



Arab Forum for Citizenship in Transition

Tunisia: Equality in Gender and Constitution



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Arab Forum for Citizenship in Transition (FACT): is an International Peace Institute supported initiative that aims to be a regional exchange platform on the exercise of equal citizenship in Arab countries in transition, with particular focus on gender equality. In partnership with local civil society organizations and government actors, FACT will pursue its vision through public policy-oriented research, advocacy, convening, and training, at local and regional levels.

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**“One is not born, but rather becomes, a woman”
--Simone de Beauvoir**

Introduction

This research is the second series of initiatives organized by the “Arab Forum for Citizenship in Transition” in Tunisia to support equal citizenship in the constitution and to help enshrine the values of equality between citizens in substance and reality.

While the first research report of the previous series, “Equal Citizenship in Tunisia: Constitutional Guarantees for Equality between Citizens,” was prepared during the early stages of the constitutional process, focusing mainly on the first draft of several drafts of the constitution and on a set of initiatives and suggestions proposed by the civil society advocating for the cause of equal citizenship in the constitution, this second research was launched during the latter stages of the constitutional process and went along with the ratification of the new constitution. Hence, this study, which does not only analyze other projects and proposals but also comment on chapters of the adopted constitution, could be considered enrichment and a logical supplement to the first research report. It is further important to note that this study does not attempt to have a supportive or a pressure effect on influencing the elaboration of the content of the adopted constitution. Rather, it presents a study of a legal enforceable text, including an examination of the different stages on the constitutional drafts, its phases as well as its intellectual background and up to what extent it can stand for interpretations and effects on gender equality.

Given that this research is conducted after the ratification of the constitution, it allows for a comparative study between the different successive drafts of the constitution. It also showcase the changes they underwent and allows for investigating the reasons behind these changes and help assess the extent of influence civil society actors have on the final drafting of the articles relating to equality and citizenship, and whether such influence is positive or negative.

Research Methodology:

In addition to observing how equal citizenship was addressed in the consecutive drafts of the constitution, which also enabled for the assessment of the pressure of civil society, women in particular, and the group advocated for gender equality within the National Constituent Assembly itself, this research relied on constitutions and comparative experiences in this field. It primarily focused on examples from advanced democracies and examples from countries that have experienced a democratic transition, especially in Latin America, Eastern Europe and Africa, in view of the existence of many similarities between them and the experience of the democratic transition that Tunisia is undergoing.

The research has also considered for comparison the Moroccan and the Egyptian cases,¹ because they are also among the “Arab Spring” countries, despite the specific features that characterize the experience of each country.

Furthermore, in addition to the review of the Tunisian constitution text and its comparison to other countries’ constitutions, this research has also sought to look into the effects of civil society intervention, particularly women’s, in the constitutional process, whether through the participatory approach, adopted by the Constituent Assembly or through free initiatives and actions meant to mobilize public opinion and the public at large in light of multiple constitutional drafts considered not only as inadequate to achieve equality, but also as a setback and a challenge to women’s acquired rights.

In order to have a holistic picture, the research made sure to interview women of women’s views so that they will not be present-absent or referred to in the third person. To this end, a sample of women from different social and professional backgrounds and of different ages were questioned on the issues of women’s rights and their political contribution and up to what extent they grasp the concept of equal citizenship. Likewise, the research has combined a study of the legal texts and the role played by institutions, the National Constituent Assembly in particular.

¹ Focus in this research is on Tunisia, Morocco and Egypt they were among the Arab Spring countries that have ratified new constitutions. It is normal to pinpoint the basic differences, which characterize the processes which all these countries have gone through. In Morocco, the regime did not fall whereas in Tunisia, the regime fell after a popular revolution which could, although with difficulties, and through major disturbances, ratify through an elected council a new Constitution. In Egypt the complicated political, economic and social conditions led to the army’s stepping in again in the political life.

The issue of access to modernity, in Tunisia and in other Arab and Islamic countries, is closely linked to the cause of women: their freedom and their equality in rights with men in the context of citizenship. The Tunisian intellectual elite became early² aware of the importance of women's liberation and the recognition of their equality rights with men. Soon that awareness translated into a pioneer legal text in the Arab and Islamic world, called the Personal Status Code (1956). It bestowed onto Tunisian women a more privileged status than that of other women in the Arab-Islamic world to this today. However, the facts show that despite this code and several amendments that have improved it and recognized additional rights to women, and despite Tunisia's ratification of several international texts that enshrine equality between male and female citizens, the legal systems still suffer from several gaps. What is most important and serious is that society still has many pockets of resistance advocating for inequality through looking for roots and justification in culture and in a distorted understanding of religion.

Furthermore, the contents and the values carried by the legal systems, pertaining to women's rights have remained at the awareness level of the elite, without being seized and fully absorbed by all the social strata, especially those living in the grip of poverty, illiteracy, and marginalization. This is due partly to the horizontal imposed approach by political power for the modernity on society, without providing the proper conditions so that the community can grow with its own strength and self-dynamics, towards achieving modernity and embracing its principles and values. This is the approach that has made large segments of Tunisian women subject to the effects of traditional thinking forces, not to say reactionary forces, trying to diminish the gains of women and to place them in lower positions than men.

This research will not go so far as to mention in details the vulnerability of the gains of women in Tunisia. The constitutional process, the mobilization by civil society and the vigilance of citizens, both male and female have proven that these gains are rooted in important categories of society. However, the alarming backward looking reactionary forces, experienced by Tunisia since the fall of dictatorship, has brought to light the necessity for avoiding past mistakes—namely not to rely on the state apparatus to impose modernity, but to rather work on rooting the values of freedom, equality and citizenship in the minds of male and female citizens themselves,

² Ref. Tahar Haddad's book: "Our Woman in Sharia and Society"

because this makes up the most secure guarantee against any thought force seeking to impose a set of social order prototype that does not believe in modernity, equality and freedom.

This research will attempt to study these different aspects, beginning with women's participation in the constitutional process (Section I), the advocacy of equal citizenship in the constitution text (Section II), then the mechanisms for implementing and supporting this citizenship (Section III), before looking into the role of the civil society in the constitutional process (Section IV), women's perception of equality (Section V), to end up by general recommendations inspired from the Tunisian experience (Section VI).

Section I: Women's Participation in the Constitutional Process

The relatively privileged situation of Tunisian women, compared to the majority of other Arab and Islamic countries, in addition to the cumulative struggles fought by them for the recognition of their rights and for supporting them, made their participation in the transition process, after the revolution of January 14, 2011, real, significant, and efficient.

A large consensus among the various political parties and national figures, represented in the Supreme Authority for Achieving the Goals of the Revolution, also in political reforms and democratic transition,³ allowed the incorporation of Article 16 in the Law-Decree n° 2011-35, dated May 10, 2011, concerning the election of the National Constituent Assembly (NCA).⁴ This article provides 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. Lists that do not follow this principle shall only be admitted when the number of seats, in the relevant constituency, is odd."

This article represents an important revolutionary step in offering equal opportunities for women and men in reaching public and electoral positions and has allowed the incorporation of the concept of parity, formally, in the Tunisian legal system and the legal literature. However, this "Revolution" remains incomplete, because Article 16 did not state the necessity of

³ The Higher Committee for the Achievement of the Revolution Purposes, political Reforms and Democratic Transition is a committee which was created after the Revolution to see to the democratic transition and compile the necessary legal texts for that end. This committee includes 35 women members out of a total of 155 members, namely 22.5 %.

⁴ Ref. the Official Gazette of the Republic of Tunisia n° 1033- page 647

succession, among women and men, to head the lists. Now, given the fact that only very limited number of electoral lists are headed by women and considering the nature of the voting system, the composition of the National Constituent Assembly, which emerged from the October 23rd, 2011 elections, was not based on the parity concept. Nonetheless, this reality did not prevent women members of the National Constituent Assembly from playing a significant role in the constitutional process, despite the shortcomings that have blemished this role and the criticism that can be directed against it.

In this study, we will examine successively (1) the representation of women in the National Constituent Assembly (NCA), (2) representation of women's group inside the NCA, and (3) the position of women members of the NCA on the issue of equal citizenship and women's rights.

1. Women's Representation in the National Constituent Assembly:

The elections of October 23, 2011 led to the election of 58 women in the National Constituent Assembly, out of a total of 217 representatives, which stands for 26.72% of the total members; a proportion, which although being far away from parity, is still higher than the world average of female representation in parliamentary assemblies, estimated at 21.3%.⁵ However, due to the resignation of a number of male members and their replacement by women members in the electoral lists, the number of women members in the Assembly increased to 65 women, i.e. 29.95% of the total assembly members, which is a considerable rate compared to the rates in the parliaments of Arab and non-Arab countries.⁶

Women members have held important positions in the different bodies of the National Constituent Assembly. The First Vice President of the Council is a woman. Women are also present in each of the six permanent committees,⁷ either as attendees in the committees' bureaus or as members:

⁵ Ref www.ipu.org, the site of the International Parliamentary Union

⁶ The average rate of women's representation in Parliamentary Councils, generally speaking, in the Arab countries, is 15.9 % whereas it is 24.2% in Europe. In the Kingdom of Morocco and despite the coming into force of the Constitution of 2011 and the Basic Law Number 27-11, dated October 14th, 2011, governing the House of Representatives (this law allocates a quota of 60 seats (15%) to women, the proportion of women in the first parliamentary elections pursuant to the Constitution of 2011 did not exceed 17 % of the total seats). See the Report of the Working Group on the Elimination of Discrimination against Women in legislation and its enforcement, dated June 19th, 2012 /HRC/20/28/Add.1.

⁷ Women representatives assumed responsibilities and were present in the Legislation Committee. However, the research will focus exclusively on the Political Committee which drafted the constitution chapters and articles.

- Preamble, Fundamental Principles, Constitutional Review Committee: as Vice President, assistant reporter with seven women members,
- Rights and Freedoms Committee: as President of the Committee, as Vice President and assistant reporter, in addition to five women members,
- The Legislative and Executive Powers and Relationships between the Powers Committee: a woman reporter of the Committee and a woman assistant reporter, in addition to five women members,
- The Judicial, Administrative, Financial and Constitutional Justice Committee: a woman Vice President and a woman Reporter of the Committee, in addition to five women members,
- The Constitutional Bodies Committee: a woman Assistant Reporter, in addition to five women members,
- The Regional and Local Public Authorities Committee: five women members in the Committee.

In addition to this representation in the NCA Committees, a women's group formed in the Council, despite great criticism concerning its role.

2. Women's Group within the Council:

The formation of a women's group in the National Constituent Assembly was a positive step, since it would enhance the awareness of women members about their unique cause away from political infightings, and make up a pressure force that is able to influence the Council's decisions and choices, especially in the constituent process. However, this group was not officially incorporated within the Assembly work (and was not quoted in the internal regulations of the Council). It has suffered since its formation, from its informal status, its limited action work and influence. Even if this group was able to bring women members together, regardless of their partisan and ideological convictions, its existence remained a formality because it could hold only few meetings, and it is not even clear whether it has selected a president or how it organizes and runs its works. This lack of transparency means that the group has remained unaccounted as far as the public opinion, the media, and even the council members are concerned.

Moreover, it is not possible, today or in the future, to find out what happened inside this group, because the NCA did not consider keeping record of the meetings of this group. It is also very difficult to retrieve and bring together women's main views of the unrecorded issues raised during their meetings. The records would have produced rich material, which could have formed a testimony of an important stage and battle, on the road to achieving equal citizenship.

Nevertheless, despite its weak performance, the women's group was able to play a decisive role in the drafting process of Article 46 of the constitution, which is considered as the cornerstone of women's rights.⁸ The clause and the drafting of that article went through tense and lengthy discussions. The women groups were able to overcome these debates by agreeing to a joint consensual draft text proposal for the Consensus Committee, thus facilitating the passing of the article in the plenary session.

The representation of women in the council is significantly important, as well as the experience they went through by forming a women's group. However, the real indicator for assessing women's participation and the role they played in the constitutional process is by examining their attitudes concerning equal citizenship and the way they defended Tunisian women's gains thus far and their struggle to support and develop these rights. From this angle, this performance can be subject to different assessments.

