

Women's Struggle for Citizenship: Civil Society and Constitution Making after the Arab Uprisings

JOSÉ S. VERICAT



Cover Photo: Marchers on International Women's Day, Cairo, Egypt, March 8, 2011. Al Jazeera English.

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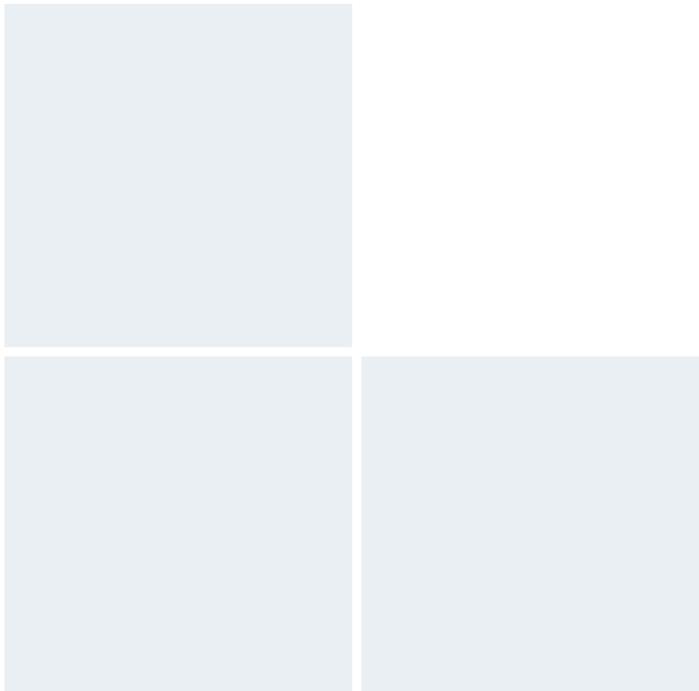
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Executive Summary

The Arab uprisings were, more than anything else, citizen revolts. They sprang from an irrepressible urge to transform relations between an authoritarian ruler and his subjects into a partnership between the state and its citizens. Though the uprisings are deeply rooted in the particularities of the Arab world, they also reflect a global movement of citizen activism.

Civil society played a pivotal role in these historic events. Before the revolts it led the civil resistance against state repression. As the transitions coalesced around the redrafting of the constitution, civil society was again fundamental in contesting and shaping that process. With the reconfiguration of the social contract in a region distinguished by gender inequality, the status of women was brought to the fore, and equal citizenship became a central goal of the uprisings. This report provides a granular analysis of the influence of civil society during the constitution-making process through the lens of women's rights.

The questions of citizenship and women's rights also intersect with one of the most important outcomes of the uprising—the rise of Islamist parties to power. The debates over the constitutions of Egypt and Tunisia reveal some of the key points of friction between Islamism and Western liberalism, a conflict that is central to the post-Cold War order and today's multilateral system. Thus the bargaining process over the constitutions reflects the struggle between the Islamists, the former regimes, and civil society over the identity and the future of the region.

In Egypt, the Muslim Brotherhood's mishandling of the process of drafting the 2012 constitution was one of the reasons behind the about-face in the public's attitude toward the Islamists. The constitution's content also fell short of the expectations of civil society and women's organizations. Yet many of the provisions in the new constitution that civil society criticized were holdovers from the previous regime, such as the way it confined women to the family sphere. In this way, traditional sexist attitudes overlapped indistinguishably with the positions of the Islamists. In other respects, the charter was actually an improvement on its predecessor, the constitution of 1971. For example,

it erased the reference to Islamic law in relation to equality between the sexes, and the notion of "citizenship" was pervasive.

Egypt's 2014 constitution, drafted after the Muslim Brotherhood was ousted from power, fulfilled many of the demands that civil society, and women's organizations in particular, had been making. For example, it guarantees women's right to hold public and senior management positions and be appointed to judicial bodies. It also establishes a commission to fight discrimination. However, in other respects it fell short of civil society's hopes, such as by still treating the family as only the domain of women. More importantly, in contrast to its predecessor, the constitutional commission was appointed, not elected, and it held meetings behind closed doors. It also preceded—or even paved the way for—an unprecedented campaign against Egyptians' civil rights that continues to intensify.

The 2014 Tunisian constitution stands in contrast to its two Egyptian counterparts. Though the whole process was led by the Islamists, as in Egypt in 2012, Tunisia's al-Nahda party made one concession after another, with civil society vocally contesting every draft, until the constitution was passed almost unanimously in the constituent assembly. The family is decoupled from references to women, who are described neither as complementary nor as partners in relation to men. Instead, the state commits itself to protect, strengthen, and develop women's accrued rights. It also stipulates the right of men and women to contest the country's presidency. On the whole, Tunisia's constitution demonstrates that Islamism and the Western liberal order are not necessarily incompatible. When compared to Egypt's 2014 text, the lesson is that the process is as important as the content itself. The Tunisian constitution was fiercely debated. It developed over six drafts that were vocally contested by civil society at every opportunity.

The experiences of Egypt and Tunisia reflect the fundamental struggle taking place among the people of the Middle East over how their societies and states should be organized. This struggle ultimately pits the capacity of the population to bring about change against that of regimes to maintain their hegemony.

Preface

The world is currently at a juncture, undergoing a major transition of which citizens are both the main incubators and the main victims. One positive consequence of the current stage of globalization, resulting in part from the equalizing effects of greater access to information technology, is that people have become more aware of their rights and duties. People are questioning the institutions that hold authority over them. The revolts that shook the Arab world starting in 2010—the so-called Arab Spring—was the result of a newly empowered, highly connected citizenry no longer content with elections as the only opening for changing the ruling elites. Unaddressed grievances, including social injustice, corruption, and marginalization, fueled these uprisings and the resulting demise of long-established authoritarian rule.

This report is based on the work of the Forum for Arab Citizenship in Transition (FACT), a project led by IPI to study how civil society organized itself to influence the post-authoritarian transitions, with particular emphasis on women's rights. It focuses on the post-uprising trajectories of Egypt and Tunisia and the active role of civil society and citizen movements in laying the foundations for more equitable and equal governance, using the constitution-writing processes as a strategic entry point. Because of the centrality of gender equality and women's empowerment in these processes, female leaders and women's associations, in cooperation with enlightened men, adopted the overarching notion of equal citizenship as their battle cry. This judicious choice was the result of a long debate about how to pursue women's rights without provoking nefarious Islamist ideologues or evoking the secular liberal feminism that previous authoritarian regimes had co-opted to consolidate their hold on power.

This report offers a number of lessons from Egypt and Tunisia that may be of relevance to other parts of the world where the fight for equality is a never-ending journey and the space for waging it is shrinking. These two cases illustrate that resilient, interconnected citizens have the capacity to bring about change peacefully, but also that the results cannot be taken for granted. In Egypt, despite certain gains, there were also reversals. In Tunisia, vigilance and activism continue unabated to ensure that gains are consolidated and enduring wrongs are addressed. Ultimately, what these two cases teach us is that the relation between text and reality, between the constitution and the actual rights that citizens enjoy, is dialectical; individual citizens will always play a pivotal role, undeterred by the countervailing forces that benefit from treating them as subjects rather than empowered partners in the fight for equality and social justice.

Youssef Mahmoud, IPI Senior Adviser

Introduction

The Arab uprisings that started in Tunisia in late 2010 and spread across the region like wildfire were earth-shattering events. Nothing like them had been witnessed in the Middle East since the struggles for independence from colonial rule more than half a century before—and even those had not happened in unison. These uprisings were not wars or military coups, though there were some of those later; they were spontaneous popular movements representing broad sectors of society reacting against decades of oppression.

These were democratic transitions, but they were also something more specific: a struggle for citizenship. During the Arab uprisings the struggle to reconfigure the social contract between subject and state—that is, to redefine citizenship—crystallized in the constitution-drafting process. The sensitivity of this process was evident in the large popular mobilizations it frequently provoked.

Constitution drafting had the potential to impact women in particular in a region that stands out for its discrimination against them. As the Tunisian academics and civil society activists Salwa Hamrouni and Nidhal Mekki noted during the constitution-drafting process in Tunisia, “The constitutional drafting period has rendered the current transitional period all the more crucial. It would not be an exaggeration to claim that the fate of women’s rights in Tunisia hangs in the balance during this critical constitutional moment.”¹ The expectations of civil society regarding women’s rights were high, in particular because of the prominence of women in the uprisings, in which on many occasions both sexes participated on equal footing and women often played a leading role. According to Mohamed Elagati, director of the Cairo-based Arab Forum for Alternatives, the defense of women’s rights was “an essential part of the struggle of all the revolution forces to achieve the demands of freedom, dignity and social justice.”²

The focus of this paper is therefore on equal

citizenship as a way to safeguard women’s rights by promoting equality and confronting discrimination. It examines in detail the constitution-drafting processes in Egypt and Tunisia, which became the key instruments for enshrining citizenship rights and the transition to democracy. It explores the debates around the drafting processes and how different sectors of society defined what they wanted the Arab uprisings to achieve from the perspective of civil society in particular (see Box 1). This is not merely an academic discussion; these were burning issues in both countries during the revolts and in their aftermath.

This report focuses on the cases of Egypt and Tunisia because, out of all the countries struck by revolt, they are the only ones that overthrew their authoritarian rulers and redrafted their constitutions with substantial civil society engagement, or pressure, in the process. While Libya also went through a change of regime and transitional authorities have put in place two interim constitutions, the drafting of these constitutions lacked the same degree of civil society participation, and a permanent charter that will be submitted to a national referendum is still being developed. Yemen, which also deposed its longstanding leader, was overcome by war before completing the constitution-making process.

Indeed, looking today at the outcome of the Arab uprisings across the region more generally, one cannot help but conclude that this has been primarily a story of failure. The hope and optimism that the Arab uprisings instilled in the hearts of millions who sought freer and more democratic societies were at first realized. As Samih Fawzi, the director of the Center for Development Studies at the Bibliotheca Alexandrina, asserts in relation to the first three years after the uprisings, “A profound change occurred in society: a change of system of rule, a popular, political and factional mobilization, the fall of paternal authority, which widened the space for voicing criticism to all authorities of the state, from the highest to the lowest.”³ However, in most cases these hopes were soon dashed and the

1 Salwa Hamrouni, “Equal Citizenship in Tunisia: Constitutional Guarantees for Equality between Citizens,” with Nidhal Mekki, Arab Forum for Citizenship in Transition, September 2012, p. 3, available at www.ipinst.org/images/pdfs/women-and-constitution-tunisia-english1.pdf.

2 Mohamed Elagati, “Women and Equal Citizenship: Analysis of the New Constitution of Egypt,” with Noov Senari, Arab Forum for Citizenship in Transition, December 2012, p. 4, available at www.ipinst.org/images/pdfs/women-and-constitution-egypt-english3.pdf.

3 Samih Fawzi, “Women and Citizenship: A Reading of the Religious Capital,” in *Citizenship and the Rights of Women in Egypt after the Arab Revolutions* (New York: Arab Forum for Citizenship in Transition, 2014), p. 105, available at https://www.ipinst.org/wp-content/uploads/2017/10/Book-Citizenship-Womens-Rights-in-Egypt-following-the-Arab-Uprising-Sept-2014_Arabic.pdf.

gains that were made lost. Libya, Syria, and Yemen have descended into full-blown civil wars.

Egypt is now experiencing levels of repression that exceed the pre-uprising days.⁴ The regression has been such that some Egyptians who were invested in the uprising and the movement for change have even wished for a return to the days of Hosni Mubarak.⁵ Egypt's new strongman, 'Abd al-Fattah al-Sisi, has increasingly curtailed the space for civil society.⁶ Derided as foreign agents, the activists who led the 2011 uprising have been imprisoned, forced into exile, or otherwise silenced. Still, before this crackdown, Egypt went through a prolonged transition in which there was significant engagement by civil society, and various conclusions can be drawn from this period.

Tunisia, on the other hand, has endured attempts by a strong and influential base of former regime supporters to sabotage the process of change. While it has suffered recurrent outbreaks of

violence from extremists and is still undergoing economic instability, it currently appears to be the only real success story from what was once called the "Arab Spring." However, despite the setbacks, from a long-term historical perspective the impact of the Arab uprisings will endure, and their repercussions will be felt in years to come. As the Egyptian historian Khaled Fahmy succinctly put it, "the genie is out of the bottle."⁷

In the process of examining the constitution-drafting processes in these two countries, this paper analyzes the fundamental struggle taking place among the people of the Middle East over their future. Ostensibly, this is a conflict between the Western liberal order and an Islamist alternative over how societies and states should be organized. But in reality, what we find is an ideological spectrum rather than a strict dichotomy. This is nevertheless a struggle that is central to the post-Cold War order and today's multilateral system. The analysis of these constitution-drafting processes sheds light on another central

Box 1. Arab Forum for Citizenship in Transition (FACT)

The notion of citizenship in the Middle East has received insufficient attention, whether by academics, analysts, or policymakers, and its prominence during the Arab uprisings warranted a more thorough examination. The Arab Forum for Citizenship in Transition (FACT), financed by the Australian Agency for International Development (AusAID) and with seed money from UN Women, was conceived by Middle Eastern civil society activists and the International Peace Institute (IPI) to enable the establishment of a locally owned network of civil society organizations.

The purpose of FACT was not just to analyze and inform but also to promote. The idea was that these historical events were a time of enormous opportunity, including for women. However, such a period of transition was also inherently unstable, and it was necessary to support efforts that would further the interests of the most vulnerable and disadvantaged members of society. In this context, the notion of citizenship was also seen as the best paradigm for advancing the cause of women. Because equal treatment of men and women is inextricably tied to the definition of citizenship, monitoring the rights of women is a way to measure the degree of citizenship.

