibility to rule on laws that could violate the constitution, including socioeconomic rights.

Finally, concerning civil society and ordinary individuals, their role is not fully integrated in the process of public policy making that remains a public domain; despite the existence of a mechanism of participatory democracy in the Moroccan constitution. This situation created a powerful executive branch.

The constitutional architecture makes the state agents, especially the government, the ultimate actors that have the obligation to conduct the public action. Therefore, the exercise of power is marked with high centralism where policies follow a top-down path. Government action is legitimated by superior insight as it has the ultimate tools to realize public policy aims; it has a powerful bureaucracy, the information, and the public resources to realize its objectives.

Consequently, what is supposed to be a democratic mechanism by the constitution to exercise power turns out to be limitative in terms of activating the participatory process of public policy making, as the public decision process is shaped by the ultimate power of the government. In that perspective, governance might limit the functioning of public policies.

Moreover, the state has to bargain with many actors to settle a middle ground solution, and its actions have always been subject to a competition between different actors that can influence public decision making to serve their agenda, which could undermine the public actions and alter its objectives (Lindblom, 1977). Those competing interests are hard to settle; therefore, the focus is redirected to the third generation of rights that benefit all without discrimination, as the second generation is marked by subsidies to a certain group at the expense of others.

In that sense, the functioning problematic that undermines rights is not the only consequence of the public actions but is due also to practices in societies where competition over resources is not always fair, either between labor and capital, or between competing agents in the same sector, which requires a change toward the integration of



mechanism that allows less advantaged people and social groups to benefit from their socioeconomic rights.

3. The role of agency in safeguarding socioeconomic rights

2.4. Limits of agency to overcome the limits of capabilities and conversion factors

The limits of these conversion factors might hinder the feasibility of socioeconomic rights despite their constitutionalizing. In that sense, the limits of conversion factor are observed in the application of what has been translated as constitutional rights into public policy; those systemic limited conversion does not allow citizens to function their capability to benefit from institutionalized resources (Sen, 1999). Thus, the institutional design makes it hard to fully integrate an instrument to guarantee socioeconomic rights

The Moroccan constitution has introduced tools to guarantee the participation of citizens in the form of the presentation of petitions and legislative propositions. Hence, it provides a way to counter the limits of representative democracy by participatory democracy by reinforcing the rights of citizens to present petitions to public authorities and to present legislative motions. However, its application through organic law has constrained the participation of the citizens by far-reaching conditions⁹. Those constraints limit the role of the agency to conduct a change in the process of public policy making, especially to integrate the population demand in the institutional agenda.

In that perspective, the mechanism of citizen participation exists, but citizens are incapable of using it; it is a pattern observed in other mechanisms such as access to information that constitutionally exists but its organic law presents many exceptions that forbid ordinary citizens from accessing certain public information and data¹⁰. All these mechanisms of participatory democracy, added to the already constraints of representative democracy, make it hard to fully guarantee the participation of citizens in public policy making. However, Morocco has constitutionalized many institutions, but their role is

⁹ Organic Law No. 44-14 on the Right to Present Petitions to Public Authorities (relating to the conditions and modalities for exercising the right to present petitions). See also Organic Law No. 64-14 relating to the right to present legislative motions.

¹⁰ Law No. 31-13 on the Right to Access to Information (adopted February 22, 2018, published in Bulletin Officiel of March 12, 2018). This law implements Article 27 of the Constitution but contains broad exceptions limiting access.



consultative and not mandatory, like CNDH (National Human Rights Council) and CESE (Economic, Social and Environmental Council) (Madani et al., 2012).

3.2 The solution within the constitution: enforcement of agency

The correction of the situation exists in the constitution itself, which is not fully used in matters of socioeconomic public policy making, as what the constitution offers in matters of socioeconomic rights, freedoms, and capabilities is limited by organic law.

To counter this situation, the constitutional court has a role in guaranteeing the application of the constitution by exercising its statutory revision and approbation of organic law, and also by the protection of rights and liberties through the exception of unconstitutionality presented by justiciable who has perceived a violation of his rights and liberties during a trial in an ordinary court, a constitutional guarantee that is still under examination by the government and parliament.

In that perspective, the constitutional court should fully play the role of guaranteeing the socioeconomic rights as it does the judicial power to guarantee certain rules; nevertheless, the ordinary courts have their role but after the violation of these rights and not in the process of making public policies, which is another subject (Tushnet, 2009). The constitutional court could accomplish the role of ensuring the fulfillment of socioeconomic rights and effectively including them in public policies, in a way compatible with the constitutional function of the legislature and the executive. It informs the government on how to better align its policies with what is enshrined in the constitution in terms of socioeconomic rights (Sager, 1978). This could compensate for the non-existence of justiciable socioeconomic rights, and not limit those rights to vague constitutional principles that the government interprets and applies through public policies without any legal constraints.

Even with the existence of constitutional principles that organize the relation between the three powers, nevertheless, their separation does not mean their independence. In that sense, the cooperation between the three branches of power and their complementarity is constitutionally granted. But the division of tasks between the branches transformed into a division of power in matters of elaboration of public policies, which requires a tool to combine their task toward the realization of socioeconomic rights.

Therefore, this public power of the government in matters of socioeconomic rights should be submitted to law; as legalization is not the same as constitutionalizing in terms of application and abiding (Stone, 2012). If the constitution sets the aims, the law traces



the path to achieve these goals, and precisely makes it transparent and clear. This public design and distribution of roles between the different actors helps determine responsibilities and allows the participation of the population in the process of public decision making. All these tasks could be conducted in coherent manners to realize the objectives of socioeconomic development and thereby fulfill socioeconomic rights.

3.3 What should be done to fully activate agency

Public policy making in terms of fulfilling socioeconomic rights is reinforced by constitutional principles such as transparency, participation, and accountability. These constitutionalized principles that frame public action should be protected by the constitutional court as it is the institution that guarantees the application of the constitution in order to fulfill socioeconomic rights through effective public policies.

Therefore, the role of the constitutional court; an institution in charge of guaranteeing the application and respect of the constitution, can reinforce conversion factors through ensuring that public policy does not exclude parts of the territory, especially when investing and providing social services; ensuring that laws promote fair competition and limit discretionary governmental action in terms of delivering aids and subsidies, in signing public-private partnerships, and in actions and laws that facilitate the concentration of benefits in the form of rent and monopoly practices.

This could be done by guaranteeing the full participation of citizens and civil society by abolishing procedural barriers to citizens' participation and access to information established in the organic laws that frame the constitutional action such the presentation of petitions. Also, the court can operate in the sense of making sure that public action is beneficial for all regions, and publishing to the public all the decisions and reviews that they present in that matter so that they can be recognized by the general public to reinforce transparency.

However, to guarantee accountability, the court should have the ability to protect socioeconomic rights without transforming into legislative and executive power (Sager, 1978; Tushnet, 2009). The latter two branches have to abide by its decisions by creating adequate actions, and hold the political responsibility to conduct those public policies.

Conclusion

This article concluded that Moroccan constitution tries to balance rights and power, and the state is more active in regulating certain socioeconomic activities without limiting rights; it is a sort of controlled liberalism where the citizens have to operate within a



framework traced by the state, and the latter operates without stepping over rights and liberties. Following Sen framework analysis, even with the existence of constitutional guarantees, the application of socioeconomic rights is applied in constrained conditions. Thus, the existence of socioeconomic rights in the constitution is limited by factual conditions while fulfilling them through public policies; challenges that Morocco tries to overcome through many reforms and policies.

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