3. The National Constituent Assembly Women Members' Position on the Issue of Equal Citizenship and Women's Rights:

The position of women members in the National Constituent Assembly are highly significant, not only because it reflects the extent of their involvement in the constituent process but also, because these women hold senior positions in the political sphere and in public life as decision-makers, which enables them to lay down the social, political and legal foundations for society. They are capable on influencing change and move forward with its gains.

This also clarifies why there were wide divergent views in the NCA, when it was supposed to speak with one single cohesive voice, endeavoring to support equality in citizenship and consolidating women's rights. Reality was different, since Article 28 provides, as early as the

⁸ The contents of the article will be dealt with in details in the second part of the research.

first draft of the constitution that was issued in August 2012, “The state guarantees the protection of women’s rights and supports their advances, considering them as men’s partners in building the nation, and their roles within the family complement each other.”⁹

The wording “complement” with men raised tumultuous debates in the Assembly, especially in the public space. Several women and human rights associations considered it as a negation of women’s rights and a threat to their gains through establishing a contemptuous inferiority stance towards women; embodying their subordination so much so that they are not seen as independent persons but always as subordinates and supplements to men.¹⁰ In addition to the fact that this chapter was drafted within the Rights and Freedoms Committee of the National Constituent Assembly thus translating the opinion of a significant part of the members of this committee, and their perception of women, their status and their rights, the Chairwoman of the Committee did not hesitate to defend the article and argues that the said article “is being subjected to a smear and misleading campaign in front of the public opinion.”¹¹

With the strong support of women and human rights associations and the rallying of male and female citizens alike, this article was reconsidered and the Joint Committee for Coordination and Drafting decided to abandon it in September 2012 and explicitly emphasized on equality between men and women. This pressure was translated in the elaboration of Article 42 in the draft of April 22, 2013, which stated that: “The state shall ensure the protection of women and support their gains. The state shall ensure equal opportunities for men and women in carrying different responsibilities. The State shall ensure the elimination of all forms of violence against women.”

This text will further undergone some improvement in the final version of the draft of the constitution, as a paradox emerged in women’s contribution in the constituent process, on their positions towards international law in general and international human rights law in particular.

Many female members, specifically those belonging to the party of the Islamic Renaissance Movement “Ennahda,” did not hesitate to show attitudes that were against

⁹ In order to examine the different versions of the constitution motion, ref. www.marsad.tn knowing that the version of August 2012 was not published officially and was considered as a draft.

¹⁰ In order to get to know these positions, ref. the following article: “Tunisie: Article 28 de la future constitution: la Société Civile s’indigne et se mobilise” published on August 13th, 2012 on fr.allafrica.com/stories/201208130950.html

¹¹ The same source, ref. also Rapport du Groupe de Travail sur l’Elimination de la Discrimination à l’égard des femmes dans la Législation et la pratique, mission en Tunisie, A/HRC/231/90Add.2

international law and international human rights treaties, under the pretext that they violated state sovereignty, collided with the Islamic identity, and forming a gateway to abolish the identity, dismantle the family and spread around “corruption and deviancy” in society.¹²

This hostile attitude embodied large number of constitutional clauses, found in the first draft version of the constitution, particularly on those dealing with cultural and religious specificities of the Tunisian society. It was also clearly specified in Article 15 of the constitution of December 14, 2012 version, which provided that: “...respecting treaties is a duty as long as it does not conflict with the provisions of this Constitution.” This indicated the intention for reconsidering Tunisia’s international commitments in light of the understanding of conservative forces. It was also perceived as a denial of the general approach of the Tunisian state, since its independence, to remain open to international law and to seek to adopt and abide-by it.¹³

Hostile views on women and their freedoms were also expressed by some women members in the Assembly, without any regards to their already acquired rights. Mrs. Souad Abd-Errahim (a member from Ennahda parliamentary group) views on the issue of single mothers, which she considered it to be a threat facing Tunisian women, was an example.¹⁴ Such views are very dangerous. It shows to what extent the hostility against women and their rights are wide spread and internalized among some women decision makers whom are considered the elite in society. Interestingly, after conducting a number of surveys,¹⁵ it became clear that even among illiterate rural women or those with a modest level of education or workers, there is an awareness of the injustices facing women and the necessary need for improving women’s conditions. They are also convinced that society imposes exaggerated restrictions on women. However, we find that some women in the NCA take stances and defend articles that do not serve the women cause in any way, which implies their adherence to the masculine values of society and to the perception of women as inferior human beings, usually accounted for by the traditions, the distorted understanding of religion and the inherited social systems. This paradox leads to the conclusion those defending women’s gains and promoting their rights, will not be advocated by

¹² The issue of the International Law in the Constitution will be dealt with in details and more accurately in the third part of the research.

¹³ Ref. the report of Human Rights Watch Organization: www-hrw.org/fr/news/2013/05/13/tunisie-le-projet-de-constitution-doit-etre-revu

¹⁴ Ref. “Rapport du Groupe de Travail”, a source indicated earlier.

¹⁵ The part n° 5 of the research will be allocated to opinion polls and their conclusions.

this segment of representative members, who, with the project they represent, will be staunch opponents to this approach.

The focus on the hostile attitudes towards securing equality between men and women in the constitution, finds its basis in the extreme danger carried by these positions, adopted by women themselves in the first place and by women who are parliament members in the second place. This should not overshadow the positions of other women members in the NCA who fought fiercely for women's rights and gains. A group of women (especially those belonging to the Democratic wing), has asked to include the Personal Status Code and women's rights it guarantees, in the constitution.¹⁶ Many women drafters in the Rights and Freedoms Committee have defended women's rights and have supported the idea of forming a non-official women group within the Council, even if their role remains limited, as it was clearly indicated earlier in this research.

Even though the percentage of women in the NCA did not exceed one third, and despite the conflict and the contradiction that their positions have brought about, women's participation in the constitutional process can be described as remarkable, compared to the experiences of other countries and taking into consideration the Tunisian very fresh democratic experience.

However, the procedural aspects relating to the constitutional process are not enough to make a general and an insightful judgment, because it is important to study the "outcomes" of this process, namely its content and up to what extent it is dedicated to securing equal citizenship.

Section II: Establishing Equal Citizenship in the Constitution

The ratified text of the constitution brings an end to the constitutional process and allow for evaluating whether the constitution establishes equal citizenship and moves forward on recognizing women's rights, or it denies the principles of equal citizenship and does not show "enthusiasm," especially to consolidate women's rights.

¹⁶ Ref. the article: Des constituantes s'engagent à demander l'inscription du principe de la parité dans la Constitution. www.babnet/cadredetail/32548.asp

We try to evaluate up to what extent the Tunisian Constitution of 2014 has devoted to gender equality by applying the following set of characteristics that should lay the foundations for the achievement of equal citizenship: (1) Gendering the Constitutional Speech, (2) Outright Prohibition of Discrimination, (3) Equality in Rights and Duties inside the Family, (4) Equality in Civil and Political Rights, (5) Equality in Economic, Social and Cultural Rights, and (6) Techniques of Positive Discrimination.

1- Gendering the Constitutional Speech:

Gender approach focuses on gendering the legal speech in general and the constitutional one in particular. Because the “feminization of the constitutional speech [by always referring to men and women simultaneously] would hinder any interpretations that could restrict some rights in favor of men, exclusively.”¹⁷

This type of speech is very important symbolically speaking, as it is not only a reminder of the other half of society, which is usually absent or in an inferior position to men, but it also reinforces women’s awareness of their importance in society. It also represents an invitation for them, to play an active role in the public life, as equal citizens to men.

Although several copies of the Tunisian Constitution drafts were produced before the final version, which already came into force, the gender approach has not witnessed any development, since wordings such as “muwatin”(a fixed masculine noun for “citizen”), “shakhis” (a fixed masculine noun for a “person”) and “insān” (a fixed masculine noun for “human being”) are still used in the constitution, which may not contribute to the creation of a favorably conceptual and psychological chock in society, so society could realizes that the supreme law in the state is meant for men and women and lays the foundations of equal citizenship.

We found no trace of gendering the constitutional speech, except in a few chapters, namely:

- In the Preamble: “Taking pride in the struggle of our people to gain independence and to build the State, to eliminate autocracy and achieve its free will, as a realization of the

¹⁷ Salwa Hamrouni, Equal Citizenship in Tunisia: the Constitutional guarantees for Equality between male and female citizens, a report presented to the Arab Forum on Citizenship in Transition period, September 2012.

objectives of the revolution of freedom and dignity, the revolution of 17 December 2010-14 January 2011, out of loyalty to the blood of our blessed martyrs and the sacrifices of Tunisian men and women over generations, and to break with oppression, injustice and corruption,”

- In Article 20: “All citizens, male and female alike, have equal rights and duties, and are equal before the Law without any discrimination. The State guarantees to citizens individual and collective rights, and provides them with the conditions to lead a dignified life,”
- In Article 34: “The State seeks to guarantee women’s representation in elected councils,”
- In Article 40: “Work is a right for every citizen, male and female alike. The State shall take the necessary measures to ensure the availability of work on the basis of competence and fairness. All citizens, male and female alike, shall have the right to adequate working conditions and to a fair wage,”
- In Article 46: “The State shall commit to protecting women’s achieved rights and seek to support and develop them. The State shall guarantee equal opportunities between men and women in the bearing of all the various responsibilities in all fields. The State shall seek to achieve equal representation for women and men in elected councils.¹⁸ The State shall take the necessary measures to eliminate violence against women.”
- In Article 74, paragraph 1: “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.”

Although the Arabic language allows for the joint use of the plural masculine (citizens) or the single masculine (citizen) when referring to men and women citizens, the issue is not simply linguistic rules question, but it is the concern of the symbolism of the used rhetoric and its ability to touch all members of society, irrespective of their gender, and to influence the prevailing turns of mind and the stereotyped perceptions. The gendering of the constitutional rhetoric, if were used systematically in all the required constitution articles, it could have a major impact on the

¹⁸ It is clear that paragraph 3 of Article 46 includes a repetition of paragraph 2 of Article 34, which talks about the State’s guarantee of women’s representations in the elected councils. This repetition is due to some oblivion because of the quick drafting of these articles during the discussions of the constitution articles, article by article. However, this oblivion may indicate the keen desire of the founders to guarantee women’s representation, which is praiseworthy in itself although it does not match up with the quality of the legal formulation of texts which rejects repetition that is detrimental to the meaning.

reader's thought of the constitution text and contribute in their appreciation of the equal citizenship concept.

The gendering of the constitutional rhetoric can also make the issue of equal citizenship present in the collective imagination and contribute to raising awareness of women conditions and the need to support and promote their rights for the public at large, especially that the current phase is witnessing a discourse and practices that bring about not only a threat to the acquired rights of women but also to their being as mere citizens, on an equal footing with men. Whereas civil society has not been able to effectively raise the awareness of the drafters about this point,¹⁹ the position of the drafters was not, actually, from the beginning, enthusiastic about this option.

The Tunisian Constitution, which came out after successive waves of constitutions in countries that experienced democratic transition, could have taken advantage of the experienced accumulations and become modern and progressive, as far as this particular point was concerned. If we look at some comparative constitutions that adopted the discourse of gendering, we would realize that the Tunisian Constitution did not only miss a chance to achieve a jump ahead, but also suffered a setback.

Models of Comparative Constitutions

One of the most prominent comparative constitutions, which has significantly introduced the feminization discourse, is the Venezuelan Constitution of 1999.²⁰ It is striking that the constitution does not only talk about “men and women Venezuelans” or “men and women citizens,” it also feminizes the jobs or the capacities, such as:

- “Male or female employee” (Article 45):
- “Male or female candidates” (Article 67),
- “Registered male or female voters (Article 73), “governor, man or woman alike” (Article 160),
- “Male and female parliament members” (Article 186),
- “Male or female President of the Republic” (Article 189),

¹⁹ The constitution draft, through the eyes of women, which was compiled by the Democratic Women Association and the report made by Dr. Salwa Hamrouni, above mentioned. However, these initiatives were not backed up by an awareness promotion campaign and enough support to overshadow the resistance of the Constitution drafters.

²⁰ Ref., for example, Articles 32, 33, 35, 36, 39, 40, 41, 50, etc.