FACT aimed at establishing a dialogue with the authorities who were leading the transitions and influencing them through convening and research. It produced a dozen policy-oriented reports authored by civil society activists, academics, and experts from the countries where the uprisings were taking place. The research, which this report is based on, offers an opportunity to provide a local account of the debates within these countries, and within civil society in particular.

4 See, for example, Amr Hamzawy, "Legislating Authoritarianism: Egypt's New Era of Repression," Carnegie Endowment for International Peace, March 2017, available at <http://carnegieendowment.org/2017/03/16/legislating-authoritarianism-egypt-s-new-era-of-repression-pub-68285>.

5 Shadi Hamid, "Hosni Mubarak Is a Free Man," *The Atlantic*, March 24, 2017, available at www.theatlantic.com/international/archive/2017/03/hosni-mubarak-free/520806/?utm_source=atltw.

6 See, for example, Giuseppe Acconcia, "The Shrinking Independence of Egypt's Labor Unions," Carnegie Endowment for International Peace, September 20, 2016, available at <http://carnegieendowment.org/sada/64634>; and Amy Austin Holmes, "The Attack on Civil Society outside Cairo," Carnegie Endowment for International Peace, January 26, 2017, available at <http://carnegieendowment.org/sada/67810>.

7 José S. Vericat, "Egypt Revolution Stumbles, but the 'Genie is Out of the Bottle: Interview with Khaled Fahmy,'" *IPI Global Observatory*, January 14, 2014, available at <https://theglobalobservatory.org/2014/01/egypt-revolution-stumbles-but-the-genie-is-out-of-the-bottle-interview-with-khaled-fahmy/>.

global issue: the process of bargaining over the relation between state and society, which pits the capacity of the population to bring about change against that of regimes to maintain their hegemony.

The Importance of Being a Citizen

Though these momentous events may be broadly understood as part of a struggle for democracy, the demands of the protesters themselves were more concrete and closer to the language of rights and citizenship. As evident from the slogans the protesters chanted, which encapsulated the reasons for the uprisings, they were demanding civil and political as well as economic and social rights. In the case of Egypt, “the revolution of January 25, 2011, rallied millions under the slogan ‘bread, freedom and social justice.’”⁸ In Tunisia one popular slogan was “work, freedom and national dignity.”⁹ It may be argued that such demands are captured in the single concept of citizenship. According to Azza Khalil, a researcher at the Cairo-based Center for African and Asian Studies and a journalist at the Egyptian newspaper *al-Shorouk*, such slogans expressed the population’s “desire for the better life that they think they deserve” and included “the different dimensions of citizenship.”¹⁰

The debate over citizenship “constitutes one of the most important issues that occupied the political arena in Egypt for years” even before the uprisings, wrote Elagati.¹¹ The notion of citizenship was not only implicit but also directly referenced in the aftermath of the uprisings in the “intense discussions about citizenship, the secularism of the

state, the principles of equality, equal opportunities and the rights of minorities and those marginalized.”¹² The various positions around these issues were what distinguished the programs of different political parties.¹³

The word “citizenship” was also in the name of movements that arose spontaneously in these countries and that represented the aspirations of the uprisings. For example, in Syria a political movement called Muwatana (“citizenship” in Arabic) was created shortly after the beginning of the revolts there. Indeed, the uprisings are sometimes referred to as a “citizen movement” because they had a broad base and were not instigated by any particular faction.¹⁴

Although the Arab uprisings brought to the fore the notion of citizenship, this was not a new concept; the term has a long history in the Arab world. The Egyptian constitution of 1971, as amended in 2007, asserted that “the Arab Republic of Egypt is a state whose system is democratic and is based on citizenship.” This concept was actually first introduced in the abbreviated constitutional declaration of 1952.¹⁵ This was no happenstance. That year a revolution had overthrown the monarchy and ended colonial rule in the country. The notion of citizenship was born out of the emancipation from colonial and monarchical rule.

The aspect of citizenship that was most central to the uprisings in the Middle East was the relation between the individual and the state that had been forged in the postcolonial era. At the outbreak of the revolts “the relation between the state and Egyptians reached the forefront of the political arena.”¹⁶ Underlying the chants of the protesters

8 Mohamed Elagati, “Introduction: The Concept and Practice of Citizenship after the Egyptian Revolution,” in *Citizenship and the Rights of Women in Egypt after the Arab Revolutions* (New York: Arab Forum for Citizenship in Transition, 2014), p. 13, available at www.ipinst.org/wp-content/uploads/2017/10/Book-Citizenship-Womens-Rights-in-Egypt-following-the-Arab-Uprising.-Sept-2014_Arabic.pdf.

9 Michael J. Willis, “Revolt for Dignity: Tunisia’s Revolution and Civil Resistance,” in *Civil Resistance in the Arab Spring: Triumphs and Disasters*, eds. Adam Roberts et al. (Oxford: Oxford University Press, 2016), p. 49.

10 Azza Khalil, “Citizenship as Seen by Egyptians,” in *Citizenship and the Rights of Women in Egypt after the Arab Revolutions* (New York: Arab Forum for Citizenship in Transition, 2014), p. 120, available at https://www.ipinst.org/wp-content/uploads/2017/10/Book-Citizenship-Womens-Rights-in-Egypt-following-the-Arab-Uprising.-Sept-2014_Arabic.pdf.

11 Elagati, “Introduction,” p. 13.

12 Omar Khalaf, “Citizenship and Women’s Economic and Social Rights in Egypt after the Revolution,” in *Citizenship and the Rights of Women in Egypt after the Arab Revolutions* (New York: Arab Forum for Citizenship in Transition, 2014), p. 53, available at www.ipinst.org/wp-content/uploads/2017/10/Book-Citizenship-Womens-Rights-in-Egypt-following-the-Arab-Uprising.-Sept-2014_Arabic.pdf.

13 Ibid.

14 In this editorial, for example, they are called citizen protests: “La Última Palabra,” *Afkar/Ideas* 53 (Spring 2017), available at www.politicaexterior.com/articulos/afkar-ideas/afkar53-la-ultima-palabra/.

15 Nathan J. Brown and Clark B. Lombardi, “Contesting Islamic Constitutionalism after the Arab Spring: Islam in Egypt’s Post-Mubarak Constitutions,” in *Constitutionalism, Human Rights and Islam after the Arab Spring*, ed. by Rainer Grote and Tilmann J. Roder (New York: Oxford University Press, 2016), pp. 245–60 (p. 252).

16 Elagati, “Introduction,” p. 13.

was a desire to reconfigure the relation between the state and its citizens—to switch from a vertical relationship in which the people were treated as subjects of a regime to a partnership between the state and its citizens. This desire went to the very core of the uprisings, as demonstrated by how irked many Egyptians were by the paternalistic tone of the last speech of President Hosni Mubarak on February 10, 2011, the day before he was removed from power, in which he addressed the public as “my children.”¹⁷

Another aspect of citizenship that reverberated widely was how it represented not only a demand for rights but also a set of duties the individual had toward society and the state. This was illustrated by protesters’ palpable interest in participating in the process of improving their country. It was also seen in the encampments of protesters, who often prided themselves on their cleanliness, organization, and security, or in the way neighbors organized themselves to protect their communities.¹⁸

More generally, the uprisings were distinguished by people’s high level of political commitment and their desire to bring about change through activism. This undermined old tropes about docile and submissive populations unable to take their destiny into their own hands that lay behind theories of “Arab exceptionalism” to explain the absence of democracy, or progress more generally, in the region.¹⁹

Elagati and the Egyptian women’s rights activist Noov Senary define citizenship as “a rights-based concept that assumes rights and duties for the citizen in the general political frame to which she or he belongs.”²⁰ The state is then contrasted with other forms of allegiance that can erode loyalty to it, such as allegiance to clan, religion, language, geographic region, or ethnicity. Thus in many Arab

countries with significant demographic variations, particularly along religious lines, the notion of citizenship has been used to gloss over that diversity and treat everyone as equal. For example, the Syrian group Muwatana longed for “a geographically and demographically unified democratic civil state in Syria; a state consisting of equal, free and individual citizens, where no sectarian, ethnic, gender or any other discrimination exists.”²¹ In Egypt this was also a challenge, given the presence of a large Christian minority within a largely Muslim population. In Tunisia, a country with no substantial religious minority, the tension was perceived more as between Islam and secularism.

As a widely accepted framework for understanding the relationship between individuals and the state, citizenship can also serve implicitly to promote women’s rights. This is useful because the promotion of women’s rights has been at the center of a longstanding debate in the Middle East. This debate is nuanced, and what follows is a rough outline.

For decades, a number of regimes in the Middle East have used women’s rights to justify their authoritarian methods. They have used them to validate the suppression of Islamist movements, which they presented as wanting to subjugate women. This so-called “state feminism” has been typified by the first ladies of Egypt (Suzanne Mubarak) and Tunisia (Leïla Ben Ali), vaunted as the embodiment of Western liberal values, foremost among them women’s rights.²² The Egyptian and Tunisian states also had “secular organizations dedicated to the advancement of women” such as Egypt’s National Council for Women, which was established in 2000.²³

The negative repercussions of this policy during the Arab uprisings and the transition period that

17 For the text of the speech, see www.aljazeera.com/video/middleeast/2011/02/20111210234022306527.html.

18 The Tunisian author Kamel Riahi wrote about this in the aftermath of the uprising in Tunisia: “A Night in Tunisia,” *New York Times*, January 18, 2011, available at www.nytimes.com/2011/01/19/opinion/19riahi.html.

19 This is a recurrent theme that is often implicit in writing about the Middle East. For an example of the phenomenon, see Jean-Pierre Lehmann, “Arab Exceptionalism in the Global 21st Century,” *Forbes*, January 18, 2015, available at www.forbes.com/sites/jplehmann/2015/01/18/arab-exceptionalism-in-the-global-21st-century/#18695c6e4b5c. For a discussion of the subject, see Tamara Cofman Wittes, *Freedom’s Unsteady March: America’s Role in Building Arab Democracy* (Washington, DC: Brookings Institution Press, 2008), pp. 2–3.

20 Elagati, “Women and Equal Citizenship,” p. 6.

21 Citizenship Movement’s Facebook page, accessed July 20, 2017, available at www.facebook.com/CitizenshipMovementMouwatana/posts/561994447189318.

22 The term “state feminism” in the Middle East context was popularized by Mervat Hatem in her seminal article “Economic and Political Liberation in Egypt and the Demise of State Feminism,” *International Journal of Middle East Studies* 24, no.2 (1992).

23 Lisa Blaydes and Safinaz El Tarouty, “Women’s Electoral Participation in Egypt: The Implications of Gender for Voter Recruitment and Mobilization,” *Middle East Journal* 63, no.3 (2009), p. 367.

followed have been discussed quite openly. For example, in its report on the 2011–2012 Egyptian elections, the Carter Center said, “Former First Lady Suzanne Mubarak was promoted as the national face of the women’s movement from 2000 until the revolution. In the backlash against the Mubarak regime, laws advancing women’s rights have largely been attacked as ‘Suzanne’s Laws’ (e.g., tools of Mubarak-era repression) by many, including some women’s rights groups.”²⁴ Similarly, in Tunisia after the uprising women’s organizations were dismissed as “politicized” for having served as pawns in the hands of the wife of Ben Ali. Women themselves were among the harshest critics of state-sponsored women’s associations, according to a survey carried out by academic researchers from the Unit for Research on Legislation on Personal Status.²⁵

For their part, Islamists have turned their opposition to the discourse of women’s rights into the spearhead of their attack against Western liberalism. For example, in Egypt they showed keen interest in banning women from wearing bikinis during the political transition following the uprising there.²⁶ At

the same time, through their grassroots organizations the Islamists developed a greater capacity to mobilize women politically than the state.

Women’s rights and their very bodies have therefore been at the center of the struggle between these conflicting parties. As Fawzi points out, “In the last three decades the rights and liberties of women became trapped in the conflict between the state and political Islam.” He sees Egypt’s two post-uprising constitutions as clear examples of this struggle, with the 2012 constitution being taken over by political Islam and the 2014 constitution by the “semi-secularized” urban elite.²⁷

Civil society has been the third party to this argument. It has for decades sided with the authorities in their criticism of regressive attitudes toward women’s rights. However, it has also criticized the regimes for not doing enough and for being hypocritical in their efforts to advance these rights. The conflict charted in this report is therefore that between these three actors: civil society, the Islamists, and the regimes. Each represents an identifiable set of interests they were struggling to advance.

Box 2. Citizenship in the global discourse

The struggle over the notion of citizenship and criticism of the human rights discourse is in fact one of the major meta-narratives of politics in the world today. Actors in the global political arena are constantly laying claim to the term in order to justify their position. Recently, controversy over when it is appropriate to invoke citizenship has advanced to the forefront of the discussion over globalization. In her first speech as prime minister of the UK, Theresa May, intending to appeal to those disgruntled with globalization, pledged to take on the “citizens of nowhere” who “don’t understand what the very word ‘citizenship’ means.”²⁸ Richard Haas, president of the Council on Foreign Relations, implicitly agreed with her, choosing “global citizen” as the first of “13 International Relations Buzzwords That Need to Get Taken to the Woodshed.” “Citizenship,” he asserts, “is a national concept, one tied to sovereignty,” that is, the nation-state.²⁹ Criticism of the human rights discourse has also become a staple of mass media due to the obvious hypocrisy with which it has been bandied about over the years.³⁰

24 Carter Center, “Final Report of the Carter Center Mission to Witness the 2011–2012 Parliamentary Elections in Egypt,” 2012, p. 134.