- The same guideline found in the constitution of Bolivia of 2009, which talks about male and female Bolivians (Articles 21, 27, 45, 108)
- Male and female citizens (Articles 26, 144)
- Male and female workers (Article 51, paragraph 1)
- Male and female Union leaders (Article 51, paragraph 6)
- Male and female candidates (Article 149)

The Moroccan constitution of 2011 is considered as being the constitution in the Arab region, which has adopted, more than in any other country, the gendering discourse, although partially. The constitution talks in many articles about “male and female citizens” (Articles 6, 7, 14, 15, 16, 27, 30 and 38) and Article 19 uses the wordings “man and woman” twice,²¹ The Moroccan constitution has kept the masculine drafting when it comes to jobs and political positions, since it talks about the Minister, the Chairman of the Council, the Court President and the Heads of regional and local councils.

Some analysts believe that the partial adoption of gendering discourse may have a reverse effect as it allows the exclusion of women from the rights that the constitution has not explicitly indicated to be in favor of male and female citizens, equally.²² Although, this opinion can be kept in proportion, based on Article 19 of the Moroccan constitution, which recognizes that “men and women equally enjoy the rights set out in this chapter of the constitution and in its requisites,” the purpose of the feminization of the speech in all the subjects was to achieve a major pedagogical function, through engraving women’s rights in the minds and stimulating their participation in public affairs.

2. Outright Prohibition of Discrimination:

One of the equal citizenship foundations is the prohibition of discrimination between men and women, in a clear and explicit text in the constitution, while considering it the “supreme law” of the state and the core source that that trumps other legal rules.

²¹ We will go back to Article 19 of the Moroccan Constitution regarding other issues in view of its importance.

²² Salwa Hamrouni, Equal Citizenship in Tunisia, above mentioned reference.

The principle of non-discrimination rises to the level of the general principle that applies to all the recognized rights in the constitution. The non-discrimination principle between the rights of women and men has a special ranking in international texts dealing with human rights.

Article 2, paragraph 1 of the Universal Declaration of Human Rights states that: “Everyone should enjoy all the rights and freedoms set forth in this Declaration, without distinction such as the discrimination on the basis of race, color, sex, language, religion, political opinion or any other opinion, national or social origin, wealth, or principle, or any other status.”

The International Covenant on Civil and Political Rights establishes the principle of non-discrimination in two consecutive positions; first in Chapter 2, paragraph 1, which contains a similar formulation to Chapter 2, paragraph 1 of the Universal Declaration of Human Rights. The second in Chapter 3, which states that: “State members should commit to the present Covenant to ensure the equal right for men and women in the enjoyment of all civil and political rights contained therein.”

We find that the principle of non-discrimination is established in the International Covenant on Economic and Social Rights in two similar positions, as stated in the International Covenant on Civil and Political Rights.²³ What is important in the formulation of these articles is that they provide for the principle of non-discrimination and show the aspects that should not be grounds for discrimination (sex, race, religion, language ...).

The non-discrimination aspects are listed for reference and not in a restrictive way, so that the list remains open in order to prevent interpretations that can allow discrimination on grounds not provided for therein. We find the principle of non-discrimination in the rights between men and women set forth in several compared constitutions where it occupies a prominent position. The wordings, talking about the principle of non-discrimination and showing, just for reference and not in a restrictive manner, the banned aspects of discriminations, deemed the best for what they offer in terms of guarantees safeguards against any form of discrimination. Among the constitutions that have adopted such a formulation, we can quote:

²³ Ref. Article 2, paragraph 2 and Article 3 of the International Covenant on Economic, Social and Cultural Rights.

- The Spanish constitution in its Article 14: “Spanish are equal before the law without any discrimination based on birth, race, sex, religion, opinion or any other status or special or social circumstances.”
- The South African constitution, which states in its Article 9, paragraph 3, that the State should not discriminate “directly or indirectly against anyone on one or several grounds, including²⁴ race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientations, age, disability, religion, conscience, belief, culture, language and birth.”
- Venezuela’s constitution in its Article 21, which reads as follows: “All persons are equal before the law and consequently: Discrimination based on race, sex, opinion, social status, is prohibited, as well as discrimination whose object or purpose is to cancel or to impair the recognition, enjoyment or exercising of the rights and freedoms every person has, within the confines of equality.”²⁵

We find that many other constitutions provide for the principle of non-discrimination in brief formulations. The German constitution for instance, in its Article 3 states, “Men and women shall have equal rights. The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist.”

There was a noticeable improvement in Egypt, between the constitution of 2012 and the constitution of 2014. While Article 33 of the constitution of 2012 stated, “The citizens are equal before the law, they are equal in public rights and duties without discrimination.” Furthermore, Article 53 of the constitution of 2014 was more detailed, it was keen to pinpoint the different facets of the prohibited discrimination, without being limited thereto, to prevent any form of discrimination stating, “All citizens are equal before the law. They are equal in rights, freedoms and general duties, without discrimination based on religion, belief, sex, origin, race, color, language, disability, social class, political or geographic affiliation or any other reason.”²⁶ Article 53 is considered, by the observers, as a step forward liable to reinforce the equality of citizenship between men and women in Egypt.

²⁴ In the original English text: “including” which indicates the possibility that other grounds exist.

²⁵ Ref. also Article 24 of the Ukrainian Constitution.

²⁶ This first sentence in Article 38 and the balance of the article are most important and we will go back to them for further study in another section of the research.

In Tunisia, the Article dealing with the prohibition of discrimination, has undergone some changes, in terms of its location, in the different drafts of the constitution, but has not witnessed a change in content. Indeed, we find that in the draft of December 2012, the principle of non-discrimination was set forth in Article 5 and was formulated as follows: “All male and female citizens are equal in rights and duties and are equal before the law without any form of discrimination.” We also find it in the general principles segment in the draft of April 2013, even though its number changed into number 6. However, the phrase “without any form” was omitted, which raises suspicions and leads to believe that the drafters, or at least some of them, do not see any harm in making an exception to the non-discrimination principle. There were no significant change recorded in the draft of June 1, 2013 or in the final version that was ratified, except for appending the article to the chapter, dealing with rights and freedoms, making it at the forefront of the chapter, adding it to a second paragraph as follows: “the State shall guarantee individual and collective rights and freedoms to the citizens, and shall provide them with decent living conditions.” Not stipulating the non-discriminatory aspects makes the Article relating to discrimination in the Tunisian constitution dismembered and incomplete, compared to the majority of the other constitutions.

3. Equality in Rights and Duties in Family Life:

The issue of family life enjoys a unique position in relation as far as equal citizenship is concerned. For a long time, the stereotypical image and classifications produced by the traditional society and defended by the conservative and reactionary forces, have ruled out a distribution of the roles whereby women kept cloistered inside their homes, procreating, raising their children and taking care of their husband. It is clear that a society where such a vision is dominant cannot be a developed society that adopts the values of modernity and civilization.

The relationship between the issue of family life and the constitutional process, has a particular impact on Tunisians, as it is closely linked to the Personal Status Code which some observers consider as “the social Constitution” of Tunisia. Several components of civil society and some male and female members in the NCA have asked to refer clearly and explicitly to the Personal Status Code in the constitution. However, there has been only an indirect though clear

reference in the constitution, to women's gains established in the said Code, which stands as the symbol of liberation for Tunisian women and the advent of a modern society.

Several comparative constitutions have ranked high the issues related to family life in their articles, because of the effect they have on the structure of society, the nature of relationships inside it and on the psychological and social composition of its components. The Venezuelan constitution (1999), for example, devotes Chapter V of the constitution for "Social and Family Rights." We find this chapter in its five detailed articles, of direct interest to the family and family life (Articles 75 to 79). The subjects of these chapters summarized as follows²⁷:

- Article 75: Families as a natural association in society, and as the fundamental space for the overall development of persons.
- Article 76: Protection of motherhood and fatherhood and the father and mother shared and inescapable obligation of raising, training, educating, maintaining and caring for their children.
- Article 77: Protection of the marital relationship and ensuring the protection of other relationships.
- Article 78: Protection of the rights of children.
- Article 79: Guarantee of the rights of young people together with family solidarity.

Bolivia's constitution has devotes Section VI of Title V to the rights of families, and it contains five articles (Articles 62 to 66) which, just like the Venezuelan constitution, are elaborated in full details, which translates the fact that the issue of family life is at the very core of constitutions of these countries. Similarly, the Portuguese constitution also devotes an extensive detailed article (Article 36) with seven paragraphs dealing with "family, marriage, relatives."

The Egyptian constitution of 2013 has dedicated miscellaneous provisions for family life issues:

- Article 10: "The family is the nucleus of society, and is founded on religion, morality, and patriotism. The State shall ensure its cohesion, stability and the establishment of its values."

²⁷ We did not judge it useful to right down the articles because they are very long

- Article 11, paragraphs 3 and 4: “The State shall protect women against all forms of violence and ensure enabling women to strike a balance between family duties and work requirements. The State shall provide care to and protection of motherhood and childhood, female heads of families, and elderly and neediest women.”

It is also committed to providing care and protection for motherhood, childhood, women who are the breadwinners in their family, the elderly women, as well as those who are most in need.” However, the phrase in paragraph 3 of Article 11: “shall...ensure enabling women to strike a balance between family duties and work requirements,” raises a legitimate question: Is reconciliation between family duties and job requirements a women’s issue exclusively?

This paragraph is merely an embodiment of a stereotyped image, produced by traditional societies, given that equal citizenship also requires that men, on the same equal footing as women, should perform their family duties as well. One fears that such materials and phrases may contribute to the establishment of the stereotyped image of women’s role (taking care of the household and home affairs) instead of resisting it and pushing for its change.

As far as the Tunisian constitution is concerned, the issue of family life has witnessed a development throughout the different versions of the constitution. In the first version of the project, published on December 14, 2012, there were two Articles dealing with this issue:

- Article 7, “The state shall guarantee the protection of the rights of women and shall support the gains thereof.,” and
- Article 8, “The state shall protect family structures and maintain the coherence thereof.”

It is clear that the mention of women’s “gains” in Article 7 is an indirect reference to the Personal Status Code. These two articles have remained brief, compared to the provisions governing family life issues in the comparative constitutions.

In the version of April 2013, the number of Article 8 has changed to become Article 10, while keeping the same wordings and adding a new article, namely Article 11, which states that, “Women and men shall be partners in the construction of the society and the state.”The phrasing of this Article is slightly different from that of Article 28 in the constitution’s draft (August 2012, which was not published officially), providing that, “the State shall guarantee the protection of women’s rights and support their gains as true partners to men in building the

nation and their two roles are intermingled within the family.” We can understand from this phrase that men are at the core of the universe and women simply revolve around them, despite the far-reaching expressions.

However, the wordings of Article 11 in the draft of April 2013 show that this relationship is based on equal partnership and that none of the two parties enjoys a more privileged position than the other (two partners). In the draft of June 1, 2013 of the constitution, we find that Article 7 states that: “The family is the basic structure of society and the State shall protect it.” The same Article with the same number kept in the final ratified version of the constitution. We also find that paragraph 1 of Article 46 states that, “The state is committed to the protection of the acquired rights of women and works to support and develop them” picks up again the same contents of Article 7 of the 2012 draft (The state shall guarantee the protection of the rights of women and shall support the gains thereof), with a more mandatory tone, on one hand, (is committed instead of it guarantees), and a more open mindedness to develop women’s rights and not to make do with the secured rights (and the State endeavors to support and develop them), on the other. Overall, the Tunisian constitution just make concise references, lost in generalities, to family life issues, compared to many other modern constitutions.

Although the Personal Status Code was revolutionary and progressive, bearing in mind the Tunisian Society in 1956 (date of its issue) and has contributed to change the way of thinking and the social structures therein decisively, the constitution of 2014 has confirmed in a shy and indirect way, the gains of Tunisian women. It did not explicitly mentioned the Personal Status Code, which preceded the constitution of 1959 and that of 2014, which is indeed the social constitution of Tunisia. A historical opportunity was wasted on setting a general framework for the family life in Tunisia based on the changes brought by the Personal Status Code for more than half a century. It also lost the opportunity brought by the development, experienced by the Tunisian society at the level of the social relations between its members, and categories, to confirm the basic general principle of equality and non-discrimination, thus making room for more freedoms.

The drafters have shown, at this level, reluctance to raise questions about the core issues, and have avoided to tackle them deeply, using opacity and excessive conciseness. In retrospect, they missed the chance, for themselves and for the Society in particular, to have a constitution that is

a real new political and social contract and a tool to achieve social changes. One can go even further and say that the constitution was not, at least at this level, a faithful image of society, but was below its expectations; it did not grasp its diversity, richness and the dynamics that it has experienced.

4. Equality in Civil and Political Rights:

Constitutions supposedly acknowledge the equal civil and political rights of women. However, many patriarchic societies and its influence over the role of women in society allows for partly excluding women from the public life or only allows them to play a partial role by calling them to vote in election without calling them to compete for or run for elections. This is something common in many societies, although in greater proportions in the Arab and Muslim societies, including the Tunisian society.

Despite their privileged status compared to their counterparts in the Arab and Muslim world, and despite the advanced characteristics granted by the Personal Status Code that introduced improvements for women status at the household and social level Tunisian women enjoy, , women's participation in the public and political life are still limited. Perhaps the constitution is the first step that will allow the integration of women, on the same equal footing as men, without any favoritism or any special treat from men.

In the constitutions being compared, we find a great number of them dedicate chapters and articles that support the participation of women in public life and in holding senior administrative and political positions. The French constitution (1958) states in its Article 1, paragraph 2, "Statutes shall promote equal access by women and men to elective offices and posts as well as to position of professional and social responsibility." The same constitution also states in paragraph 2 of Article 4 that the political parties shall contribute to the implementation of the principle set out in the second paragraph of article 1 as provided for by statute." It is worth pointing out here that the French constitution makes it mandatory for the state through its laws, to encourage women to participate in the political and professional life. It also calls the political parties to take part in this policy, which confirms that supporting the political participation of women is a societal responsibility and not only the state's responsibility. For instance:

- Article 26 of the Bolivian constitution states that participation in political life is a right to all male and female citizens, and adds: “Participation shall be equitable and under equal conditions for men and women.”²⁸
- We also find in Article 52, paragraph 2, of the constitution of Rwanda, a reproduction of paragraph 2 of Article 4 of the French constitution on the contribution of political formations, to make sure that women have the same equal access to electoral positions as men.
- The constitution of the Czech Republic, despite the presence of Article 3 of the Charter of Human Rights and Fundamental Freedoms (Annexed to the Constitution and enjoying the same value), providing for the principle of equality in all rights and freedoms, paragraph 4 of Article 21 of the same Charter states that, “Citizens have the right to enjoy equal access to the electoral and other public positions, under equal conditions.”
- In Morocco, Article 30 of the constitution of 2011 states that: “The law provides [prevoit] the provisions of [a] nature encouraging the equal access of women and men to the elective functions.”
- In Egypt, Article 11 of the constitution of 2014 is considered as a quantum leap forward when it comes to supporting women’s participation in public life stating: “The state commits to achieving equality between women and men in all civil, political, economic, social, and cultural rights in accordance with the provisions of this Constitution. The state commits to taking the necessary measures to ensure appropriate representation of women in the houses of parliament, in the manner specified by law. It grants women the right to hold public posts and high management posts in the state, and to appointment in judicial bodies and entities without discrimination.”

The Tunisian constitution of 2014 reference seems to be modest, when comparing it to the constitutions being studied, especially to how it is stipulated in the Egyptian constitution. The first version of the constitution draft contained a single and brief Article, referring to the participation of women, namely Article 37, paragraph 1: “The state shall ensure equal opportunities for men and women in carrying different responsibilities.” In the version of April

²⁸ The original Spanish text uses the phrase: “la participacion sera equitativa y en ingualdad de condicionesentre hombres y mujeres.”

2013, this paragraph became with the same wordings, paragraph 2 from Article 42; and the same formulation was kept in the version of June 2013, after, with changing the number of the Article (it became paragraph 2 of Article 46).

In the final version of the constitution, we find that paragraph 3 of Article 46 stipulates: “The State shall seek to achieve equal representation for women and men in elected councils.” Article 46, which included two paragraphs about women’s participation in public and political life: paragraph 2, provided, “The state guarantees equal opportunities between men and women in the bearing of all the various responsibilities in all fields.”. Paragraph 3 also provides: “The State shall seek to achieve equal representation for women and men in elected councils.”

Despite the notice, which we already mentioned regarding the redundancy in Article 42 and Article 46, this shows the awareness of the drafters at the later stages of the constituent process, that the constitution did not have great amount of material to support women’s participation in public life, which accounts for the confusion caused by the incorporation of two articles, dealing with the same subject.

Overall, the constitutional provisions remained brief in this field, and one cannot say that the Constitution will be a revolutionary steering tool, as far as women’s participation in public and political life is concerned.

5. Equality in Economic, Social and Cultural Rights:

Economic, social and cultural rights are ranked high in modern constitutions. However, they are meaningless when citizens continue to be deprived of employment, health, education, and decent housing, the most basic attributes of human dignity.

Equality based on these rights is an important measurement and indicator of up to what extent constitutions have succeeded in considering the principle of equal citizenship. Women who effectively contribute in the economic life cycle and are involved in the creation of the national wealth, are denied, in many countries, the simplest economic and social rights, as well as cultural rights. Observers confirm, in relation to the Tunisian example, that despite the many leading legislations, the position of women in the social and economic fields remained inferior.

The best example, in this respect, is that many women are paid a lower salary than men for the same job; furthermore their chances to get jobs are less than men's, despite equal qualifications.

In order to avoid these practices and certainly to break with this reality, many constitutions have insisted on the incorporation of several economic, social and cultural rights and emphasized on the necessity for women to enjoy these rights equally with men and to acknowledge women's work and their participation in the economic and social development. For instance, the constitution of Venezuela states in Article 88, "The State guarantees the equality and equitable treatment of men and women in the exercise of the right to work. The state recognizes work at home as an economic activity that creates added value and produces social welfare and wealth. Housewives are entitled to Social Security in accordance with law." Also in the constitution of Bolivia Article 48, paragraph 5 and paragraph 6 states:

"The State shall promote the incorporation of women into the workforce and shall guarantee them the same remuneration as men for work of equal value, both in the public and private arena...Women shall not be discriminated against or fired because of their civil status, because of pregnancy, because of their age or physical features, or because of the number of children they have. It is guaranteed that pregnant women and parents cannot be dismissed from employment until the child completes one year of age."²⁹

Article 59 of the Portuguese constitution in its paragraph 2 guarantees a special protection for women's work, while the Spanish constitution Article 35 states that no discrimination between both sexes regarding work is allowed.

As for the Arab constitutions, we find that the Egyptian constitution of 2014, in spite of the importance of economic, social and cultural rights that it recognizes, lacked any reference to the guarantee women have to enjoy these rights in particular.

The Moroccan constitution in its Article 31 has dealt with the State's endeavor for the, "...mobilization of all the means available [disponibles] to facilitate the equal access of the citizens [feminine] and the citizens [masculine] to conditions that permit their enjoyment of the

²⁹ Ref. also Article 43 of the Constitution of Columbia: "Women and men enjoy the same rights and opportunities. Any form of discrimination against women is prohibited during pregnancy period and after delivery, women enjoy a special assistance and care from the State, through food aid in case they lose or they leave their job. The State supports women who are heads of families, in particular".

right: to healthcare, to social protection, to medical coverage...etc.” Generally speaking, both the Egyptian and Moroccan constitutions remained general and did not emphasize strongly enough on women’s enjoyment of economic and social rights, equally to men, which is not very different from the Tunisian constitution.

Indeed, we find that the economic, social and cultural rights, set forth as early as the first version of the constitution, are characterized by their limited number and their formulation (these rights are relating to work, trade union and strike, education, health, social security coverage, property , culture; there are also third generation rights, namely human solidarity right, the right to a healthy environment and the right to water).³⁰

For this study in particular, it was clearly evident that the first three drafts of the constitution proceeded the final draft did not pay any attention to men’s and women’s equal enjoyment of these rights.

Women’s right to work and equal paid salary for the same job as of men, as specifically stipulated or safeguarded in many constitutions, was not referenced in the first three drafts of the Tunisian constitution. The first three proceeding drafts did not mention women’s work, encouraging it or protecting it or even securing equal pay for equal work: “Work is a right to each citizen, and the State shall work out the necessary measures to guarantee it under decent and fair conditions.” There has been no change in these wordings, except in the final version of the constitution, where Article 40 states: “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.”

This article raises many observations; it is the only article in the “Rights and Freedoms” chapter, the articles that provide for economic, social and cultural rights, which uses the gendered speech. The genderization in this article in particularly, emphasizes the importance of

³⁰ From the beginning of the debates inside the Constitutional Committees, there was some fear that economical and social rights may not be established (work, health, housing, special social coverage) on the grounds that they are very expansive to the State and that the State is committed to extend care and not to achieve results, according to the State’s resources. However, the jurisprudence of the United Nations Committee of Economical, Social and Cultural Rights partially turns down this interpretation and considers that some of the obligations assumed by the States in this respect are obligations to achieve results such as the elimination of discrimination in the social and economical fields, which cannot be overlooked because of the relating financial impact. Ref. the general comments of the Committee on its site (SUPP) 1991/23.

the right to work, which was one of the main core demands of the Tunisian revolutionary masses during the 2011 revolution. Given that work is one of the conditions of human dignity, it is pertinent to emphasize on the need that everyone, men and women alike, should enjoy this right without any discrimination. The gendered article also draws its importance from its emphasis on the particular status of Tunisian women, compared to their counterparts in some Arab and Islamic countries. Tunisian women are workers in the public sphere. They are an effective force in society, and play a significant role in the economic life cycle. Female contribute to society's evolvement on many different levels and all the aspects of life. However, this article does not appreciate the work of women and does not guarantee specifically its protection.

Furthermore, paragraph 2 does not explicitly state that men and women should receive equal pay for the same work or for a work of the same nature. It is difficult to believe that the drafters, who are supposed to have examined a large number of constitutions around the world and who are aware of the problem raised in Tunisia for decades, relating to the issue of inequality in work pay between men and women in the private sector, apparently forgot or inadvertently omitted to stipulate equality in equal pay for equal work or work for equal value. If this interpretation is affirmed, then it is to be considered as a serious shortcoming in the establishment of one of the major economic rights in the constitution and a significant gap in recognizing equal citizenship. Accordingly, the drafters may have missed an opportunity to eliminate a discriminatory practice against women in the economic field.

6. Positive Discrimination: A Means to Achieve Equal Citizenship

It is obvious that society (and specifically the Arab-Islamic societies) suffers from many cases of gender inequality which may, if the law is enforced evenly on everyone, lead to a further deepening of the social disparities and their complication. Strangely enough, the fact of enforcing the law evenly will fuel inequality, which is a natural phenomenon, as equality should apply onto similar contexts, and when it is a different context, it is necessary to deal with them differently,³¹ which perfectly embodies the cases of discrimination against women in our

³¹ "Indirect discrimination occurs when the Law or the policy or the program is not discriminatory. However it has a discriminatory influence when enforced. This may occur just as an example when women are in a weaker position than men when it comes to profiting from the offered opportunities and from a specific favor because of the absence of equality from the start. The enforcement of a neutral law, which does not make a difference between male and female gender, may lead to an

societies. Thus, within this frame, equality will truly mean the fact of being offered equal chances, which would require a policy and a positive move from the state through the constitution and all the legislations.

A positive discrimination cannot be considered as discrimination in the conventional sense, given that it seeks to eliminate an existing discrimination through legal actions that could turn the wheel of social change forward.

Many international texts go along with this principle, including Article 4, paragraph 1 of the Convention on Eliminating all Forms of Discrimination Against Women which provides: “Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.”³²

Article 157 clause b-paragraph 2 of the Treaty on the Functioning of the European Union (which replaced the Convention establishing the European groups), states: “With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.”