25 Mohsen Al-Tlili, “Citizenship in Tunisia and Mechanisms for the Promotion of the Rights of Women,” Arab Forum for Citizenship in Transition, 2014, pp. 24–25, available at www.ipinst.org/images/pdfs/FACTReport-Equal_Citizenship-Arabic-September2014.pdf.

26 Amira Nowaira, “Will Egypt’s First Post-revolution Parliament Make a Difference?,” *The Guardian*, January 25, 2012, available at www.theguardian.com/commentisfree/2012/jan/25/egypt-parliament-islamist-majority; David D. Kirkpatrick, “Islamists Win 70% of Seats in the Egyptian Parliament,” *New York Times*, January 21, 2012, available at www.nytimes.com/2012/01/22/world/middleeast/muslim-brotherhood-wins-47-of-egypt-assembly-seats.html.

27 Fawzi, “Women and Citizenship,” p. 99.

28 David Runciman, “Do Your Homework,” *London Review of Books* 39, no. 16 (March 2017), available at www.lrb.co.uk/v39/n06/david-runciman/do-your-homework.

29 Richard N. Haas, “13 International Relations Buzzwords That Need to Get Taken to the Woodshed,” *Foreign Policy*, February 3, 2017, available at <http://foreignpolicy.com/2017/02/03/13-international-relations-buzzwords-that-need-to-get-taken-to-the-woodshed/>.

30 See, for example, Michael Hobbes, “Saving the World, One Meaningless Buzzword at a Time,” *Foreign Policy*, February 21, 2017, available at http://foreignpolicy.com/2017/02/21/saving-the-world-one-meaningless-buzzword-at-a-time-human-rights/?utm_content=buffer8cf6d&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer.

Civil Society in Egypt and Tunisia

It is hard to establish the exact influence of civil society organizations in the Middle East, but they were clearly key instigators of the Arab uprisings. Though in numbers they represented a tiny minority of those involved, they created and nurtured a spirit of contestation that, when the right circumstances arose, quickly grew into nationwide uprisings. In Egypt, Kefaya (Arabic for “enough”) was the first movement that openly called for President Mubarak to step down, thus breaking a taboo and setting a precedent.³¹ This movement attracted the attention of international media despite its small number of adherents by proposing a set of ideas based on a project of reform that resonated widely.³²

Civil society, of which women’s groups were historically an essential part, also played an important role during the transitions following the uprisings, including in the constitution-drafting processes. Civil society representatives in Egypt and Tunisia participated in some of the hearings of the constitution-drafting bodies and submitted written proposals. Even when they did not directly participate in the official debates, they exercised influence by organizing campaigns to lobby for certain issues. As discussed below, women’s groups were deeply involved in these different activities.

It was evident in the discourse of and discussions among the various political forces and the constitution makers that civil society set at least some of the parameters. It managed “to impose a context that the constitutional committees and governments could not completely ignore.”³³ This process of greater citizen input through civil society has become a major characteristic of constitution-drafting processes of the postcolonial era, and of the last two decades in particular. According to

Tunisian academic and civil society activist Nidhal Mekki, “The participatory approach is considered as the most prominent feature of contemporary constitutional processes.”³⁴

The term “civil society,” however, is ambiguous and controversial. This report uses a narrow definition of civil society as “a vocal minority” of the urban educated elites associated with certain nongovernmental organizations. To justify this, it is necessary to make an important linguistic distinction, particularly because this report attempts to provide a local understanding of the subject.

The Arabic term for civil society is *al-mujtama‘ al-madani*. There is, however, another expression that often overlaps with this term: *al-mujtama‘ al-ahli*, which translates awkwardly as “community society” and is best understood with reference to its derivative, *al-mu‘assasat al-ahliyya*, or “community associations.” The difference between these terms directs attention to an essential point: civil society organizations in the Middle East are split between those that are driven by a liberal agenda, influenced by Western thought and institutions, and those that are rooted in a spirit of solidarity, voluntarism, and charity, which are closer to the more disadvantaged echelons of society that they claim to serve.³⁵ Something of an ideological divide, though not necessarily a confrontation, appears to have emerged between these two categories. For some decades now, the latter have often fallen under the influence of an Islamic, if not Islamist, project, while the former are sometimes referred to as “secular.”³⁶

One of the distinguishing features of “secular civil society” is its promotion of the discourse of human rights and citizenship, both essential building blocks of the nation-state system that underpins the Western liberal order and of which women’s rights are a key element; indeed, it is no coincidence that many of these organizations are sustained by Western funding. However, while

31 Rania Zada, “Civil Society and Citizenship,” in *Citizenship and the Rights of Women in Egypt after the Arab Revolutions* (New York: Arab Forum for Citizenship in Transition, 2014), p. 79, available at www.ipinst.org/wp-content/uploads/2017/10/Book-Citizenship-Womens-Rights-in-Egypt-following-the-Arab-Uprising-Sept-2014_Arabic.pdf.

32 Ashraf Khalil also succinctly describes the central role of civil society, including Kefaya, in Egypt since the turn of the millennium in the lead-up to the overthrow of Mubarak in *Liberation Square: Inside the Egyptian Revolution and the Rebirth of a Nation* (New York: St. Martin’s Press, 2011), pp. 29–46.

33 Khalaf, “Citizenship and Women’s Economic and Social Rights in Egypt after the Revolution,” p. 64.

34 Nidhal Mekki, “Tunisia: Equality in Gender and Constitution,” with Salma Jrad, Arab Forum for Citizenship in Transition, September 2014, p. 39, available at www.ipinst.org/images/pdfs/FACTReport-Gender_Constitution-Arabic-September2014.pdf.

35 For a case study of this distinction in the Palestinian context, see Benoît Challand, “A Nahda of Charitable Organizations? Health Service Provision and the Politics of Aid in Palestine,” *International Journal of Middle East Studies* 40, no.2 (2008).

36 See, for example, Monica L. Marks, “Convince, Coerce, or Compromise? Ennahda’s Approach to Tunisia’s Constitution,” Brookings Institution, February 2014, p. 1, available at www.brookings.edu/research/convince-coerce-or-compromise-ennahdas-approach-to-tunias-constitution/.

some consider it challenging to reconcile this discourse with Islam, the broader public and even leading Islamists have adopted at least its general outlines. Most notably, Yusuf al-Qaradawi (1926–), one of the most influential clerics globally and a major reference for the Muslim Brotherhood, is a renowned advocate of citizenship as the basis for the relation between Egyptians and their political authorities.³⁷ This spirit is also shared by Rashid al-Ghannushi (1941–), the co-founder and leader of the Tunisian al-Nahda, an offshoot of the Egyptian Muslim Brotherhood.

Nonetheless, there is a split in how Islamists view citizenship. Acceptance, or otherwise, of the nation-state system and the human rights discourse, to which the notion of citizenship is intimately tied, is one of the major fault lines among Islamists today. This is why civil society activists in Egypt expressed outrage when the leader of the Muslim Brotherhood, Muhammad Mursi, in his first address after winning the presidential elections, addressed Egyptians as “my clan” (*ashirati*) rather than “citizens” (*muwatinun*).³⁸ The latter was the more common term and can be traced to speeches by nationalist leader—and Muslim Brotherhood persecutor—Gamal Abdel Nasser (1914–1970), who would use it as his opening line.³⁹

Egypt

The relation between the Egyptian state under the Mubarak regime (1981–2011) and its subjects was fundamentally broken. During its last years, the regime tried to increase its legitimacy by introducing amendments to the Egyptian constitution further clarifying the principle of citizenship as the basis for rights and liberties.⁴⁰ Despite these

efforts, however, citizenship remained a dysfunctional concept in practice because there was no real desire to guarantee political, social, and economic rights, equality between the sexes, and protection of religious minorities. The killing of Khalid Sa'id in police custody in Alexandria in June 2010, which was the most concrete catalyst of the revolt in Egypt, epitomized this, immediately becoming a symbol and a rallying cry against police brutality, but also more generally against state repression and the absence of basic rights and freedoms. In the end, the flawed relation between the state and Egyptians could not sustain itself any longer, and protests started in earnest on January 25, 2011.

WOMEN IN EGYPT BEFORE THE UPRISING

One of the most palpable manifestations of Egypt's crisis of citizenship before the uprising was discrimination against women. Egyptian women have long suffered extreme levels of marginalization in multiple spheres. Levels of deprivation among women in Egypt are such that Egyptian analyst Omar Khalaf, graduate of the Faculty of Economics and Political Science at Cairo University and a researcher at the Arab Forum for Alternatives, talks about “the feminization of poverty,” pointing to the systemic causes of this discrimination.⁴¹ The Women's Economic Opportunity Index placed Egypt 62 out of 113 countries in 2010.⁴² Around the time of the uprising, women represented 22.4 percent of the labor force and were four times more likely to be unemployed.⁴³ Women were mostly absent from senior positions in both the public and the private sectors and suffered from wage inequality. A gender gap in education also affected women's literacy and advanced education levels.⁴⁴

37 Jacob Hoigilt, *Islamist Rhetoric: Language and Culture in Contemporary Egypt* (London/New York: Routledge, 2011), p. 58. There were numerous publications on this issue on the intellectual Islamic scene, including *Citizens Not Dhimmis*, by Fahmi Huwaidi, one of the more renowned “new Islamists.” Elagati, “Introduction,” p. 13. For a comprehensive study of the “new Islamists,” see Raymond William Baker, *Islam without Fear: Egypt and the New Islamists* (Cambridge: Harvard University Press, 2003).

38 For the text of the speech, see <http://gate.ahram.org.eg/News/224329.aspx>.

39 Some have argued that Mursi was not trying to replace the notion of citizenship but simply trying to use a warmer form of address. Indeed, the rejection of the concept of citizenship is more closely associated with Salafis, who are more often than not opponents of the Brotherhood.

40 Elagati, “Introduction,” p. 13.

41 Khalaf, “Citizenship and Women's Economic and Social Rights in Egypt after the Revolution,” p. 64.

42 Economist Intelligence Unit, “Women's Economic Opportunity,” June 2010, available at http://graphics.eiu.com/upload/WEO_report_June_2010.pdf.

43 Data from “Women in Egypt: Still Struggling,” *The Economist*, October 21, 2011, available at www.economist.com/blogs/dailychart/2011/10/women-egypt; and the International Labour Organization from 2009, cited in Outi Kärkkäinen, “Women and Work in Egypt: Tourism and ICT Sectors,” European Training Foundation, October 2010, p. 24, available at [www.etf.europa.eu/webatt.nsf/0/E88B6660C198FDECC12578CC004C2796/\\$file/Women and work in Egypt - 2011_EN.pdf](http://www.etf.europa.eu/webatt.nsf/0/E88B6660C198FDECC12578CC004C2796/$file/Women%20and%20work%20in%20Egypt%20-%202011_EN.pdf).

44 Devarajan Shantayanan and Lili Mottaghi, “Predictions, Perceptions and Economic Reality,” World Bank, *MENA Quarterly Economic Brief* 3 (July 2014), p. 14, available at <http://documents.worldbank.org/curated/en/373331468052751480/Predictions-perceptions-and-economic-reality>; Kärkkäinen, p. 26.

The absence of women in politics was one of the most obvious indicators of their marginalization. Only eleven women were elected to the lower house of parliament in 2000 (2.4 percent), and only four were elected in 2005 (0.9 percent). In 2010 sixty-four seats were reserved for women, leading to a historically high representation of 12 percent.⁴⁵ As summarized succinctly by the Carter Center, “Women’s political empowerment in Egypt consistently ranks among the bottom 10 percent of countries worldwide.”⁴⁶

Though government and other official institutions are ultimately responsible for this disparity, a culture of discrimination against women is firmly entrenched in society. This culture of discrimination affects the attitudes and behavior of women and how they perceive their role in society. There is, for example, a general reluctance among women in Egypt to join political parties or other public organizations such as labor unions. While this is partly due to high levels of illiteracy, it also stems from a sexist culture that relegates women to the private sphere and that is often justified by invoking religion.⁴⁷ Many Egyptian women did not accept this marginalization, and the subject was “an area of intense debate” after the uprising.⁴⁸

THE 2012 CONSTITUTION: IS ISLAMISM INCOMPATIBLE WITH WOMEN’S RIGHTS?

After mass demonstrations started on January 25, 2011, they quickly escalated so that by February 11th the military intervened and forced President Mubarak to step down. When the Supreme Council of the Armed Forces, composed of fifteen senior military commanders, assumed power it announced the suspension of the 1971 constitution and of parliament, to be followed by fresh elections, thereby setting the blueprint for the political transition. Although the Muslim Brotherhood had not

participated in the revolt from the start, the organization eventually emerged as the best-organized political force, and its political formation, the Freedom and Justice Party, won 46 percent of the seats in the election for the People’s Assembly held between November 2011 and January 2012. Together with the Salafis, represented by the al-Nur Party, which received 24 percent of the seats, they established a powerful coalition. Thus civil society groups, including the leftist groups that had played a major role in the uprising, had been upstaged.

While there were numerous obstacles preventing women from reaching public office, women were keen voters, based on some accounts. According to the Egyptian Center for Women’s Rights, they represented an average of some 65 percent of voters in the four election cycles that took place in 2012.⁴⁹ Such levels of participation are contested, however. For example, the Carter Center argued that women were underrepresented throughout the process of the 2012 presidential elections, pointing out that 3 million women, particularly in rural areas, may have been disenfranchised by their lack of a national identity card.⁵⁰

Moreover, the new election law in 2011 eliminated the reserved seats for women, ostensibly because quotas were a form of positive discrimination that reinforced rather than dissipated discrimination. In reality, this probably had more to do with the Muslim Brotherhood’s desire to dismantle state feminism, though, as discussed later, there were also broader objections to quotas. While the new law required that party lists include at least one woman, it far from guaranteed that women would win seats.⁵¹ According to Ziyad Baha al-Din, who led the Social Democratic Party and later became deputy prime minister, political parties across the ideological spectrum “put women at the bottom of

45 Evan Hill, “Women Make Leap in Egypt Parliament,” *Al-Jazeera*, November 28, 2010, available at www.aljazeera.com/news/middleeast/2010/11/2010111813029420433.html.