In addition to its establishment in the international texts, many international constitutions have established the principle of positive discrimination, for its importance in achieving real equality between men and women, such as paragraph 2 in Article 21 of the Venezuelan constitution which states: “The law shall guarantee legal and administrative conditions such as to make equality before the law real and effective manner; shall adopt affirmative measures for the benefit of any group that is discriminated against, marginalized or vulnerable...”

It is obvious that women are among the vulnerable groups that suffer from discrimination. Paragraph 2 of Article 9 of the constitution of South Africa states that: “To

increase in the existing disparities or even to their worsening.” General comments by the United Nations for Human Rights. HRI/GEN/1/REV.9 (Vol 1).

³² Ref. also Article 2, paragraph 2 of the Treaty for the Prohibition of all Racial Discrimination Forms.

promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.”

In the Indian constitution we find two long articles dealing with this issue, including paragraph 3 of Article 15 which states: “Nothing in this article shall prevent the State from making any special provision for women and children.” Paragraph 4 also states: “Nothing in this article...shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens.” We find that Article 16, which has 5 clauses and 2 sub-clauses entitled “Equality of Opportunity in Matters of Public Employment” supports the idea of positive discrimination, even if it were mainly meant for the marginalized groups in India in general.

In the constitutions of the Arab Spring Countries, we find that the Moroccan constitution was a pioneer in establishing the Parity Principle, as a procedure aiming at promoting women’s participation in public life. In fact, in Article 19 “The State works for the realization of parity between men and women. Article 30 stipulates: “The law provides [prevoit] the provisions of [a] nature encouraging the equal access of women and men to the elective functions.”

This Article, despite its importance, falls short of the expected equal opportunities for electoral jobs, while many constitutions do not limit equal opportunities to political participation, but go beyond it to cover all the professional, economic, cultural and social fields.

The new Egyptian constitution has devoted two articles to the issue of equal opportunities. First is Article 9, which provides clearly: “The state ensures equal opportunity for all citizens without discrimination”. It is clear that this phrase refers to the commitment to achieve a result and not simply to make efforts, as it is the case with the Moroccan constitution on the issue of parity (the state sees to...), and we find as well that Article 11, referred to earlier, “grants women the right to hold public posts and high management posts in the state, and to appointment in judicial bodies and entities without discrimination.” It is clear that Article 11 supports Article 9 by emphasizing on a number of fields where there are no equal opportunities or where it is difficult to achieve them socially and professionally.

The Tunisian constitution was no exception in this respect. We find that, as early as the first version of the constitution (December 2012) the principle of equal opportunity was stressed upon: “The state shall guarantee the provision of equal opportunities between men and women in the bearing of various responsibilities.” (Article 37). This article was maintained in the version of April 2012 and June 1, 2013 with the same wordings and under a different number. In the final version the principle of parity was established and the phrase “in all the fields” was added in the paragraph, relating to equal opportunities, to cover all the fields and not to remain limited to political and electoral responsibilities, exclusively.

It is possible to say that the new Tunisian constitution has established many principles that guarantee equal citizenship, and the final version made an improvement compared to previous constitution drafts. However, this establishment was not clear and strong enough in many parts (the issue of speech gendering, equality in family life, economic and social and cultural rights).

Despite some opinions that it is “one of the best Constitutions in the world,” it remained lagging behind many constitutions, in several areas, especially the constitutions of the countries that have gone through the democratic transition experience and modern constitutions in general. It is not an exaggeration to say that the constitution drafters could have examined only few of these constitutions or that they were not pioneers as they pretended to be.

In general, recognizing and stipulating rights in the constitution are necessary, but it is not enough. Unless there are legal mechanisms and a process to put these rights and principles into practice are not available, they are going to remain to be only ink on paper. So, to what extent did the new Tunisian constitution establishes mechanisms for rooting and supporting equal citizenship?

Section III: Rooting and Supporting Mechanisms for Equal Citizenship

Among the issues on which all constitutions today agree is the recognition of a set of rights and freedoms, with equality between male and female citizens at their forefront. Today, there is no state or system that openly talks about its hostility-to or its rejection-of the principles of human rights, even though in reality, it does violate them. It has become imperative not to feel eased and secured simply when these rights are established on paper, given that most dictatorship

countries' constitutions are shot through with great amount of rights and resounding useless rhetoric.

It is therefore essential that the provided for rights be accompanied with a set of legal and institutional mechanisms which would secure their application and respect in reality. Human rights are no longer a mere internal issue but also a concern for the entire international community, linking the national constitution to international human rights law, as a reference for interpretation and development of constitutional rights. Thus provides a guarantee for these rights against the restrictions that national authorities could exercise on them. The existence of a judicial institution in charge of monitoring the constitutionality of laws and of national institutions for human rights that are independent from the executive power will immunize these rights against reactionary interpretations and work on their development.

1. Link the Constitution to International Law:

The principle of equality has witnessed a major development in international law in general and the international human rights law in particular. Women's rights also occupy a special position in international covenants on human rights.

These texts are considered, largely, advanced and consequently make up a source of inspiration for national constitutions, where they can catch a liberating breath to move forward with the assets of women, and a reference material to establish new rights for women.

The international system of human rights plays a leading role as a mechanism for rooting and supporting equal citizenship. It has become hence, in many constitutions, a reference for the interpretation of the constitution requirements, so much so that any interpretation leading to restrictions on women's rights or equality with men is difficult to contemplate.

In fact, many constitutions do not hesitate to provide for international laws prevalence, specifically international human rights law over the domestic law. This phrasing often refers to the rules that do not enjoy the same primacy as the constitution. However, in some constitutions, there is no such distinction; other constitutions provide that the provisions of the constitution itself must be consistent with international law. As example, we can quote in this context, paragraph 4 of Article 13 of the Bolivian Constitution (2009): "The international treaties and

agreements ratified by the Plurinational Legislative Assembly, which recognize human rights and that prohibit their limitation in States of Exception prevail in the internal order. The rights and duties established in this constitution will be interpreted in accordance with international treaties of human rights ratified by Bolivia.” Article 10, paragraph 2 of the Spanish Constitution provides that: “Provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain.” Article 75, paragraph 22 of the Argentinean Constitution provides for a long list of international conventions on human rights which are recognized as having a “Constitutional Value” and Article IV of the Moldovan Constitution (1994) states: “Constitutional provisions on human rights and freedoms shall be interpreted and enforced in accordance with the Universal Declaration of Human Rights, other conventions and treaties to which the Republic of Moldova is a party.” Wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations.

Thus, international reference in terms of human rights play the role of the guarantor of the rights established in the constitution and for the liberating breath of the constitutions against any tendency to question the recognized rights or interpret them in a reactionary manner that could limit or ignore these rights.

Arab constitutions are more modest as far as this issue is concerned. There are even tendencies that emerge and disappear, showing a desire to drift away from international law and which could open the door to the reactionary and conservative interpretations of rights and freedoms, leading to restrictions on them. Article 19 of the Moroccan Constitution states: “The man and the woman enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural and environmental character, enounced in this Title and in the other provisions of the Constitution, as well as in the international conventions and pacts duly ratified by Morocco and this, with respect for the provisions of the Constitution, of the constants [constantes] of the Kingdom and of its laws.” Although the first part of the article is considered as a remarkable step forward, since it recognizes, without any discrimination, the rights of the male and female citizens that are set forth in the constitution, as well as those provided for by the international texts, it makes them nonetheless subject to the constitution (which is acceptable, since the

constitution stands for the highest legal rules in the internal legal system), and to the constants of the Kingdom which is an illegal and loose phrase open to broad interpretations.

It also makes these rights subject to the laws of the Kingdom, so the laws shall prevail over the rights established by the international human rights law, in case of a conflict between them, which stripes out Article 19 of all its meaning and significance (knowing that the constitution does not precisely provide for the ranking of treaties in the Moroccan legal system). As for the new Egyptian Constitution, it merely recognizes its commitment to the agreements, covenants, and international conventions of human rights that were ratified by Egypt at the power of the law (Article 93), which does not make them immune to the negation by the internal law negation of the provisions international texts contain.

In Tunisia, the issue has known several developments, from which we can draw many lessons. In the first draft of the constitution (December 2012), there was a focus on the Arab-Islamic identity of the Tunisian State and a complete absence of any reference to the international human rights law, as a consultation material or for the interpretation of constitutional rights, while keeping with international treaties, ratified by Tunisia in this field. Article 15 in the General Principles Chapter has raised a storm of criticism in political, legal and academic circles as it states, "...international treaties shall, where no contradiction with the provisions of the present Constitution exists, be respected." We can understand from this formulation the possibility for the Tunisian State to reconsider any of its international commitments, in case it is incompatible with the constitution; which is very dangerous because ratifying a treaty bounds the state by all its clauses unless some reservations to some of them are made.

It seems that a large number of the drafters were throwing in this wording to negate many common provisions found in international human rights covenants ratified by Tunisia, because they come in tensions with the constitution and specifically its first Article which stipulates that the religion of the Republic of Tunisia is Islam. Many of these covenants contain articles dealing with women and their rights (freedom to choose a husband, without coercive force, without any discrimination based on religion, freedom to exercise political rights, religious rights, many economic, social and cultural rights, and the right to equality...). A progressive interpretation of

these texts will lead to the abandonment of polygamy, an issue that is already settled in Tunisia, but still outstanding in many Islamic countries.

It could be argued that the formulation of the constitution could have made the Tunisian Constitution non-modern, rather a backward looking and an isolationist constitution. The intensity of the criticism about this Article led to its abandonment in the next draft (April 2013, Article 21), stating instead, “The international agreements approved and ratified by the Chamber of Deputies shall be superior to laws and inferior to the Constitution.” This Article is considered as being late, compared to the position of the international law in many constitutions, which tend to put it in the same ranking as the constitution or make it a must to interpret the constitutional rights, in harmony with international human rights law. It further reduces the seriousness and credibility of the argument that the Tunisian Constitution “is one of the best constitutions in the world,” as it has negated one of the most important features of modern constitutions, namely being open to international law in general and to the international human rights law, in particular.

In addition to the above, the drafters, who abandoned the “catastrophic” formulation of Article 15 (which became n° 21 in the version of April 2013), refused to add in the preamble the wordings “and based on the principles of universal human rights in keeping with the cultural specificities of the Tunisian people,” linking likewise the integration into the universal legal system to the extent of the latter’s compatibility with the national specificities.

Likewise, privacy governs universality, which empties the latter of all its meaning and prevents, no doubt at all, any progress of human rights and freedoms. This phrasing faced sharp criticism from the human rights organizations and modern forces, so it was abandoned in the draft of June 1st, 2013.

The final draft of constitution (January 2014), just like its predecessors, kept a focus on the issue of the Arab-Islamic identity in the preamble and the absence of any reference to the international human rights law in the Chapter dealing with Rights and Freedoms.

The articles which identifies the position of the international law from national law has only witnessed a slight change in the wordings to read as follows, “International agreements approved and ratified by the Assembly of the Representatives of the People have a status superior to that of laws and inferior to that of the Constitution.”

Likewise, the Tunisian Constitution remained behind many recent constitutions, which are characterized by a dynamic modernism and open-mindedness in dealing with the international human rights law, as they consider it the guarantor of a dynamic and liberal interpretation of the rights and freedoms, included in the constitution.

If we take into account the fact that a large number from among the drafters fiercely defended the idea of creating a “High Islamic Council,” as a constitutional body that would examine up to what extent legislations and treaties are in-line with the instructions of Islam, we realize the nature of the referential framework they wanted to create and the consequences resulting therefrom. If created, this body will disturb the activities of the most important judicial agency in charge of protecting rights and freedoms, namely the Constitutional Court.

2. The Constitutional Court: The Defender of Rights and Freedoms:

Article 16 of the Declaration of the Rights of Man and Citizen (1789) states: “A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all.” This statement solidified as time went by until human rights become today the soul and the core of constitutions. However, past processes made it clear that stipulating the rights is not enough in itself if the constitution does not include the institutional safeguard mechanisms that secure the protection of these rights from public authorities. Past constitutional processes further have shown that the best constitutional body to play this role is a judicial body and more specifically the Constitutional Court, which examines the conformity of laws with the constitution, in order to prevent the legislature from circumventing the constitutional rights and empty them of all their contents.