46 Carter Center, “Final Report of the Carter Center Mission to Witness the 2011–2012 Parliamentary Elections in Egypt,” p. 134.

47 Elagati, “Women and Equal Citizenship,” p. 5.

48 Carter Center, “Final Report of the Carter Center Mission to Witness the 2011–2012 Parliamentary Elections in Egypt,” p. 134.

49 Egyptian Center for Women’s Rights, “Report on the Status of Egyptian Women for the Year 2012” (in Arabic), *Gomhuria Online*, January 8, 2013, available at www.gomhuriaonline.com/main.asp?v_article_id=60516#.WSHQFxiw0o8. Many of these ballots were cast for Islamist parties, which had well-organized and active women’s sections but do not always have the same understanding of women’s rights as secular civil society in Egypt. Zada, “Civil Society and Citizenship,” p. 84.

50 Carter Center, “Presidential Election in Egypt: Final Report,” 2012, pp. 45–46, available at www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/egypt-final-presidential-elections-2012.pdf.

51 UN Women, “Women’s Empowerment in the Middle East and Worldwide,” April 20, 2012, available at www.unwomen.org/en/news/stories/2012/4/women-s-empowerment-in-the-middle-east-and-worldwide.

their lists, in compliance with the law,” which in fact reduced women’s chances of entering parliament.⁵²

Thus in the 2011–2012 elections for the lower house of parliament (the People’s Assembly) women only obtained 8 out of 498 elected seats (1.6 percent)—four of them from the Muslim Brotherhood–affiliated Freedom and Justice Party. Similarly, in the 2012 elections for the upper house (the Shura Council), women won only 5 out of 180 seats (2.8 percent).⁵³ In the presidential elections of June 2012 there were no women among the thirteen candidates.

After the elections the focus turned to redrafting the constitution. Article 60 of the Constitutional Declaration issued by the Supreme Council of the Armed Forces in March 2011 called on members of the Shura Council and the People’s Assembly, the upper and lower houses of parliament, to elect a 100-member Constituent Assembly to draft a new constitution in six months, which would then be put to a referendum. Due to its victory in the elections, the Islamist coalition controlled the composition of this Constituent Assembly, leading many civil society organizations to fear that the constitution would be used to pave “the way for a theocratic system of government.”⁵⁴

The National Council of Women demanded 30 percent representation for women in the Constituent Assembly.⁵⁵ Other women’s organizations demanded parity. In the end, only 8 women were appointed out of 100 total members, and of

these only one, Manal el-Tibi, had a record of “championing women’s rights.”⁵⁶ The paucity of women raised concerns about the process and the notion of citizenship that would be forged. However, it must be noted that this was still an improvement over previous constitutional assemblies in Egypt that had included no women.⁵⁷

Civil society organizations filed legal challenges against the Constituent Assembly on the grounds that it did not properly represent women, youth, and minorities, and the initial assembly was dissolved by court order in April 2012. The second assembly, elected in June, was not a significant improvement in this respect. As a result, opposition parties and Christian churches boycotted its work.⁵⁸ In the meantime, street protests against the Mursi government were becoming larger and more frequent and were turning increasingly violent, leaving dozens injured. In late November, as a court was scheduled to again decide whether to dissolve the Constituent Assembly, Mursi issued a presidential decree protecting the assembly from dissolution. The final draft of the constitution was rushed through the Constituent Assembly on November 30th without allowing for a proper debate. By that time only women from the Islamist faction were left, the rest having quit.⁵⁹ The Constituent Assembly was seen as representing only the Islamists and not Egyptian society as a whole, including its minorities. Civil society took to the streets once again to protest the final draft and the planned referendum.⁶⁰ The public vote took

52 Ziyad Baha al-Din, “The Scandal of Women’s Representation in Parliament: Are We in the Twenty-First Century?” (in Arabic), *Shorouk News*, January 10, 2012, available at www.shorouknews.com/columns/view.aspx?cdate=10012012&id=0f4ba8b4-e50e-45dc-b2fe-24e7583c564b.

53 Carter Center, “Preliminary Statement on Egypt’s Shura Council Election,” February 28, 2012, available at www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/egypt-022812-shoura-council-elections.pdf.

54 M. Cherif Bassiouni, “Egypt’s Unfinished Revolution,” in *Civil Resistance in the Arab Spring: Triumphs and Disasters*, eds. Adam Roberts et al. (Oxford: Oxford University Press, 2016), p. 64.

55 “National Council of Women: Women’s Representation in the Constituent Committee of the Constitution Is ‘Insulting’” (in Arabic), *Masress*, March 28, 2012, available at www.masress.com/shorouk/571605. This demand was also echoed by the Carter Center in its “Preliminary Statement on Egypt’s Shura Council Election.”

56 Mariz Tadros, “The Politics of Mobilising for Gender Justice in Egypt from Mubarak to Morsi and Beyond,” Institute of Development Studies, May 2014, p. 21, available at www.ids.ac.uk/publication/the-politics-of-mobilising-for-gender-justice-in-egypt-from-mubarak-to-morsi-and-beyond.

57 *Ibid.*, p. 21. For their names and short biographies, see also Elagati, “Women and Equal Citizenship,” pp. 31–32.

58 Jason Gluck and Michele Brandt, “Participatory and Inclusive Constitution Making: Giving Voice to the Demands of Citizens in the Wake of the Arab Spring,” United States Institute of Peace, 2015, p. 7, available at www.usip.org/publications/2015/01/participatory-and-inclusive-constitution-making; “Egypt Court Suspends Constitutional Assembly,” BBC, April 10, 2012, available at www.bbc.com/news/world-middle-east-17665048; “Egypt’s Churches Withdraw from Constituent Assembly,” *Al-Ahram Online*, November 17, 2012, available at <http://english.ahram.org.eg/NewsContent/1/64/58411/Egypt/Politics-/Egypts-churches-withdraw-from-Constituent-Assembly.aspx>.

59 Bassem Sabry, “Manal El-Tibi’s Resignation Letter to Egypt’s Constituent Assembly,” *Al-Ahram Online*, September 26, 2012, available at <http://english.ahram.org.eg/News/53896.aspx>; Heba Afify, “Infighting in Constituent Assembly as Draft Articles Presented,” *Egypt Independent*, July 25, 2012, available at www.egyptindependent.com/infighting-constituent-assembly-draft-articles-presented/; Zeinab El Gundy, “Mona Makram Ebeid Resigns from Egypt’s Constituent Assembly,” *Al-Ahram Online*, March 26, 2012, available at <http://english.ahram.org.eg/NewsContent/1/64/37740/Egypt/Politics-/Mona-Makram-Ebeid-resigns-from-Egyptys-constituent-.aspx>.

60 See Amnesty International, “Egypt’s New Constitution Limits Fundamental Freedoms and Ignores the Rights of Women,” November 30, 2012, available at www.amnesty.org/en/latest/news/2012/11/egypt-s-new-constitution-limits-fundamental-freedoms-and-ignores-rights-women/.

place on December 15th, and the constitution was approved by 64 percent of voters. However, the turnout was only 33 percent.

The uprisings had galvanized civil society in Egypt, and nongovernmental organizations were very active during the transition period, including in drafting their own proposals that they presented to the Constituent Assembly. These included at least a dozen women's groups, some long-established and others created after the uprising.⁶¹ Beyond submitting constitutional proposals, these organizations led almost daily demonstrations demanding the advancement of their rights. One of their foremost concerns was the place that religion would occupy in the constitution; they feared that Islam would be "instilled...into the fabric of the state" and the repercussions this would have for women's rights.⁶² Civil society activists particularly feared that women's rights would suffer given that the belief prevailed among the Islamists "that the rights that were established for women and children under Hosni Mubarak...were part of 'the remnants of the regime' and not 'social gains' and thus they must be reviewed."⁶³

Equality and Nondiscrimination

One of the first things women's organizations objected to in the constitution was a reference to sharia in relation to equality between men and women. According to Elagati, "Members of the Constituent Assembly insisted on including the qualification: 'in a manner that does not conflict with the rules of sharia,' to which civil society strongly objected."⁶⁴ A reference to sharia also appeared in Article 2, which stipulated that "the principles of sharia are the primary source of legislation." Here, however, the Muslim Brotherhood was not adding anything new; these same references appeared in Articles 2 and 11 of the 1971 constitution. In the final text, the reference to sharia in the article on equality between the sexes was omitted.

In addition, the fifth principle in the preamble referenced equality, including the only use of the feminine form of the word "citizen" in the text: "Equality and equal opportunities are for all: male

and female citizens; for there is no discrimination, nepotism, or favoritism in rights and duties." In the rest of the charter there were a number of references to equality for all citizens with regards to various rights, but they did not specifically mention women and men or gender more generally. Specific references to women and gender in articles that protected certain rights were in most cases dropped, and the more neutral "citizens" was used. There were other references to both men and women that did not include the notion of citizenship. Article 61, for example, introduced a plan to eradicate illiteracy among "males and females." But these were rare. This was because a majority in the Constituent Assembly argued that singling out women was a form of positive discrimination that contradicted the principle of equality.

On the whole, the notion of "citizenship" is pervasive. The term in its different forms appears around forty times in the text. For example, Article 6 defines Egypt's political system as "based on the principles of democracy, and consultation, citizenship (under which all citizens are equal in rights and public duties), political and multi-party pluralism, the peaceful transfer of power, the separation and balance of powers, the rule of law, and respect for human rights and freedoms." The preamble associates Egyptian civilization with "citizenship, equality and nondiscrimination." These are the very definitions that civil society organizations would have provided. This is not accidental, but was the result of civil society's specific and repeated demands as part of a concerted effort.

Dropping the reference to sharia, the 2012 text's explicit references to women and gender and the constant references to citizens indicated clear progress from previous constitutions and in effect furthered the principle of equal citizenship. But civil society organizations wanted a text that not only improved on the past but that proactively corrected inequality in society, making explicit and forceful references to women and men and the need to prevent discrimination based on gender. With the exception of the preamble and the general

61 Elagati, "Women and Equal Citizenship," p. 18.

62 Ester Cross and Jason Sorens, "Arab Spring Constitution-Making: Polarization, Exclusion, and Constraints," *Democratization* 23, no.7 (2016), p. 1300.

63 Fawzi, "Women and Citizenship," p. 113.

64 Elagati, "Women and Equal Citizenship," p. 33.

assertion of equality and nondiscrimination among citizens, the constitution did not contain an explicit reference to the notion of discrimination against women in general. The closest it came is Article 6, which prohibited the formation of a political party “that discriminates between citizens, whether on the basis of gender, origin or religion,” which itself was a holdover from the 1971 constitution. But that was just one instance of women’s discrimination being addressed, and it did not address the phenomenon as a whole.

Civil society also demanded mechanisms to protect women, for example by criminalizing discrimination, enforcing gender parity in state institutions, and establishing oversight agencies to address discrimination in education, healthcare, and the workplace as well as domestic violence and other personal status issues. But the text did not attempt to institute full equality through positive discrimination, such as a quota system, which had been introduced in amendments to the 1971 constitution in 2007, or any other mechanism.

Protection and the Family

One place where the constitution did refer specifically to women was in Article 10: “The state provides special care and protection to breadwinning and divorced women as well as widows.” There were, however, many important categories of women missing from this provision. There was no mention, for example, of protection from sexual exploitation, forced marriage, domestic violence, and human trafficking. Women’s organizations argued that this limited the scope of protection and entrenched women’s marginalization. As expert Mariz Tadros explains, while “undoubtedly the recognition of the welfare needs of vulnerable women is a positive addition..., it does not challenge power relations between men and women and in effect, its wording reeks of a paternalistic state engaging with the vulnerable through a needs-based rather than rights-based framework.”

Moreover, Article 10 identified the family as the particular fiefdom of women. Thus it relegated

women to a particular sphere of society, contravening the principle of and the drive toward equality. In the words of Hassiba Hadj Sahraoui, deputy director for the Middle East and North Africa at Amnesty International, “It is appalling that virtually the only references to women relate to the home and family.”⁶⁵

However, this reference to the relation between women and the family already appeared in the 1971 constitution, which, like all previous charters, was clearly biased in favor of men. The 2012 text repeated some of the key language relating to gender that was found in the previous constitution or followed along the lines of the former regime’s reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁶⁶ Though it goes unmentioned in the 1971 constitution, one of the most substantial reservations to CEDAW dealt with the treatment of divorcees, and a parallel may be drawn to the reference to divorcees in Article 10 of the 2012 text.

International Human Rights Law

Civil society organizations also sought a reference to the international human rights charters, or at least the three considered the basic pillars of gender equality: the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1976), and CEDAW (1979). It was thought that a reference to a treaty like CEDAW would encourage gender equality in future legislation and in modifications to existing laws.