Constitutional courts have played, since World War II, an essential role in protecting the constitutional rights and progressively interpreting them, making the oversight of the constitutional system, the center of every modern constitution. Given the importance of their role in the protection of rights, many constitutions explicitly provide, in addition to a number of other issues, for the role of the Constitutional Court in protecting the rights and freedoms recognized by the constitution; this is best illustrated in Article 93, paragraph 4 of the German Constitution.

We find the same focus on the role of the Constitutional Court in protecting the rights, in the Spanish Constitution. Article 161 of the Spanish Constitution dedicates a paragraph to the

control and safeguards of the constitutionality of laws in general (paragraph 1, firstly) and a separate paragraph to the protection of the rights and freedoms guaranteed by the constitution (paragraph 1, secondly).

We also find that the Kenyan Constitution dedicates an article in the “Bill of Rights,” which is the chapter of the constitution relating to the rights and freedoms, to specify the competence of the Supreme Court in examining disputes concerning the violation of the fundamental rights and freedoms set forth in the Bill of Rights; while it devotes a separate chapter to cover the competence of the various judicial bodies in general.

The Bolivian Constitution provides, in Article 196, that the Constitutional Court “assures the supremacy of the Constitution, exercises constitutional control, and safeguards respect for and enforcement of constitutional rights and guarantees.”

We find along with an emphasis on the general role played by the Court in the area of constitutional control, a special focus on the protection of fundamental rights and freedoms, guaranteed by the constitution. We find also the same focus, although differently, on the role of the Constitutional Court in the protection of rights, in the Moroccan Constitution, which limits the control of the constitution, through pleading for the article dealing with constitutional rights and freedoms (Article 133).

The Egyptian Constitution of 2014 specially refers to rights and freedoms as part of the competence of the Constitutional Court, set forth by Article 192. The issue of the role of the Constitutional Court in protecting the constitutional rights has witnessed a development through the successive drafts of the Tunisian Constitution. In the draft of December 2012, paragraph (i) of Article 117 states that the Constitutional Court is competent to “Individuals may, after all other means of appeal have been exhausted, file a direct appeal before the Constitutional Court against prevailing provisions which the Constitutional Court has not previously looked into if such provisions are in violation of the rights and freedoms prescribed under the Constitution.” Thus, rights and freedoms were isolated to make the object of direct appeals lodged by individuals.

In the April 2013 draft of the Tunisian Constitution, this procedure was abandoned and therefore the Court became competent to examine “all bills before their signing,” which includes

the draft of bills that concern rights and freedoms, although giving up the focus on rights and freedoms may have some reasons. The non-listing of the issue of rights and freedoms as part of the competence of the Constitutional Court was maintained, which raises many questions, especially that the general tendency in the modern constitutions is to recognize the pivotal role of the Constitutional Court in protecting and interpreting the rights actively and dynamically, in order to immune them against reactionary interpretations that lead to imposing restrictions on them.

The belief that abandoning this option was deliberate and justified, especially since the first drafts some defended the need to have specialists in the Sharia among the members of the Constitutional Court, so to warrant respect for the first article of the constitution, which stipulates that Tunisia's "religion is Islam."

The fierce defense orchestrated by conservative parties and movements within the Constitutional Council concerning the idea of establishing the Supreme Islamic Council, with specific regards to the interference and the disturbance effects it could bring about to the Constitutional Court, we will have realized that the intention was to dwarf the role of the Constitutional Court in the field of rights and freedoms. It would interpret them in a reactionary and backward looking manner that restricts them, causes rigidity to them and deprive them of all contents.

3. The National Committee of Human Rights:

Human rights national institutions are important mechanisms to achieve the internationally recognized human rights and those, which are established constitutionally, within the State.

The labels and forms of these institutions differ from one country to another but they share a set of features, the most important of which, perhaps, and without being judicial bodies, is independence from the executive power. While many countries are satisfied with only one national institution for the human rights, other countries who are keen to support equal citizenship, create an independent national institution for the protection and support of women's rights.

What is certain is that these institutions complete the role of national institutions that are generally competent, as far as human rights are concerned.

The most prominent example of this approach is the Constitution of South Africa, which creates “the South African Committee for Human Rights” side by side with “the Committee for Gender Equality” (Article 181). However, the Kenyan Constitution has created only one institution, dealing with human rights, but its name focuses on the issue of equal citizenship, “the Kenyan Committee for human rights and equality.”

The Moroccan Constitution is distinguished by its Article 19, which emphasizes on the equality of rights between men and women and holds the State responsible for seeking to achieve the principle of parity. It provides in paragraph 3 of Article 19: “a body for parity and fighting all forms of discrimination, shall be created to meet this purpose.” Chapter 164 of the Moroccan Constitution states: “The authority charged with parity and with the struggle against all forms of discrimination, created by virtue of Article 19 of this Constitution, sees[,] notably[,] to the respect for the rights and freedoms specified in said Article, under reserve of the attributions devolved to the National Council of the Rights of Man.” This Council was created under Article 161 of the constitution and therefore, Morocco joined the countries that chose to establish, besides the institution that generally takes care of human rights, a national institution dealing particularly with the issue of fighting against discrimination and achieving equal citizenship.

It seems that the Egyptian Constitution has followed the example of the Moroccan Constitution, and we find that it provides for a National Council for Human Rights (Article 214), as well as a National Council for Women (Chapter 214). As for the real innovation, which the Constitution of 2014 brought, compared to the Constitution of 2012, it is the stipulation in Article 53 that: “The state shall take all necessary measures to eliminate all forms of discrimination, and the law shall regulate the establishment of an independent commission for this purpose.”

The Tunisian Constitution seems lagging behind and modest compared to these constitutions, namely it has only created the “Human Rights Commission” which according to Article 128 “oversees respect for, and promotion of, human freedoms and rights, and makes proposals to develop the human rights system. It must be consulted on draft laws that fall within the domain of its mandate.” One understands from the phrasing in this Article that consulting this

body is mandatory, however its opinions or deliberations are not binding, so the consulting party is not obliged to adopt the opinion issued by this commission, which may limit its role and its position in the institutional fabric of the State.

If this option was isolated, it would not raise major observations but incorporating it in the context of certain options, already discussed, confirms that the issue of equal citizenship was not the object of a consensus between the different currents, represented in the National Constituent Assembly.

4. Adequate Legislative Framework for the Constitution:

It is known that constitutions set the rules and general principles while the role of laws and other legal texts is to enforce them and put them into practice. Therefore, establishing equal citizenship should not stop at the level of the constitution text, and in order to materialize it and make it a reality, texts of different rankings in the legal rules hierarchy should be drawn, aiming altogether at seeking to turn the general principle into a living reality.

If we take, for example, the political rights and what is specifically related to the right to vote, especially candidacy and access to public and electoral positions, the constitutional establishment alone is not enough. The electoral law must provide for certain procedures likely to support women's participation in political life, which makes parity establishment set forth in the constitution a reality.

Perhaps the experience of the Tunisian electoral law in 2011 constitutes a good starting point whereby the candidate lists were obliged to respect the alternation between women and men in the preparation of the lists. However, the failure to adopt horizontal alternation (i.e., alternating women and men as heads of the lists) made the number of women representatives less than half of the members of the Constituent Assembly, as stated earlier (in Section 1).

According to Article 46 of the constitution, which holds the state responsible for seeking to achieve parity in elected councils, the electoral law will be obliged to respond favorably to this option. Therefore, the parties will have to submit a list headed by a woman and another by a man, and so forth, always in compliance with the vertical alternation within the same list. Furthermore, the eradication of violence against women (Article 46, last paragraph) requires

taking relating “adequate measures;” so it is natural that the first measure should provide the appropriate legislative framework.

Although the Tunisian State has ruled out many legislations in the field of family life and civil rights, and especially the Personal Status Code and all the amending texts that complete it, the field of economic and social rights still needs legislative texts to turn constitutional rights into a living reality not just a slogan.

Perhaps the most striking example, in this respect, is the right to work (the subject of Article 40 of the constitution) which needs legal texts that encourage employment of women, without discrimination, and in particular those that guarantee equal pay for equal work or equal value. This issue is still subject to discrimination and a glaring injustice in the private sector, where women workers receive by far lower wages than men, for executing the same work.

It is also necessary to take into account the specificities of gender in the workplace, which is not discriminatory in nature, but a step towards achieving equality, as different situations should not be dealt with in the same way.

5. Actual and Effective Resort to Courts:

The achievement of equal citizenship is a long and complex process. It involves the composition of legal instruments (the texts of the constitution and laws) and promoting women’s awareness of their right to resort to courts. Here we must distinguish between two levels namely the level of citizens’, in general, and particularly women’s, resort to justice, on one hand, and the level of the judicial rulings effectiveness and up to what extent they are enforced.

At the first level, we find that women rarely resort to courts to exercise their rights except in case of divorce, and even in this respect, battered women do not massively resort to justice, especially in the underprivileged and illiterate women communities. Perhaps this is linked to the social pressure exerted on women, as society often holds them responsible for the disintegration of the family in case of a divorce and puts on their shoulders exclusively the duty of protecting the family, even if they were subjected to insults, violence and neglect.

Furthermore, the fact that many women feel subordinate to men, in a vulnerable situation, prevents them from resorting to courts, fearing that their situation may get more complicated.

This is also true in the professional field, where women in the private sector often receive unfair and lower wages than men, and cannot appeal to courts for fear of losing their jobs or harassed by their fellow employers. In fact, this is not specific to Tunisia exclusively, but shared by many Arab and African countries and other countries in Latin America. Civil society can play at this level, a pivotal role through promoting women's awareness of their rights and the legal procedural means available to them to guarantee and exercise these rights. In several countries, there are civil associations and coalitions whose purpose is to rally support for women and to denounce violations against them.

They also provide logistical and legal support for women whose rights are exposed to violation; many countries recognize that civil society organizations are entitled to go to courts to litigate and defend the interests of women whose rights and freedoms are attacked. Among the most prominent examples of these civil organizations we can mention the Canadian Association LEAF (Women's Legal Education and Action Foundation), which played a prominent role not only in helping women in terms of legal support but also to put pressure on jurisprudence, so to be open and to adopt a dynamic and liberal interpretation of women's rights.³³

This approach will have a strong and real impact if it was adopted in Tunisia. However, some laws would need modification, especially those dealing with the condition of interest to file legal actions, because the judiciary continue to put obstacles on litigations presented by civil society on behalf of vulnerable groups. It uses the pretext of the absence of personal and direct interest, which deprives these originally vulnerable groups, both in terms of financial resources and legal knowledge, of the possibility to enforce their constitutional rights.

The second level to the issue of resorting to justice is the question of the effectiveness of the ruled out judgments. What is the point of delivering judgments if they are not enforced or if they are not enforced properly?

This requires a follow-up by the public authorities and the administration to check on to what extent the judicial decisions are enforced and compliance of all the parties in the litigation with their provisions. Otherwise, the trust of the citizens, particularly the vulnerable groups, headed by the women, in the judicial institution, will bring setbacks and consequently citizens

³³ Ref. LUCAS (L.E. "Does Gender Specificity in Constitution Matter" <http://scholarheo.law.duke.edu>.

will feel more reluctant to refer to this institution. Civil society can also play a role in drawing the attention to cases of non-enforceable by courts' decisions and the lack of their efficiency, pointing out at the same time the social causes behind it. This potential role of the civil society, necessarily leads us to recall the role it played in the constituent process.

Section IV: The Role of Civil Society in the Constitutional Process

The participatory approach is considered as the most prominent feature of contemporary constitutional processes.³⁴ It is based on the involvement of civil society through organizations and non-governmental associations, the unions and the experts in the drafting of constitutions, by receiving and listening to their suggestions, their perceptions and their proposals.

The National Constituent Assembly (NCA) of Tunisia has expressed since the beginning of its works, its intention to adopt a participatory approach and stressed its openness onto civil society. Although the relationship between the Assembly and civil society was not always based on “harmony and communication,” civil society was able to organize several activities outside the Constituent Assembly and communicate with the Assembly. Civil society's activities had a significant impact on the constituent process.

1. Public Activities Organized by Civil Society During its Engagement with the NCA:

The Tunisian constitutional process has witnessed an unparalleled momentum of activities and mobilization in order to put pressure on the drafters to secure the inclusion of human rights, guarantee of equal citizenship, and to protect the gains of Tunisian women.

From the beginning, the Assembly declared its openness to all the proposals submitted by civil society on any chapters and articles of the constitution, particularly those relating to freedoms. Dozens of constitution and article proposals reached the Assembly, particularly those concerning human and citizens' rights.³⁵ We specifically indicate in this respect the

³⁴ Ref. Le nouveau constitutionnalisme, DRI, rapport, novembre 2012

³⁵ For an exhaustive study of these different constitutions, particularly the draft of the network “Doustourna” – Ref. Salwa Hmrouni Equal Citizenship in Tunisia ... a reference already indicated.

“Constitution of Citizenship through the Eyes of Women,” which was drafted by the Tunisian Democratic Women Association.³⁶

The Assembly also met, in the constituent committees, notably the drafting committee dealing with rights and freedoms, with several experts and academics in order to take their opinions and their insights on equal citizenship issues. The Rights and Freedoms Committee listened to a representative from the Tunisian League for Human Rights, representatives from the Tunisian League of Women Voters, the Tunisian Democratic Women Association, and the Tunisian Women Association.³⁷

In addition to the direct dialogue with the drafters within the Assembly, civil society, particularly women’s groups, organized many activities to explain the concept of equal citizenship, and to defend and further support the rights and gains of women. We can mention as follows, for instance, the most important events and activities:

- Before the election of the Council, a campaign under the heading “From the Revolution up to a Constitution of Equality,” aiming at securing a constitution that achieves equality started on March 8. It was organized by the Tunisian Democratic Women Association, the Association of Tunisian Women for Research on Development, the Women’s Committee in the Association of Tunisian Human Rights, the General Union of Tunisian Workers and other associations.
- During the Constituent Process, the Tunisian Democratic Women Association organized, on the 4th and 5th of February 2012, an international forum titled “For the Constitutionalization of Women’s Rights.” The event brought activists from civil society from different regions of the country, representatives from the National Constituent Assembly and activists from various Arab countries. It is also important to note that the First Deputy Chairman of the National Constituent Assembly, Mrs. Mehrezia Labidi, chaired the opening session of the event.
- The Center of Research, Studies, Documentation and Information on Women, held a meeting, in the presence of a group of representatives from the National Constituent

³⁶ Ref. to the final report of the Rights and Freedoms Committee, a reference already listed- pages 7.

³⁷ Ref. the final report of the Rights and Freedoms Committee, a reference already listed – pages 9, 10,11.

Assembly, during which discussions centered on how to include the women's rights, include in the Personal Status Code, in the Tunisian constitution.

- Women's associations organized many marches in the capital and other cities; most notably the march of August 13, 2012, on Women's Day, which had a deep impact on the National Constituent Assembly.
- The Arab Forum for Citizenship in Transition (FACT) prepared in September 2012 an important report on equal citizenship in Tunisia, through the draft of the constitution, compiled by the National Constituent Assembly, and a set of constitution drafts prepared by political parties, civil organizations and academics.
- Many non-feminist associations necessarily worked on the issue of citizenship and made several proposals to the National Constituent Assembly about the articles dealing with rights and freedoms.³⁸
- Among the most important experiences of the National Constituent Assembly, in the context of the participatory approach in drafting the constitution, is the organization of two open days in the headquarters of the Council, for the civil society organizations, under the slogan "Towards a Participatory Drafting of the Constitution."
- There was also the initiative of the National Dialogue on the constitutional process, which assigned members of the National Constituent Assembly to travel in different groups to all the governorates of the Republic and meet with citizens and civil society components to listen to their opinions and suggestions about the constitution. These members also moved outside the country to listen to the Tunisian community abroad (including abroad, such as in France and Italy).
- The multiplicity of these activities and the diversity of the actors and their communication with the National Constituent Assembly necessarily raise questions about the impact of all of these activities on the Constitutional Process.

2. Civil Society Activities' Impact on the Constitutional Process:

Today with the end of the battle of rights and freedoms in the constitution, after the ratification of the constitution and its coming into force, the constitutional process can be looked at with a

³⁸ Professor Slim Loghmani, Professor Salwa Hamrouni and Professor Salsabil Klibi produced a document about the rights and freedoms Chapter in the works of the study day organized by the Democratic Transition Study Association.

more objective, rational and calm attitude. Such assessment would have been impossible to achieve during the constitutional process, because the most important and most effective weapon in the hands of the civil society and women's associations (seeking to establish equal citizenship) was sending panic calls of the dangers of negating women's gains of the fear of establishing a back looking ideological reactionary vision, which make the stipulated rights an empty glass.

However today, we could objectively assess the impact of lobbying and advocacy practiced by the civil society and their efficiency, as far as the final text of the Constitution was concerned. We can evaluate this impact based on the successes achieved by the civil society in "battles" and controversies that revolved around the formulations of the constitutional clause, and the way to establish the rights and mechanisms that concern the rights and freedoms, in general, and equal citizenship in particular:

- The term "cultural specificity," which would have led to the prevailing of the cultural specificity over universal human rights, was abandoned in the preamble following pressure from the civil society (and other actors).
- The formulation of Article 1, as stated in the constitution of June 1st, 1959, was kept, adding provisions that it could not be amended, consequently the Sharia was abandoned as a source of legislation.
- The civility of the State was provided in Article 2, as well as the emphasis on the fact that it could not be amended.
- The phrase that indicates that women are partners with men (Article 28 of the constitution draft) was abandoned, especially after the huge demonstration of August 13, 2012.
- The condition that Tunisia had to respect treaties, in accordance with the constitution, was abandoned, which, if maintained would have led to Tunisia's denial of its international obligations in the field of human rights.
- The principle of prohibiting discrimination between male and female citizens was set forth in Article 21.
- Emphasis was put on the acquired rights of women and on supporting, developing and offering opportunities for women and men in all the fields, and a confirmation of the State's quest to achieve Parity in the elected councils and the eradication of violence against women (Article 46) was made.

- The idea of stipulating that one of the members of the Constitutional Court should be a specialist in jurisprudence was dismissed.
- The integration of an independent Constitutional Commission, called the “Supreme Islamic Council,” which would have caused confusion in the legal system, especially in relation to the Constitutional Court, was also abandoned.

Not all these achievements would have been possible without the mobilization of civil society and its serious struggle, in dark periods of the Tunisian history (amidst stifling political crisis, assassinations of political figures, economic decline etc ...). Considerably, these must be taken into account in the future, in case of any interpretation of the provisions of the constitution, especially those relating to rights, freedoms and equality among citizens so that they are one of the presumptions about the will of the drafters and the living forces in the society to establish a constitution that warrants equality and establish equal citizenship. These achievements will add a protection against the reactionary interpretations of the constitution.

Another reading of these achievements considers that the positive response of the conservative forces to the proposals of civil society was a retreat from the articles that formed a clear threat to equal citizenship. There was no support to, or development of, women’s rights, up to the required standards, if compared to the relating provisions in modern constitutions (this issue is thoroughly elaborated, especially in the second section of this research). Perhaps this is due to the strategy pursued by the conservative and traditional forces, which lowered the ceiling of their “demands” (retreat from international obligations, the use of Sharia as a law-making source, establishing the stereotyped image of women as heads of the households and partners of men). It was therefore acknowledged that the retreat from this backward looking agenda was 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. These achievements should not hide from our sight some imperfections, gaps and weaknesses that marred the movements of civil society, during the constitutional process, including perhaps in particular the followings:

- If we exclude some cases referred to above, many of the movements of civil society during the constitutional process were unilateral and did not establish a wide, real and permanent coalition among the most important women's organizations, to disseminate the concept of equal citizenship and organize a systematic advocacy campaign in the National Constituent Assembly.
- Civil society components lacked a clear strategy on how to exercise pressure on and thereafter influence the constitutional process, so much so that many civil society actions were characterized by dispersion, improvisation, and weak mobilization, which undermined their persuasion capabilities and efficiency.
- The poor advertising allocated to the initiatives of some civil society components, despite the importance and seriousness of their outputs. We can quote in particular the report that was compiled under the auspices of the Arab Forum for Citizenship in the Transition (FACT) project, which stand as an important reference in the field of equal citizenship. However, this report was not distributed to the members of the National Constituent Assembly and did not even enjoy the adequate advertising,³⁹ in addition to the fact that the forum did not "appear" on the surface at the national level.
- The initiative of the National Dialogue about the constitution was a good idea in itself, but its organization was blemished by many shortcomings, preventing a large spectrum of the civil society and citizens from taking part therein. This affected the citizens', in general, and women's in particular, grasping of the contents of the constitution, and prevented a further elaboration of the concept of equal citizenship within large groups among women (rural women, women with limited educational and cultural back ground, unemployed women, younger group of women), whose presence in the tours of the National Dialogue was very minimal and their contribution almost nonexistent. This predicament can lead to the conclusion that the National Dialogue was dominated by formalities (the number of participants including women, men and associations' representatives was only a few dozens in Siliana, for example) and perhaps by the will of the Constituent Assembly to eliminate certain associations.

³⁹ No internet site was developed in due course and it was not exploited to secure a wider spreading of the report.

- What draws one’s attention is the weakness of civil society mobilization in the defense of equal citizenship and we could notice the scarcity of the proposals that supported equality in the 217 proposals recorded on the online website of the Constituent Assembly.⁴⁰ The strange thing is that there were proposals calling to keep the reservations to CEDAW Convention, on the grounds that this Convention conflicted with the Islamic identity.
- A release of the pressure exercised by civil society on the Constituent Assembly in the final stages of the Constitutional Process, was noticed, which leads to believe that part of civil society is not completely independent from some political parties. So, as soon as the political importance of the demands for women’s rights dwindled and other issues and “priorities” emerged, the civil tide and women’s movement have become limited and women’s rights issue has become clearly absent, since the issuance of June 2013 version. Fortunately enough, the last minute awakening allowed the incorporation of Article 46 in the current formulation of the constitution.

The study of various aspects of the constitutional process and its influence by the movements conducted by different actors, specifically civil society, is most important. However, the evaluation of the degree of society “grasping” in general and women in particular of the concept of equal citizenship, the political participation of women and their enjoyment of their rights, require a detailed study of the vision that the Tunisian women, on the ground, from various categories and ages, have of the concept of equal citizenship and up to what extent they have grasped women’s rights and gains.

Section V: Women’s Perception of Equal Citizenship:

Most of the previous sections (except Section IV on the participation of the civil society) focused on studying the legal texts (the Constitution, the comparative experiences and the laws) and on the institutional aspect (NCA). These are undoubtedly important and essential aspects. However, researching in the field of equal citizenship will remain theoretical and overly abstract, if it has not come down to the street level to extrapolate women’s perception of themselves, their rights, their conditions and up to what extent they grasp the concept of equal citizenship.

⁴⁰ Ref. to the document on the following link: [www.anc.tn/visit/main/A/Rdosdiversjus\\$col=15](http://www.anc.tn/visit/main/A/Rdosdiversjus$col=15)

This field approach is very important for several reasons. The first reason is that the upgrading of women's conditions in Tunisia has been historically the outcome of entrenched faith and conviction among elite leaders and intellectuals (Habib Bourguiba, and Tahar Haddad) in the first place. These leaders were behind the issuance of the Personal Status Code. Although one cannot argue about the extent from which the social changes brought along by this Code, the analysis of the current status quo (the spreading of stereotypes about women, even among women themselves, the rise of the traditional thinking that has emerged from the results of the 2011 elections, the continued violence against women, together with the weakness of their participation in public and political life), confirms that the liberation spirit that came in the Code and the idea of absolute equality between women and men exposed therein have been limited to certain elites in the Tunisian society (groups of higher social and educational backgrounds). They did not filter into the depth of society and they were not translated in the daily practices and behaviors.

One can confirm that the way the code was issued and the various legal texts that strengthened the rights of women, which were horizontally imposed by the State and were not the result of a self-development within the society, led to their poor grasping by the marginalization of less fortunate categories in the society, especially in the rural areas and among the illiterate and unemployed. Consequently, the field study of the perception by women of various segments of their rights will enable us to have a general idea about up to what extent the idea of equality in society is rooted in the society.