However, the Muslim Brotherhood had a longstanding hostility toward CEDAW, which it claimed contradicted Muslim ethics and Egyptian traditions.⁶⁷ According to Elagati, Salafis also “held quite an aggressive position against international treaties and charters” more generally.⁶⁸ Thus there are no references to any particular international convention. On the contrary, the constitution clearly places itself above international law. According to Article 145, “No treaty contrary to the provisions of the Constitution can be approved.” This outraged Egyptian activists and international

65 Amnesty International, “Egypt’s New Constitution Limits Fundamental Freedoms and Ignores the Rights of Women.”

66 For these reservations, see Elagati, “Women and Equal Citizenship,” p. 12. As one commentator mentioned, “the drafters of the 2012 constitution were themselves heavily inspired by the 1971 constitution.” Zaid al-Ali, “Another Egyptian Constitutional Declaration,” *Foreign Policy*, July 9, 2013, available at <http://foreignpolicy.com/2013/07/09/another-egyptian-constitutional-declaration/>.

67 Tadros, “The Politics of Mobilising for Gender Justice in Egypt from Mubarak to Morsi and Beyond,” p. 13.

68 Elagati, “Women and Equal Citizenship,” p. 33.

human rights organizations.

Disappointment and Suspicion

Despite some progress from the previous text, civil society did not deem the constitution to be sufficiently gender-sensitive and was left disappointed and suspicious. For example, Rania Zada, a researcher at the Arab Forum for Alternatives, argues, “Many of the articles in the draft constitution were placed with the philosophy of ‘mention the right and assault it’ which is the same philosophy of the 1971 constitution.” By this she meant that though rights are mentioned, they are ambiguous and thus open to interpretation, which “opens widely the door to violence against women and all other types of violations.”⁶⁹ Others claimed that the constitution “reflects the background of its drafters more than the general national vision.”⁷⁰ That is to say, it did not live up to the expectations of those men and women who participated equally in the uprising and did not reflect the spirit of the revolution.

THE 2014 CONSTITUTION: AN EXCLUSIVE PROCESS WITH AN INCLUSIVE RESULT

Though at the beginning of the uprising in Egypt, civil society and the Muslim Brotherhood were aligned in their efforts to overthrow the Mubarak regime and stop the army from sabotaging the transition, by 2013 the Islamists had fanned rancor among large swaths of the population. Many people had come to the conclusion that all their suspicions about the movement’s sectarianism and its desire to impose a narrow, self-serving agenda on the country had been confirmed. The Muslim Brotherhood’s mishandling of the constitution-drafting process played a major part in this.⁷¹

The military took advantage of this wave of resentment to help mobilize the millions who came into the streets on June 30, 2013, demanding the removal of Mursi from power. In what amounted to a coup d’état, the military duly arrested Mursi on July 3rd, placed itself in power, and proceeded to cancel the 2012 constitution. Yearning for stability

and economic improvement, many Egyptians, at least at first, were ready to withstand the suppression of political freedoms that followed. It was not long before this suppression began to target any form of opposition, including civil society activists.

On July 8, 2013, the military appointed the chief justice of the Supreme Constitutional Court, Adly Mansour, as interim president, and he issued a constitutional declaration. This served as an interim constitution and put in place the arrangements for drafting a new text.⁷² This time the drafting body, called the Committee of Fifty, was appointed not by an elected parliament but by the interim president. Its membership was meant to represent a cross-section of society, including political parties, labor unions, religious institutions, and human rights activists, but was effectively imposed by the military without any democratic process. The Muslim Brotherhood was completely ostracized. This lack of a democratic process was one fundamental difference between the 2014 constitution and the previous text.

From a gender perspective, the committee was no better than its predecessor in 2012. According to two constitutional experts, “Article 29 of the constitutional declaration reserved only 10 percent of the committee member positions for ‘women and youth’ each, resulting in only five women and four youths.”⁷³ Once it started to operate, the committee was criticized for its lack of transparency. Civil society complained about the absence of public review of the committee meetings. Women’s organizations such as Baheya Ya Masr tried to engage with it, demanding equality and nondiscrimination, but it is difficult to determine if any of their proposals were taken into account.

Regardless, the result was considered a significant improvement in comparison to its predecessor. The constitution has been lauded for embracing lofty principles of a democratic, liberal welfare state while also removing the articles that gave the previous text a distinctly Islamist sheen.

69 Zada, “Civil Society and Citizenship,” p. 90.

70 Elagati, “Women and Equal Citizenship,” p. 41.

71 For some of the problems with the process, see al-Ali, “Another Egyptian Constitutional Declaration.”

72 Yussuf Auf, “Egypt’s Constitutional Committee,” Atlantic Council, September 5, 2013, available at www.atlanticcouncil.org/blogs/menasource/egypt-s-constitutional-committees.

73 Gluck and Brandt, “Participatory and Inclusive Constitution Making,” p. 9.

Equality and Nondiscrimination

The sentence in the preamble of the 2012 constitution that uses the word “citizen” in its masculine and feminine forms is gone from the 2014 constitution. However, as Zada points out, Article 11, which is the main reference to gender equality in the text, clearly prescribes “equality between women and men in all rights,” and the way it spells this out marks a difference: it not only establishes the principle of equal citizenship but also provides for mechanisms to guarantee it.⁷⁴

Article 11 adds that “the state shall ensure the achievement of equality between women and men in all civil, political, economic, social, and cultural rights” and that it “shall take the necessary measures to ensure the appropriate representation of women in the houses of representatives,” reintroducing the clause found in the 2007 amendments to the 1971 constitution. It further “guarantees women’s rights to holding public and senior management positions in the state and their appointment in judicial bodies and authorities without discrimination.” It does not, however, provide any further detail on how to ensure representation due to another heated debate on quotas within the Committee of Fifty.⁷⁵

Similarly, Article 53 not only asserts the equality of all citizens “without discrimination based on religion, belief, sex, origin, race, color, language, disability, social class, political or geographic affiliation or any other reason”; it also establishes an independent commission to fight discrimination. This was much more detailed and more concrete than Article 33 of the 2012 constitution, which simply stipulated the equal rights and public duties of all citizens and nondiscrimination among them. However, like in the 2012 text, there is no explicit mention of equal rights for women in specific areas where discrimination has been particularly glaring, like education, work, and wages.

Protection and the Family

The constitution also expanded the protection of the state to areas that civil society had demanded it

address, though like the previous text, in some cases by doing so it betrayed a paternalistic attitude. The 2014 constitution commits the state to protecting women from all forms of violence, ensuring that women are able to strike a balance between family and work, and providing care and protection for motherhood, childhood, female breadwinners, elderly women, and women in need.

However, like the 2012 text, it also refers to the duties of women toward their families without mentioning those of men. This attitude is most evident in Article 16, which refers to the martyrs of the nation and their wives, as if women had not also been martyrs. On the other hand, the constitution codifies one of the most concrete gains for women on personal status issues, of great consequence to gender equality and citizenship rights, in Article 6, which grants Egyptian women the right to pass their nationality on to their children.⁷⁶

International Human Rights Law

By referring to international human rights law, the 2014 constitution satisfied civil society in yet another area in which the previous one had fallen short. Article 93 declares that “the State shall be bound by the international human rights agreements, covenants and conventions ratified by Egypt, and which shall have the force of law after publication in accordance with the established conditions.” However, it did not explicitly make national law subservient to international law. In particular, many civil society organizations had wanted a specific mechanism to ensure that parliament abides by its commitment to these agreements when legislating. In general, although civil society was more satisfied with the 2014 constitution, it felt that the text could have been even more explicit in guaranteeing the application of the principles it contained.

Between Principle and Reality

In practice, however, the regime of ‘Abd al-Fattah al-Sisi has clearly not lived up to the lofty principles of the 2014 constitution. One of the earliest signals of this was the rejection of women’s applications to

74 Zada, “Civil Society and Citizenship,” p. 91.

75 Noov Senary, “Egypt: Women and the Concept of Equal Citizenship in the 2014 Constitution—An Analytical View,” Arab Forum for Citizenship in Transition, March 2014, pp. 5–6, available at www.ipinst.org/wp-content/uploads/2017/10/1403-Egypt-Constitution-2014-AR.pdf.

76 Though this had already become law in 2004. Reem Leila, “Citizens at Last,” *Al-Ahram*, July 2004, available at <http://weekly.ahram.org.eg/Archive/2004/697/eg10.htm>. This is a right that Tunisian women had already gained in 1993, in what one academic terms as the “second major wave” of gender legislation, after the Personal Status Code of 1956. See Mounira M. Charrad, “Tunisia at the Forefront of the Arab World: Two Waves of Gender Legislation,” *Washington and Lee Law Review* 64, no.4 (2007), pp. 1522–23.

lated by both sides and failed to gain equal rights, but also because they have suffered systematic physical aggression when attempting to express themselves in public spaces.⁸⁴

CIVIL SOCIETY UPSTAGED

In the end, civil society organizations, which had led the revolt against Mubarak's authoritarian rule, were upstaged. Their influence was limited in the 2012 constitution, which was dominated by the Muslim Brotherhood, and the charter itself was far from what women's organizations had wished for. Still, despite fears that the Islamists were set on dismissing women's rights as remnants of the previous regime, there was some progress. Crucially, the reference to sharia in relation to equality between men and women was erased. A number of significant references to women were introduced. However, these were not enough; they set women mostly in the context of the family—though this was consistent with the 1971 constitution and therefore not strictly a regression—and were perceived by civil society as paternalistic. The constitution also placed itself above international covenants, underlining the conflict with the global liberal order. And yet the language of citizenship and human rights was pervasive, and the constitution featured women more prominently than its predecessor. Also, though in small numbers, women were represented in both constituent assemblies, which was a historical first.

There are also numerous problems with the 2014 constitution. The constitution-drafting committee was appointed rather than elected, there were few women in its ranks, and its proceedings were opaque. However, its outcome represented a substantial leap forward for equal citizenship and prominently features women's rights. It specifically refers to equality between men and women in all major categories of rights and also proposes mechanisms to promote them, bringing back, for example, the notion of women's "appropriate representation" in parliament. It dictates nondiscrimination on the basis of gender and establishes a commission to ensure this. While it also betrays a paternalistic attitude, identifying the family sphere

with women, it makes some progress in at least one personal status issue. Moreover, unlike its predecessor, it expresses commitment to international conventions.

Yet the greatest drawback has been that, during the whole process and since, Egypt has witnessed an unprecedented and escalating campaign against freedom of expression. This demonstrates that, though the regime tried to use the language of civil society, there was no collusion between the two; this language was a fig leaf for the repression of its rivals.

Tunisia

Though a country of less geopolitical significance than Egypt, with around one-eighth of the population, it was in Tunisia that the uprisings that set the whole region on edge started. Though far from an unqualified triumph, the North African country has also been the single success story of the Arab uprisings.⁸⁵ It is the only country that managed to rid itself of its long-serving authoritarian ruler without descending into civil war or reverting back to authoritarian rule.

WOMEN IN TUNISIA BEFORE THE UPRISING

Tunisia has long been considered one of the most liberal Arab countries, with a vibrant, prestigious civil society. Many Tunisians were, and still are, particularly proud of the country's Personal Status Code (*Majallat al-Ahwal al-Shakhsiyya*), a milestone in the region that granted women unprecedented rights and freedoms. Passed in 1956 (coinciding with Tunisia's independence from colonial rule), it banned polygamy and made divorce the remit of civil rather than religious courts. According to Mekki, the code "stands as the symbol of liberation for Tunisian women and the advent of a modern society."⁸⁶ The code is the greatest exponent of the country's liberalism—one that is strongly tied to a culture of secularism and ingrained within a broad sector of society.

Nonetheless, large swaths of the country are socially conservative and religious. The Islamist al-Nahda movement won 37 percent of the vote in the

⁸⁴ The virginity tests, first denounced in March 2011, and the aggression against a girl who was beaten by police and stripped down to her underwear in December 2011 were some of the most notorious examples.

⁸⁵ Sarah Feuer, "Tunisia, a Success Story?," *Foreign Affairs*, July 6, 2017, available at www.foreignaffairs.com/articles/tunisia/2017-07-06/tunisia-success-story.

⁸⁶ Mekki, "Tunisia: Equality in Gender and Constitution," p. 18.

first democratic elections on October 23, 2011, making it the largest political party, though short of a majority. This does not mean all al-Nahda voters are opposed to the Personal Status Code or women's rights more generally, but it does open the possibility that they interpret differently what these involve.

Before the uprising, Tunisia's liberal façade also belied a police state where any form of dissent, particularly from Islamists but also from civil society, was brutally persecuted. The repressive nature of the state led to the revolt that was ignited when Mohamed Bouazizi set himself on fire on December 17, 2010, which was resolved after less than a month of protests when President Zine El Abidine Ben Ali went into exile on January 14, 2011. Bouazizi—Tunisia's version of Egypt's Khalid Sa'id—was a fruit and vegetable seller who was harassed by the police and turned away by the authorities when he protested the abuse, thus underlining the absence of both economic and civil rights. This event symbolized the basic demand for social justice that fueled the revolt. In sum, as Hamrouni and Mekki suggest, "The Tunisian revolution did not happen by chance. It was the culmination of years of struggle for freedom, dignity, and equality."⁸⁷

The Tunisian regime not only failed to protect civil liberties but also failed to deliver on the centerpiece of its liberal claims: the status of women. Its policies had some positive impact on women's lives. Beyond the Personal Status Code, which Habib Bourguiba, the founder of modern Tunisia, championed, Bourguiba also promoted women in the workforce, for example by introducing special benefits for childbirth and protections for working mothers in 1966.⁸⁸ The government also worked

hard to raise the standards of education among women.⁸⁹

For this reason, the levels of education and employment among Tunisian women were higher than in many other Arab countries. For example, in 2010 Tunisia had a female youth literacy rate of 96 percent compared to Egypt's 84 percent.⁹⁰ The female youth unemployment rate in 2010 was 27.8 percent in Tunisia and 54.6 percent in Egypt.⁹¹ However, while Tunisian women had similar levels of education as men, there was still a large gap between the two in terms of employment. By 2009 there were more women than men in institutes of higher education,⁹² but labor force participation for women in 2008 was around 33 percent, against 90 percent for men.⁹³

Tunisian authorities also attempted to promote the participation of women in public life, though they ultimately fell short. Ben Ali, who ruled from 1987 until being forced into exile in 2011, introduced the Law on Political Parties in 1988, requiring all new parties to adhere to the principle of equality between the sexes.⁹⁴ In 2007 he increased the number of women in his ruling Constitutional Democratic Rally party to at least 30 percent.⁹⁵ As a result, the number of women elected to parliament increased from 1.8 percent in 1966 to 11.5 percent in 1999, 22.7 percent in 2004, and 27.6 percent in 2009.⁹⁶ The regime also pushed for women to occupy other positions of power. The number of women judges doubled in ten years, reaching 24 percent by 1998.⁹⁷ In 1992 the Ministry of Women's and Family Affairs was created and was headed by a woman. In 1999 women were appointed to head the Ministry of Health and the Ministry of the Environment, representing two out of twenty-nine ministers, the same number as in 2007. In 2004,

87 Hamrouni, "Equal Citizenship in Tunisia," p. 6.

88 Naila Al-Silini, "Tunisian Women's Participation in Political Life and Voting," New York: Arab Forum for Citizenship in Transition, September 2014, p. 12, available at www.ipinst.org/images/pdfs/FACTReport-Women_Participation-Arabic-September2014.pdf.