The second importance of this field study is that it comes after the fall of dictatorship and widespread revolutionary spirit in the country, especially in 2011 and after the 2011 elections and the formation of the National Constituent Assembly (that had significant women participants). Also, especially, after a long and difficult constitutional process, in which views collided and escalated in the public space and whereby it was possible for all the segments of society to sense its affect, directly or indirectly, at a higher or lower level, though the debates that took place during the process and by the various developments and concepts that were put forward in a context of freedom of expression, which the country had not witnessed anything similar since independence. Also in the shadow of the nucleus of civil society, still in the

making, that accompanied the constitutional process and its progress and generally withstood attempts to reconsider the historic gains of women.

The field study benefits from this dynamics, as it evaluates response of participants after the issuance of the Personal Status Code or after the Constitution of 1959. It will allow us to know whether there are signs that Tunisian women have grasped or not the concepts of modernity, equal citizenship and the rights of women, in particular.

Interviewed Samples:

It is important to make it clear first, that this field study may not meet all of the scientific requirements, because the persons who conducted it have legal backgrounds, not sociological ones. However, the accuracy and frequency of some of the answers made it possible to draw a number of conclusions as a clear view of certain trends and perceptions.

The field study was conducted through the interrogation of a sample of 25 women, taking into account the diversity of the segments:

- Women with a high educational and professional backgrounds
- Young women and students
- Illiterate women (rural and urban)
- Women workers
- Unemployed women

Of course, many of the interviewees can be included in more than one category (students: high level of education, illiterate women, women workers...). A set of general questions was selected to assess women's awareness of their rights, their participation in public and political life, while avoiding to ask technically complex questions, such as: "Do you realize the meaning of equal citizenship?," because they may not be answered by women across the various different categories of participants, even the educated ones. Thus we could know the level of "interilization of and awareness" of equality by women in their daily lives, without looking into the extent of their grasping and their understanding of theoretical concepts.

Perhaps the most important lesson the Tunisian experience teaches us is that equal citizenship is experienced in everyday life and that it becomes meaningless if it remains only

between the two covers of the constitution, although it is written in golden letters. In the following, we will present, at a first stage, the first results of the interviews (1) before presenting the main conclusions that can be drawn from them (2).

1. Results of the Opinion Poll:

The answers related to the understanding of women's rights were, touching all of the female students and young educated women, generally clear (9 answers). The majority of the answers among women with good educational and professional backgrounds and the most advanced in age were clear (4 answers), while only one answer was vague. However, among women with a low educational level, rural women and women workers, the answers varied and we find that women with a low educational background gave subdued blurry answers (3) while the answers of young female workers were clear (4) and (3) other answers were general.

For equality between men and women in rights and opportunities, there were six affirmative answers (five of them in the ranks of women with a low professional and educational background and one answer in the ranks of female students and young women with a good level of education). There were twelve negative answers, closely divided between various categories (five among women with a low social and educational level, three among women with a high social and professional level and four answers in the ranks of students and young women with a good educational level), whereas six answers confirmed equality in rights at the level of the texts and the absence of equal opportunity on the ground.

Concerning whether women consider their rights at risk in temporary time, there were twenty-three affirmative answers, while only two answers considered women's rights were not threatened. All the answers confirming the existence of a threat to women's rights saw that the main danger comes from conservative and traditional religious currents (consensus on this point).

In regards to participating in the elections of October 23, 2011, twenty answers confirmed participation while five others did not participate (two among the students and three among women with low educational and professional backgrounds).

There was almost a consensus about the deterioration of women conditions, after the revolution, with twenty-three affirmative answers, while according to one answer from a female student, these conditions improved. There was also another relative answer considered that the participation of women in the public space has evolved, but the raise of reactionary currents kept threatening it (a student).

In regards to following the work of the National Constituent Assembly, seven answers confirmed their follow-up of the work (among educated women and girls), while ten answers confirmed their occasional follow-up (five among women with a low social and professional background, two among women with high social and educational level and three among students). There were also eight answers confirmed that they were not following (six among women with a low educational level, one answer among the educated women and the other two in the ranks of female students).

As for the guarantee the constitution draft offers to secure women's rights,⁴¹ six answers considered that this guarantee was partial (five among female students and one among educated women); there were also six negative answers (three among uneducated women, one among educated women and two among female students). Thirteen answers said that they had no opinion (seven of uneducated women, four of educated women and two answers among female students).

Thus, we find that there is no explicit affirmative answer that the constitution guarantees the rights of women, which leads us to think, not only about the text of the constitution itself, but also about citizens' perception of the constitution.

To the question of up to what extent the Personal Status Code guarantees the rights of women; there answers were affirmative (seven women with limited education, four educated women and seven female students).

Although there were no negative answers, some interviewees asserted their being unable to answer (two of uneducated women) while five answers considered the guarantees included in the code as insufficient (two among uneducated women, one among educated women and two among female students).

⁴¹ The opinion poll took place before the ratification of the Constitution.

Regarding women's knowledge of CEDAW Convention (the United Nations Convention on the Eradication of all Forms of Discrimination Against Women), ten answers stated that they do not have knowledge of it (eight among women with low education, one answer among women with a higher level of education and one answer in the ranks of female students). Eight answers confirmed their knowledge of the Convention (six among the female students, one answer among women with modest education and the other in the ranks of women with an excellent professional and educational background). These answers ranging between clear answers, on one hand and disparate and different answers, on the other, require a number of conclusions and observations.

2. Conclusions Drawn from Interviews:

The first conclusion that can be drawn from the results of the opinion poll, is that women have a considerable understanding of their rights, especially among women with a higher educational and professional background (of different ages).

It is to be pointed out that even among illiterate, rural and unemployed women, and despite the presence of something blurry in women's recognition and understanding of their rights, an important segment of these categories has a minimal realization of these rights and their importance. This parts with the divisional stereotype prevalent in the society, providing that the understanding of women's rights and having a clear idea about them, is limited to women belonging to the elite, and possibly the improvement of the level of awareness among the uneducated women is due to the debate in the public space about women's rights issue throughout the transition period.

So that in spite of all the shortcomings that marred the constitutional process and its outputs, important results were achieved by civil and media movements, which has moved women's issue from behind closed doors to public spaces, and changed it from a subject, dealt with exclusively by academics and jurists to an issue of citizenship that concerns everyone, particularly women.

Perhaps this will foster further the attachment of Tunisian women, from various segments, to the Personal Status Code so that the free debates, the opinion clashes, the proposals and awareness about the value of the achieved assets, resulting from the dangers that have beset

this Code, have succeeded in achieving what the political authorities have failed to achieve since 1956, the release date of the Personal Status Code. This point is confirmed if we consider the high percentage of women, belonging to the different interviewed categories, who consider that the Personal Status Code guarantees their rights.

The assessment made by women of the extent of their equality with men, as far as opportunities are concerned, shows that there is a great sense of unequal opportunities and many women recognize that equality in rights, guaranteed by the texts, is not enough in front of the discrimination operated on the ground, limiting women's chances.

It is striking that there is a general feeling among women of different ages, segments and concerns about the existence of a serious and imminent danger threatening the rights of Tunisian women and there is a consensus that the source of this danger is the extremist religious currents that carry reactionary and back looking thinking.

Perhaps this feeling is what made a significant proportion of women consider that the status of women has deteriorated after the revolution, despite the fact that the legal prevailing texts have not changed. This opinion is underpinned if we notice that the number of women, who believe that the Tunisian constitution guarantees women's rights, is a small number and they consider it as a partial guarantee, while the proportion of those who had no views or had negative ones was very high. This translates two facts:

- A high percentage of women is not familiar with the constitution and specifically with the aspects relating to women's rights.
- A significant proportion of women does not trust the constitution as a guarantor of women's rights.

It is to be noted concerning the participation of women in the elections, that there was an increase in the proportion of women who participated in the elections of 2011, as well as the presence of a significant proportion of women who followed the works of the National Constituent Assembly, although unevenly.

This translates the enthusiasm of women to follow public affairs and to participate in them, although many women complained about the absurd debates of the Council. It is feared that this will lead to put off women from participating in the upcoming elections. This may result

in women's parting with political affairs, which will facilitate their exclusion and make their presence in the elected councils just a formality.

Concerning the knowledge women have about the United Nations Convention on the Eradication of all Forms of Discrimination Against Women (CEDAW), we note that women's knowledge is relatively high with a sharp increase of the rate of those who do not know about it, in the ranks of illiterate, rural women and women with a limited education background, which is normal. Perhaps the discussions that took place during the Constitutional Process, which have strongly re-emerged recently, have contributed to this point.⁴²

The status of Tunisian women has been privileged compared to the status of their peers in most Arab and Islamic countries and fortunately, we can say that this situation is still privileged.

All the events of the transition and constitutional process and their developments have shown the seriousness of the risks threatening equal citizenship, as these risks do not stem from one part of the political class only, but sometimes from groups in the society that experience marginalization and exclusion. However, the seeds that were planted during the independence have begun to bear fruit, as it was evident through the stages of the constitutional process that the degree of the rooting of equal citizenship awareness has been strengthened compared to past decades. It turns out that the defense of women's rights is no longer dependent on the will of the politicians, but has become the issue of all women from various age groups, which will be particularly strengthened thanks to the dynamics of the female civil society.

The most important conclusion we get from the Tunisian constitutional process in this area is 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.

⁴² A group of Ennahda Representatives in the National Constituent Assembly filed a motion relating to the Decree n° 103 of 2011, dated October 24th, 2011, relating to the authorization to ratify the withdrawal of the statement and the reservations issued by the Government of Tunisia relating to the Law n° 68 of 1985, dated July 12th, 1985, relating to the ratification of the Convention to eradicate all forms of discrimination against women.

Section VI: General Recommendations Based on the Tunisian Experience:

The difference in the historical, social and political contexts makes the Tunisian experience in the Arab world a unique experience that cannot be reproduced in a different cultural and social soil, without taking into account the specificities of each cultural and social environment.

However one can give general recommendations, the purpose of which is not to teach lessons but to make a proposal and some brain storming on the issue of equal citizenship and the best ways to reinforce it in the countries, under the umbrella of the Arab Forum for Citizenship in Transition:

- There is an urgent need to overcome the negative images reflecting women as being inferior to men, or having no status without men or just dependent on men. This is not an easy process as it faces, in many Arab societies, opposition by a large number of men given their macho mentality often based on misinterpretation of the religion and of the religious messages;
- There is also a need to fight women interiorizing themselves as inferior to men; many women accept this situation, even more, they justify it basing their arguments on the same macho ones. This fight needs extra efforts and implication by the civil society in its entirety and by the intellectual elite. No mentality change can succeed unless it is supported by forward looking political authorities;
- There is a need to encourage the political participation of women as voters and as candidates. This will sensitize them to their rights and their capacity to change their status. To do so, there is a need to pass laws prone to further encourage women getting politically involved (Tunisia's horizontal parity on the 2011 electoral lists can be a starting point that should be developed);
- There is a need to empower civil society to better address women issues and equal citizenship and to reach the political decision makers, as well as to install the equality principle at all levels of society;
- There is a need to adopt a participative approach in the constitution drafting , particularly the chapters dealing with "rights and freedoms" by involving the civil society and experts and by studying the successful experiences in the area of equal citizenship whether in traditional democratic countries or those which have gone through democratic transitions;

- There is a need to elaborate a clear and well defined strategy on how the civil society should interact with the political decision makers, a strategy based, as much as possible, on dialogues and supportive approaches rather than confrontation which can lead to the breaking off between the civil society and the decision makers;
- There is also a need to establish national institutions focusing on the elimination all historical, social and cultural roots of discrimination against women. Such institutions should be provided with the necessary resources and have a clear mandate to fully assume its duties of disseminating the principles of equal citizenship and women rights and to monitor any breaches and to take coercive measures when appropriate;
- There is a need for national constitutions to take into consideration the universal human rights as they are the driving force behind progressing equal citizenship and the prerequisite securing positive interpretations of the national cultural backgrounds; it comes as no surprise that the societies where women are free are the most developed and progressive societies.

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