89 During Ben Ali's rule, Law 91-65 of July 1991 emphasized the importance of girls' education. See Emma C. Murphy, "Women in Tunisia: Between State Feminism and Economic Reform," in *Women and Globalization in the Arab Middle East: Gender, Economy & Society*, eds. Eleanor Abdella Doumato and Marsha Pripstein Posusney (Boulder: Lynne Rienner, 2003), p. 180.

90 Data from UNESCO, available at <http://en.unesco.org/countries/tunisia> and <http://en.unesco.org/countries/egypt>.

91 Data from World Bank, available at <http://data.worldbank.org/indicator/SL.UEM.1524.FE.ZS?view=map&year=2010>.

92 Kristine Goulding, "Unjustifiable Means to Unjustifiable Ends: Delegitimizing Parliamentary Gender Quotas in Tunisia," *Al-Raida Journal* (Summer/Fall 2016), p. 75, available at www.alraidajournal.com/index.php/ALRJ/article/view/83/82.

93 Sangeeta Sinha, "Women's Rights: Tunisian Women in the Workplace," *Journal of International Women's Studies* 12, no.3 (2011), p. 193.

94 Murphy, "Women in Tunisia," p. 177.

95 Goulding, "Unjustifiable Means to Unjustifiable Ends," p. 75.

96 Al-Silini, "Tunisian Women's Participation in Political Life and Voting," p. 11.

97 *Ibid.*, p. 8.

and for the first time since independence, a woman was appointed as a governor.⁹⁸

These ministerial positions, however, were largely symbolic, because the important portfolios remained in the hands of men. Similarly, although the number of women in parliament made Tunisia a clear outlier in the Arab world, where representation of women in legislatures in 2012 averaged less than 15 percent, what this really meant for women was questionable.⁹⁹ Some women's rights activists thought the role of women in parliament was "restricted and cosmetic" and simply a "democratic façade."¹⁰⁰ On the whole, according to Naila al-Silini, a professor of humanities at the University of Sousse and civil society activist, the presence of women in public life did not meet "the expectations created by the formal laws of the state" and was altogether insufficient: "Despite the fact that the dominant discourse since the late 1950s talked about women it was not for women."¹⁰¹

THE NATIONAL CONSTITUENT ASSEMBLY: A REAL BARGAIN

The revolution constituted an opportunity to reconfigure relations between the regime and its subjects, and gender equality was pushed to the forefront of the national debate as the country attempted to transition to democracy. The High Commission for the Realization of the Revolution's Objectives, Political Reforms, and Democratic Transition, established on March 15, 2011, and a key instrument of the transition, included 35 women out of a total of 155 members (22.6 percent).¹⁰² The commission "discussed the adoption of the principle of equality between men and women in all aspects of political participation."¹⁰³ The election law it passed determined that "candidates shall file their candidacy applications on the basis of parity between men and women. Lists shall be established in such a way to alternate

between men and women."¹⁰⁴ One major deficiency, however, was that the law did not establish the need to alternate between men and women at the top of the lists. As a result, women only headed 7 percent of the lists.

The elections for the National Constituent Assembly (NCA) on October 23, 2011—the first vote after the flight of Ben Ali—represented the formal break with the previous regime. Due to technical difficulties with the registration of voters and their effective mobilization on polling day, levels of participation were disappointing despite the population's overarching desire to vote. These problems particularly affected rural areas and women; while registration reached 51 percent, it was 48 percent among women.¹⁰⁵ The Independent High Authority for Elections, which only had two women on its sixteen-member board, did not adequately account for the overall inexperience of the country's population with democracy or for high levels of illiteracy, particularly among rural women. Nonetheless, during the election campaign, candidates "made a conscious effort to place gender issues at the fore of their programs."¹⁰⁶

In the end, women won 59 out of 217 seats (27 percent), which was significantly higher than the global average of around 20 percent and higher than in many Western nations.¹⁰⁷ However, civil society was disappointed because it was al-Nahda that won by far the largest number of women delegates (forty-three), followed by al-Takattul (five), with the rest divided among six other parties.

Women held some influential positions in the NCA. The first vice-president was a woman, and women were represented in all six permanent committees. Women members created a women's group, but it was never officially incorporated and proved unable to organize itself properly. Nonetheless, this group played a decisive role in

98 Ibid.

99 International Parliamentary Union, "Women in National Parliaments," December 31, 2012, available at www.ipu.org/wmn-e/arc/world311212.htm.

100 Amel Grami, "Gender Equality in Tunisia," *British Journal of Middle Eastern Studies* 35, no. 3 (2008), p. 359.

101 Al-Silini, "Tunisian Women's Participation in Political Life and Voting," pp. 7, 10.

102 The Committee of Experts, charged with preparing the ground for the new constitution, had a similar ratio, with two women out of its ten members. Al-Silini, "Tunisian Women's Participation in Political Life and Voting," p. 16.

103 Hamrouni, "Equal Citizenship in Tunisia," p. 7.

104 Article 16 in Law-Decree no. 2011-35, dated May 10, 2011, concerning the election of the National Constituent Assembly (NCA). It appeared in the Official Gazette of the Republic of Tunisia no. 1033, p. 647.

105 Al-Silini, "Tunisian Women's Participation in Political Life and Voting," p. 46.

106 Hamrouni, "Equal Citizenship in Tunisia," p. 7.

107 Al-Silini, "Tunisian Women's Participation in Political Life and Voting," p. 51.

drafting Article 46 of the constitution, considered a cornerstone of women's rights. According to Mekki, "The clause and the drafting of that article went through tense and lengthy discussions. The women groups were able to overcome these debates by reaching a joint consensual draft text proposal for the Consensus Committee, thus facilitating its approval in the plenary session."¹⁰⁸ On the whole, even though barely over a quarter of NCA delegates were women, and despite the conflicts and contradictions in their positions due to their different political affiliations and opinions on various issues, particularly gender, their participation in the constitutional process was remarkable when compared to other countries in the region and considering Tunisia's limited democratic history. There was less progress in the executive branch, where there have only been two or three female ministers in successive governments.

After the election, the NCA expressed "its intention to adopt a participatory approach and stressed its receptiveness to civil society."¹⁰⁹ From the beginning, the assembly declared its receptiveness to all the proposals submitted by civil society, and dozens of constitutional proposals reached the NCA, particularly related to its Rights and Freedoms Committee.¹¹⁰ Various committees met with experts and academics to hear their opinions on issues relevant to equal citizenship. The Rights and Freedoms Committee invited representatives from the Tunisian Human Rights League, Tunisian League of Women Voters, Tunisian Democratic Women's Association, and Tunisian Women's Association.¹¹¹

The transition period was distinguished by its frequent and often massive popular mobilizations. Civil society, particularly women's groups, held numerous activities to explain the concept of equal citizenship and to defend and further support the rights and gains of women. They organized

countless marches all over the country, campaigns, and international conferences in which activists from the different governorates met representatives of the NCA and activists from other Arab countries. These conferences had titles such as "From the Revolution to a Constitution of Equality" and "For the Constitutionalization of Women's Rights." A two-day conference for civil society called "Towards a Participatory Drafting of the Constitution" took place at the headquarters of the NCA itself. There was also a national dialogue that had members of the NCA travel in groups to all the governorates of Tunisia to meet with ordinary citizens and civil society to hear their opinions about the constitution, as well as abroad to meet Tunisian expatriates in France and Italy.¹¹²

However, the relationship between civil society and the assembly was not always based on "harmony and communication." Civil society mobilized the public to coerce the NCA.¹¹³ It "saw street protests as a way to work against the monopoly of political parties over the transition process."¹¹⁴ As a result, "the Tunisian constitutional process witnessed an unparalleled surge in activity and mobilizations to put pressure on the drafters to secure the inclusion of human rights, guarantee equal citizenship, and protect the gains of Tunisian women."¹¹⁵ On the whole, there is little doubt that "civil society's activities had a significant impact on the [constitutional] process."¹¹⁶

The major conflict between civil society and the NCA was the emergence of al-Nahda as the dominant political force in the country. This provoked profound concern among large swaths of the population, and civil society in particular, that found the Islamist project antithetical to their principles. As in Egypt with the Muslim Brotherhood, the fear was that al-Nahda would dominate the process and try to impose its agenda, in particular by attempting to create a theocracy or

108 Mekki, "Tunisia: Equality in Gender and Constitution," p. 9.

109 Ibid., p. 39.

110 Ibid.

111 Ibid., p. 40.

112 This is not to be confused with the Tunisian National Dialogue Quartet, made up of three trade unions and a human rights organization, which managed to peacefully resolve political tensions that could have divided the country and led to major violence in the post-uprising era.

113 Ibid., p. 39.

114 Amel Boubekeur, "The Politics of Protest in Tunisia: Instrument in Parties' Competition vs. Tool for Participation," German Institute for International and Security Affairs, March 2015, p. 2.

115 Mekki, "Tunisia: Equality in Gender and Constitution," p. 41.

116 Ibid., p. 39.

at least to “Islamize” society. Thus, stopping al-Nahda’s Islamization of society became the central issue for civil society organizations.¹¹⁷ Throughout the work of the NCA, and particularly when a draft constitution was issued, civil society rallied to protest what it considered to be threats to women’s rights. This resulted in a bargaining process, as drafts evolved and adapted progressively to civil society’s demands.

Though al-Nahda was the largest force in the NCA, like the Islamists in the Constituent Assembly in Egypt, the Tunisian Islamists showed much greater willingness to listen to opposing voices, and civil society had more significant input into the whole process. This was not simply due to a difference in temperament. One factor that forced al-Nahda to compromise was that, with 37 percent of the seats, it did not have a majority, unlike the Muslim Brotherhood in Egypt after it allied with the al-Nur party.

One illustration of al-Nahda’s more conciliatory approach was how it handled the controversy around the Joint Committee for Cooperation and Drafting. The committee was created to coordinate the work of all the drafting committees within the NCA and to assemble the final draft. However, it came under particularly intense criticism because it was felt that al-Nahda dominated it and opposing points of view were not being given due consideration. Things came to a head in June 2013 when positions solidified around a number of key issues. At that point a decision was made “to form a new body, known as the Consensus Committee, in which each political group was given equal weight to all others.”¹¹⁸ Thus, as opposed to Egypt, where the majority view won out, in Tunisia a choice was made to also represent minority views.

The ultimate indicator of al-Nahda’s genuine commitment to conciliation was the nearly unanimous approval of the country’s new constitution on January 26, 2014, with 220 votes in favor, 12 against, and 4 abstentions—significantly more than the two-thirds majority required to avoid a referendum. Overall, the process took two years of impassioned deliberations and four drafts. Some

argue that even though it was not approved by a popular vote, the constitution was considered legitimate by the broader public due to the “deliberate and organized efforts to reach out to and consult with people.”¹¹⁹ Indeed, the process of public consultation had far-reaching consequences for the whole transition process, helping to cement a new social contract. The process was far from perfect, but it can serve as a reference for future transitions in other countries.

THE CONSTITUTIONAL DELIBERATIONS: ACCOMMODATING EQUAL CITIZENSHIP

Deliberations in the NCA began on February 13, 2012, and the first draft of the constitution was released in August 2012. The 1959 constitution remained a fundamental point of reference for civil society. That text had been groundbreaking with regards to its endorsement of human rights. Article 5 declared Tunisia’s commitment to them: “The Republic of Tunisia shall undertake to guarantee that the human rights enunciated in the present constitution will be exercised in its universality, comprehensiveness and indivisibility.” However, after expressing its commitment to the rights of the individual, it went on to handicap their exercise in Article 7: “The exercise of these rights cannot be limited except by a law enacted for the protection of others, the respect for public order, the national defense, the development of the economy, and social progress.” Indeed, successive Tunisian regimes proceeded to systematically violate individual rights. Civil society wanted to maintain the references to rights and remove those articles that undermined them while also establishing mechanisms to guarantee them.

Equality and Nondiscrimination

Civil society demanded that the constitutional text stipulate the equality of and nondiscrimination against women specifically. According to Hamrouni, “A constitution that enumerates all rights and freedoms without explicitly stating that these rights should be shared equally by all members of society can never uphold the values of

117 Marks, “Convince, Coerce, or Compromise?,” p. 13.

118 Zaid al-Ali and Donia Ben Romdhane, “Tunisia’s New Constitution: Progress and Challenges to Come,” *OpenDemocracy*, February 16, 2014, available at www.opendemocracy.net/north-africa-west-asia/zaid-al-ali-donia-ben-romdhane/tunisia%E2%80%99s-new-constitution-progress-and-challenges-to-

119 Gluck and Brandt, “Participatory and Inclusive Constitution Making,” p. 10.

citizenship and democracy.”¹²⁰ This is reflected in the Universal Declaration of Human Rights, Article 2 of which states that “everyone is entitled to all the rights and freedoms set forth in this Declaration... without any distinction between men and women.”

The first draft constitution in August made a number of references to equality and nondiscrimination, though the preamble was the only section that specifically referred to female citizens. It affirmed the desire to build a state where “justice and equality in rights and duties prevail between all male and female citizens.” Three other articles emphasized the equality of citizens. Article 1.6 stipulated that “all citizens shall have equal rights and obligations and shall be equal before the law.” Article 2.22 added the notion of nondiscrimination: “Citizens shall, before the law, be equal in rights and obligations without any discrimination of any form.” And Article 2.28 dictated that “the state shall guarantee the provision of equal opportunities between men and women in the bearing of various responsibilities.”

In the final draft, in Article 21, a specific reference to female citizens was added to the notion of nondiscrimination: “All male and female citizens are equal in rights and duties and are equal before the law without any form of discrimination.” This was the first sentence in the section on rights and freedoms and was followed by: “The state guarantees freedoms and individual and collective rights to all citizens, and provides all citizens the conditions for a dignified life.”

Some argued that this was a tepid endorsement of nondiscrimination and the drafters missed an opportunity for the constitution to become a “new political and social contract and a tool to achieve social change.”¹²¹ It was said that the constitution failed to introduce mechanisms to guarantee equality by monitoring cases of discrimination. Other civil society activists also thought that the constitution could have made a more categorical commitment to women’s rights by making a reference to equality and nondiscrimination with regards to specific rights: civil, political, economic, social, cultural, and within the context of the

family.

Protection and the Family

Tunisian civil society activists felt that equality within the family is “the cornerstone for adopting an effective principle of equality.”¹²² Many Tunisians are proud of the country’s Personal Status Code for its historical importance in advancing the rights of women. Still, the code was not perfect; it did not touch on issues such as guardianship and inheritance, for example. Civil society organizations were well aware of the code’s limitations but would accept nothing less than what it already contained. The 1959 constitution made only an offhanded reference to the code, requiring in Article 8 that political parties respect “the principles pertaining to personal status.”

The terminology used on this issue in the August draft was particularly ambiguous. There was no clear assertion of women’s equal rights within the family. The two articles that referenced women ostensibly defended their rights but were seen as setting them apart from men, framing them in the context of the family and driving a wedge between women and equal citizenship. Article 1.10 asserted that “the state shall protect the rights of women as well as protect the family structures and maintain the coherence thereof.”

Article 2.28 was the more controversial of the two: “The State shall guarantee the protection of women’s rights and support their achievements considering them as true partners of men in building the nation and their roles within the family shall be complementary.” The suitability of the term “complementary” became a major national debate. Some observers argued that the “the style of language is poetic and literary but lacks the necessary legal depth” and that “nothing threatens freedom and rights like the use of ambiguous and manipulative language within a constitution, which could render certain rights void and unenforceable.”¹²³ Others had a stronger reaction. Much of civil society bristled at the notion of interpreting equality as a form of complementarity, which they claimed opened the possibility of a division of labor within the family that was

120 Hamrouni, “Equal Citizenship in Tunisia,” p. 14.

121 Mekki, “Tunisia: Equality in Gender and Constitution,” p. 21.

122 Hamrouni, “Equal Citizenship in Tunisia,” p. 4.

123 Ibid., pp. 33, 35.

detrimental to women.¹²⁴ On the other hand, the chairwoman of the NCA's Rights and Liberties Committee, which had drafted the article, defended it, arguing it was "being subjected to a smear campaign in front of public opinion."¹²⁵

However, references to family life and to women's equality more generally evolved significantly through the different drafts. Article 2.28 was reconsidered, and the Joint Committee for Coordination and Drafting decided to abandon the concept of complementarity in September, and Article 7 of the December 2012 draft simply reads: "The State guarantees the rights of women and supports their achievements." In the April 2013 draft, Article 2.28 turned into Article 11, which eliminates the notion of complementarity and maintains only the first part of the sentence: "Women and men shall be partners in the construction of the society and the state." This was more satisfactory to civil society.

But in the end that formulation was also dropped. Article 46 of the final text reads: "The state commits to protect women's accrued rights and work to strengthen and develop those rights." The text adjusts the content of Article 7 of the December 2012 draft ("The state shall guarantee the protection of the rights of women and shall support the gains") to introduce a more mandatory tone ("is committed" instead of "shall guarantee").¹²⁶ It also exhibits greater open-mindedness to advancing women's rights further ("to strengthen and develop" them) and not to make do with "accrued rights." Civil society groups and some members in the NCA had asked for a clearer reference to the code, but in the end the reference is indirect, contained in the phrase "accrued rights."

In the eyes of civil society, this debate was linked to another that created a major uproar: the place of Islam, and more specifically sharia, in the constitution. It was feared that any reference to Islam and sharia could be used to undermine other guaran-

tees of women's rights. Article 1 of the 1959 text mentioned Islam but in a relatively ambiguous manner: "Tunisia is a free, independent, and sovereign state. Its religion is Islam, its language is Arabic, and its form of government is a republic." In the end, that article was kept unchanged from the first to the final draft, but al-Nahda's show of interest in questioning this formulation, which the NCA started to discuss in the spring of 2012, caused an outcry.

Overall, and compared to other modern constitutions, the references to the family are few, haphazard, and lost in generalities. The 2014 constitution "confirmed in a shy and indirect way the gains of Tunisian women" already contained in the code and a whole body of legislation on women's rights that had built on it in the six decades since it was issued.¹²⁷ By avoiding an explicit reference to the code, an opportunity to further enshrine it and the changes it has brought about was missed. Nonetheless, civil society had an influence on the references that were included, both through mass protests—a large demonstration on August 13, 2012, the anniversary of the code, was a show of strength by civil society—and by directly meeting with the NCA.¹²⁸

Political Rights

The constitution was also an opportunity to encourage women's participation in political life, not just as voters but also as candidates. Positive discrimination, in particular, is a widely held principle endorsed by CEDAW. It is also found increasingly in more recent constitutions. Constitutions in many countries have chapters and articles that support the participation of women in public life, including in senior administrative and political positions. The 2011 constitution of Morocco establishes the principle of parity to promote the participation of women in public life in Articles 19 and 30. The 2014 Egyptian constitution devotes two articles to the issue of equal opportunities, and Article 11 specifically is consid-

124 See, for example, Réseau des Organisations Féminines d'Afrique Francophone, "Tunisie: Article 28 de la future constitution—La société civile s'indigne et se mobilise," August 13, 2012, available at <http://rofaf.org/index.php/actualites/951-tunisie-article-28-de-la-future-constitution-la-societe-civile-sindigne-et-se-mobilise>.

125 Ibid. See also UN Human Rights Council, *Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice*, UN Doc. A/HRC/23/50/Add.2, May 30, 2013.

126 Mekki, "Tunisia: Equality in Gender and Constitution," p. 20.

127 Ibid.

128 On civil society meetings with the NCA, see "Tunisia: Debate on New Constitution September 14–15 in NCA," AllAfrica, August 12, 2012, available at <http://allafrica.com/stories/201208160421.html>.

ered to be a quantum leap forward in this regard. Its Tunisian counterpart is more modest. It was not as explicit but did point in the same direction.

Tunisia's 1959 constitution only referred to the presidential candidate in the masculine singular and more generally "made no serious effort to encourage women to participate in political life."¹²⁹ In 2012, even though all political factions in the NCA made clear that they would accept a woman as president, it was clear that the debate was heated given that the August draft included five alternative formulations of the presidential candidacy requirements. Two of those made specific reference to "the right of every male or female Tunisian" and to a "male or female candidate."¹³⁰ This was already progress over the 1959 constitution, but many civil society activists concluded "that the question of women's ability to contest a presidential election has not been settled yet and that the National Constituent Assembly has yet to determine their stance on the right of women to reach high political positions."¹³¹ Nor did the draft attempt to remedy the absence of women in public life more broadly. There was no mention of women as candidates for other public decision-making positions, for example as governors or mayors, of which there have been few examples in Tunisian history.

This was remedied in the final text. Article 74 states that "every male and female voter who holds Tunisian nationality since birth, whose religion is Islam shall have the right to stand for election to the position of President of the Republic." Another sentence was also added to Article 46 in the final constitution: "The State shall seek to achieve equal representation for women and men in elected councils." This was actually a softer version of Article 34, which was also new and which in effect set the basis for the introduction of quotas: "The state seeks to guarantee women's representation in elected bodies." Article 46 also added the phrase "in all domains" to the article guaranteeing "equality of opportunities between women and men to have access to all levels of responsibility," which had not appeared since the first draft. This illustrates significant changes in the late stages of the drafting

process.

Overall, the constitutional provisions on political rights remained brief, and many civil society activists did not think that the constitution would revolutionize women's participation in public and political life. These provisions were nonetheless progress for Tunisia.

Economic and Social Rights

Tunisia's 1959 constitution is spare on the subject of economic and social rights. It mentions little more than the state's responsibility to provide prosperity and share the country's wealth, which it largely failed to do given that the lack of social and economic rights was one of the main causes of the uprising in 2010. For this reason, economic rights featured prominently in constitutional proposals from civil society organizations. For example, the proposal from the civil society network *Shabakat Dusturna* included clauses on a minimum wage and dignified working conditions as well as gender equality in all fields.

On the whole, the 2014 constitution mentions economic and social rights only fleetingly. There is, however, a provision on the right to work that was introduced in the final draft, which includes one of the few references to women. Article 40 asserts that "work is a right for every citizen, male and female. The state shall take the necessary measures to guarantee work on the basis of competence and fairness. All citizens, male and female, shall have the right to decent working conditions and to a fair wage." Still, civil society demanded more explicit recognition of the contribution of women to the workforce and protection in the workplace. The constitution also does not specifically demand things such as equal pay or encourage the employment of women. According to Mekki, "In this way, the drafters may have missed an opportunity to eliminate a discriminatory practice against women in the economic field."¹³²

International Human Rights Law

While some modern constitutions declare that their provisions must be consistent with international law, and "the international human rights

129 Hamrouni, "Equal Citizenship in Tunisia," p. 24.

130 This draft was first released by the Tunisian newspaper *Al-Chourouk* and can be found here (in Arabic): web.archive.org/web/20120812210803/http://www.alchourouk.com:80/Ar/print.php?code=565818.

131 Hamrouni, "Equal Citizenship in Tunisia," p. 25.

132 Mekki, "Tunisia: Equality in Gender and Constitution," p. 26.

system plays a leading role to anchor equal citizenship and support it," this is not always the case.¹³³ For example, the 2014 Egyptian constitution includes a commitment to international agreements, covenants, and conventions that were ratified by Egypt as legally binding (Article 93) and is therefore not as openly hostile to international law as its predecessor. However, it does not explicitly make national law subservient to international human rights law, leaving the door open for the latter to override the former.

It is in relation to international law that the conflict between Western liberal discourse and that of al-Nahda became most visible. Al-Nahda activists frequently adopted positions that opposed international law, such as international human rights conventions, arguing that they violated "state sovereignty, collided with Islamic identity, facilitating its abolition as well as that of the family and spread 'corruption and deviancy' in society." This attitude was exemplified in numerous clauses in various drafts. The August 2012 draft stated that "international treaties shall, where no contradiction with the provisions of the present Constitution exists, be respected." This made international law subject to the constitution in a similar way as under the Egyptian charter of 2012.¹³⁴

The preamble to the June draft reinforced this idea in its reference to "universal human rights that are in harmony with the Tunisian people's cultural specificity." This was interpreted as allowing the Tunisian state to reconsider any of its international commitments if it found them to be incompatible with the constitution. It raised a storm of criticism in political, legal, and academic circles because, according to Mekki, "the focus was on the Arab-Islamic identity of the Tunisian State and a complete absence of any reference to international human rights law in the section on Rights and Freedoms, whether as consultation material or for the interpretation of constitutional rights in harmony with international treaties ratified by Tunisia in this field."¹³⁵ As a result, "specificity

comes to govern universality, which empties the latter of all its meaning and prevents...any progress in human rights and freedoms."¹³⁶

A compromise was found in the article on this subject in the April 2013 draft: "The international agreements approved and ratified by the Chamber of Deputies shall be superior to laws and inferior to the Constitution." Many civil society groups still considered this insufficient relative to the role that international law played in other constitutions, but it was kept intact in the final text. There were, however, other victories for civil society. The reference to "the cultural specificity" was erased, and the reference to "the foundations of our Islamic-Arabic identity" was kept but without being compared to international law. There was also no reference to sharia in the text, despite repeated attempts to do so. On the contrary, Article 2 defines Tunisia for the first time as a "civil state based on citizenship."

Engendering the Discourse

In a broader criticism, Salwa Hamrouni, director of the Tunisian Association of Constitutional Law, and Nidhal Mekki, assistant professor at the Faculty of Juridical Sciences of the University of Tunis, recommended "engendering" the legal discourse. She argued that the constitution should always refer to "male and female citizens" simultaneously, instead of the more ambiguous "citizens," to underline equality and nondiscrimination.¹³⁷ The reason for this is that, though it "may seem repetitive,... repetition is an effective way to prevent legislators from falling in the trap of excluding women in certain parts of legislation. On the other hand, using feminine terms in the texts serves as a continuous reminder of the obligation to put content into practice."¹³⁸ It would also have a more general pedagogical function, emphasizing the rights of women and stimulating their participation in public affairs.

Explicit references to both men and women are part of a trend in human rights law, and these have

¹³³ *Ibid.*, p. 30.

¹³⁴ Criticism of such clauses in the April 2013 draft was also voiced by international human rights organizations. See, for example, Human Rights Watch, "Tunisia: Revise the Draft Constitution," May 13, 2013, available at www.hrw.org/news/2013/05/13/tunisia-revise-draft-constitution.

¹³⁵ Mekki, "Tunisia: Equality in Gender and Constitution," p. 31.

¹³⁶ *Ibid.*, p. 32.

¹³⁷ Hamrouni, "Equal Citizenship in Tunisia," p. 5.

¹³⁸ *Ibid.*, p. 13.

been included in a number of constitutions “in order to exclude the interpretation that would restrict certain rights to men and not women.”¹³⁹ In the Arab region, the 2011 constitution of Morocco has gone furthest in this direction. It refers to the need to guarantee the “freedom of citizens, men and women” throughout. But not all the text is “engendered.” For example, it refers to political positions using the masculine form, which is linguistically ambiguous—in Arabic, as in other languages where nouns have a gender, it is habitually used to refer to both men and women—and could be manipulated to discriminate against women and restrict “some rights in favor of men, exclusively.”¹⁴⁰ Making inconsistent use of the formula is therefore particularly counterproductive and may give way to the exclusion of women from the rights granted in articles that do not mention women specifically.

In the Tunisian constitution, most of the words used to refer to people are in the masculine form. The most common is “citizen,” but there are others such as “judge” or “president.” In addition to the four instances in which the word “citizen” is used in the feminine form, there are a few places where “women” are mentioned specifically. Article 34 determines that “the State seeks to guarantee women’s representation in elected bodies.” Article 46 deals with women’s rights specifically: “The State shall commit to protecting women’s accrued rights and seek to support and develop them. The State shall guarantee equal opportunities between men and women to have access to all levels of responsibility in all fields. The State works to attain parity between women and men in elected assemblies. The State shall take the necessary measures to eradicate violence against women.” Finally, Article 74 stipulates that “running for the position of President of the Republic shall be a right for every male and female voter who holds Tunisian nationality since birth, whose religion is Islam.”

Any further “engendering” of the constitution was unlikely given that civil society had “not been able to effectively raise the awareness of the drafters” on this point. The only serious initiative in this regard was the constitutional proposal “Through the Eyes of Women” from the Democratic Women’s Association.¹⁴¹ Nonetheless, civil society and women’s groups point to the above articles as evidence of their success in influencing the constitution.¹⁴² This reflected substantial progress over the 1959 text.

GREAT EXPECTATIONS

From the perspective of women’s rights, Tunisia’s 2012 constitution was an improvement on its predecessors and “established a number of principles that guarantee equal citizenship.”¹⁴³ International human rights organizations expressed satisfaction with the text, while calling for the review of existing laws and public institutions in light of its articles.¹⁴⁴

However, Tunisian civil society had greater expectations. The text could have been more explicit and forceful. According to one civil society activist, while the positive response of conservative forces to civil society proposals was a retreat from the articles most clearly threatening equal citizenship, it did not translate into real progress for women’s rights compared to the standard set by other recent constitutions. The retreat from these positions was therefore not to be acclaimed as a great victory for equal citizenship: “The truth is that women’s rights have only accomplished a slight progress; the shadows of the traditional powers and the fears from reactionary interpretations remain hovering around this constitution.”¹⁴⁵

The main failure of civil society had been its disorganization. There was no “broad, real and sustained coalition among the most important women’s organizations, to disseminate the concept of equal citizenship and organize a systematic advocacy campaign in the NCA.”¹⁴⁶ On the whole,

139 *Ibid.*, p. 10. The constitution of Venezuela (1999) is probably the one that has embraced such a discourse most profoundly. It uses the male and female form in all references to individuals and professional positions, whether citizens, workers, judges, ministers, or presidents.

140 Mekki, “Tunisia: Equality in Gender and Constitution,” p. 13.

141 *Ibid.*, p. 14.

142 Al-Silini, “Tunisian Women’s Participation in Political Life and Voting,” p. 63.

143 Mekki, “Tunisia: Equality in Gender and Constitution,” p. 28.

144 <https://www.hrw.org/news/2014/02/01/tunisia-let-constitution-herald-human-rights-era>.

145 Mekki, “Tunisia: Equality in Gender and Constitution,” p. 43.

146 *Ibid.*

civil society lacked a clear strategy for exercising pressure and influencing the constitutional process. As a result, many civil society actions were scattered and improvised. Important civil society initiatives with relevant outputs were poorly advertised and narrowly disseminated. The national dialogue, for example, was a good idea, but its execution suffered from many shortcomings, preventing a much larger portion of the public from taking part.

Part of the problem, though, was that the demands of women's groups did not represent those of society as a whole. Thus, "it is not just the state and its institutions that must adopt the principle of non-discrimination against women in the civil and political fields but society at large, especially in patriarchal societies which consider women apathetic about politics."¹⁴⁷

Yet despite the limited gains and the disorganization, the uprising and the constitutional process mobilized Tunisian women. According to Mekki, they proved that "women's freedom and equal citizenship with men are no longer a gift from the authorities, but have become a legitimate right, grabbed from them, despite themselves, if necessary. Tunisian women have proven that they are ready to fight for their cause regardless of what it might cost them."¹⁴⁸

Conclusion

Constitutions are never the distillation of eternal principles, removed from the context they are drafted in. As Noov Senary, a researcher at the Arab Forum for Alternatives and women's rights activist, argues, "Constitutions reflect different ideologies in society. They reflect the existing balance of power and networks of interest."¹⁴⁹ More particularly, they are a product of the competition between different groups to impose their vision of society. This is sometimes at odds with the interest of citizens in defending and advancing their rights. The relation between text and reality, between the constitution and the actual rights that citizens

enjoy, is thus dialectical; it is the result of the interplay between these different actors, and it is therefore liable to change over time as power shifts among them. Sometimes the text is closer to the interests of a specific group and further from those of citizens, while other times those interests are more intimately aligned.

For this reason, the debates around constitution drafting after the Arab uprisings provide a window into the struggle between the major forces trying to shape the Middle East. This was a unique historical period in which the most profound questions about the identity of the region came to the fore, but it was also part of a dialogue taking place globally about Islam and its relation to the liberal order.

There are different ways to understand this struggle. This report is based on a series of analyses produced by Egyptian and Tunisian civil society activists and academics in order to reflect as faithfully as possible a local perspective on the debates that were taking place in these two countries and the region as a whole. These analyses highlight civil society activists' profound suspicion of the Islamists, who came out on top in the elections in both countries. According to this narrative, "After the revolution political parties and movements arose that recalled religious authority and despite their numerous differences they agree on the repression of women and their rights and the demand to implement sharia especially regarding personal status" issues.¹⁵⁰ On these grounds, the Islamists were seen as a major threat to a series of hard-won rights gained by citizens over more than a century.

Civil society presented this as a struggle between tradition and backwardness, on the one hand, and modernity and progress, on the other, if not as a clash of civilizations. Some civil society activists spoke about the uprisings and transitions to democracy as "a battle with multiple fronts involving the media, public space, cultural exhibits, [and] protests in front of governmental offices."¹⁵¹ Women were on the frontlines of this clash, and

147 Hamrouni, "Equal Citizenship in Tunisia," p. 21.

148 Mekki, "Tunisia: Equality in Gender and Constitution," pp. 50–51.

149 Senary, "Egypt: Women and the Concept of Equal Citizenship in the 2014 Constitution," p. 5.

150 Al-Silini, "Tunisian Women's Participation in Political Life and Voting," p. 59.

151 *Ibid.*, p. 60.

“their combativeness was manifested on numerous occasions.”¹⁵²

The conflict, however, was not so straightforward. Although civil society represented women’s interests and popular demands, it did not represent all of society—far from it. Civil society was combating a culture that was profoundly sexist, well beyond its Islamist elements. Its discourse was perceived as elite. Even worse, their rhetoric had been hijacked by the authoritarian regimes in their power struggle with the Islamists and to control society more generally.

And yet it is undeniable that the principles that civil society defended resonated widely in the region and also globally, and one of these principles in particular: citizenship. Despite being largely unsuccessful—at least in the short and medium term—the Arab uprisings have not only been part of the latest wave of democratic transitions but are also examples of the citizenship movements that are defining the current global era in their attempt to reorganize the relation with the state.

The concept of citizenship was central to the Arab uprisings, which mobilized millions of people and reenergized civil society. Citizenship provided people a framework through which to understand the profound crisis they were living through and also offered them the solution. It offered women, specifically, a channel through which to address the problem of gender discrimination. In fact, the revolts “moved [the] women’s issue from behind closed doors to public spaces, and turned it from being a subject dealt with exclusively by academics and jurists to an issue of citizenship that concerns everyone.”¹⁵³ The liveliness of the constitution-making processes and the amount of popular engagement with them are the best examples of how energized and eager for such change so much of the public was.

The experiences of Egypt and Tunisia illustrate the capacity of citizens to bring about change, though also the delicacy of this change and how quickly gains may be reversed. The Arab uprisings were fundamentally citizen revolts, which civil society organizations played a central role in

instigating and then leading. While they were upstaged soon after the uprisings in the elections that gave power to the Islamists, they tried again to reconfigure the social contract by influencing the constitution-making process.

In Egypt the Muslim Brotherhood led this exercise, and it was far from satisfactory to civil society, which ended up boycotting it. The result was a text that showed greater concern for women than its predecessor, even removing the condition of sharia when stating that men and women are equal. Nonetheless, its attitude was paternalistic, though this was a reflection not only of its Islamist drafters but also of a sexist society more generally (as evidenced by the fact that its successor also suffered from this attitude). It also showed that the Islamists had difficulties with the liberal global order, as illustrated by their reservations regarding international conventions. The 2014 constitution represented major progress for women’s rights, but the process itself was essentially exclusive, driven by a military junta. In the end it paved the way for an unprecedented repression of citizens’ rights that has continued to intensify to this day. Beyond the obvious need to properly implement principles, the lesson here is that the process is as important as the outcome.

Such a blatant instrumentalization of women’s rights to justify authoritarian rule is not unique to Egypt. A similar contradiction is prevalent throughout the world and threatens to render meaningless the human rights discourse. As Mekki points out, “Today, there is no state or system that openly talks about its hostility towards, or its rejection of, the principles of human rights, even though in reality, it does violate them.... Most dictatorships have constitutions that overflow with rights and resounding rhetoric around [them].”¹⁵⁴ Some civil society activists in Tunisia therefore identify a need not just to appeal to the authorities to include the language of citizenship but to develop “a strategy...for those working on women’s rights on the ground to support the concept of citizenship and the rights of women” in order to change this mentality, including among

152 Ibid.

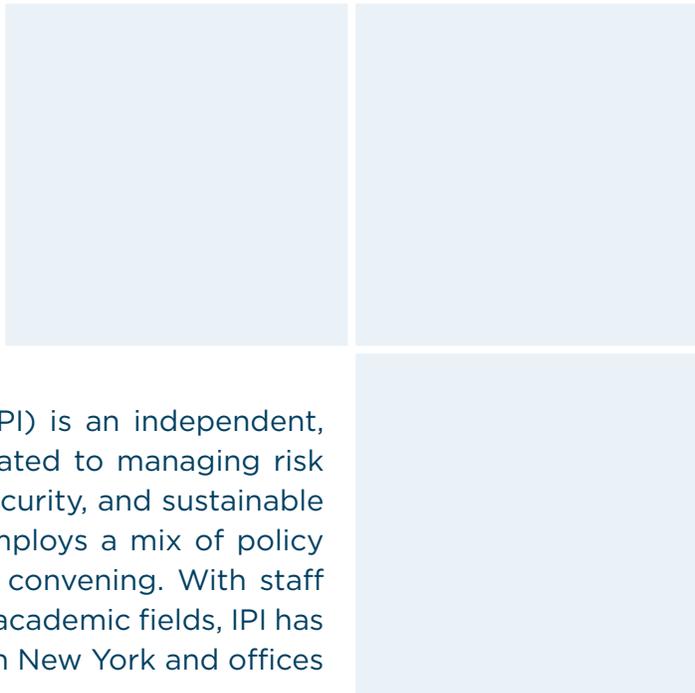
153 Mekki, “Tunisia: Equality in Gender and Constitution,” p. 49.

154 Ibid., p. 29.

some women who did not endorse the struggle for these rights. Some, for example, have suggested media campaigns, targeting in particular television's complicity in promoting and enforcing the marginalization of women.

The Tunisian case, on the other hand, has become in many ways a model to follow. In this smaller North African country civil society managed to provide significant input into the constitution-making process and also to extract substantial concessions. Despite the considerable messiness of the process, the constant street protests were a testament to the liveliness of the debate and the high degree of popular engagement. Six different drafts were produced, all were

discussed widely and parsed ad nauseam, and each constituted progress, more or less, over the previous version. The final text was not an ideal constitution from the perspective of civil society, but it was one that represented a real compromise among the different forces in the country. Testament to this is the nearly unanimous vote with which it was approved in the NCA. Such a conciliatory process is the recipe for a more enduring constitution. Most importantly, however, it illustrates the possibility to reconcile two visions of society initially considered antithetical and for an Islamist-led government to ensconce itself in the global liberal order.



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