



المنتدى العربي للمواطنة في المرحلة الإنتقاليّة  
Forum Arabe pour la Citoyenneté en Période de Transition  
Arab Forum for Citizenship in Transition

# **Equal Citizenship in Tunisia: Constitutional Guarantees for Equality between Citizens**

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## **Executive Summary**

This study aims to present conceptions and recommendations for the drafters of Tunisia's new Constitution in order to consider equal citizenship and its implication for equal rights and responsibilities.

The study is divided in two sections. The first section conducts a comparative examination of constitutions from a geographically diverse number of countries chosen for their relatively recent and successful democratic transition experience.

The second section examines several proposed constitutions submitted to the Constituent Assembly. These proposals can be characterized into two groups:

- 1- Proposals by political parties: These include proposals by Afaq Party (with liberal orientation), Ennahda Party (Islamist orientation), and Tunisian Labor Party (with social democratic orientation).
- 2- Proposals by Civil Society: These include proposals by Bureau of Experts, Tunisian General Labor Union, Brigadier Sadiq Belaid, and Dostorna Network.

In its assessment of international constitutions and national proposed constitutions, the study employs a number of analytical dimensions and offers recommendations for each of these dimensions. These dimensions are:

- 1- Equality between male and female citizens through “gendering” of legal discourse
- 2- Equality between male and female citizens through explicit prohibition of discrimination
- 3- Equality in rights and responsibilities in the political sphere
- 4- Equality in rights and responsibilities in the economic, social, and cultural sphere
- 5- Equality in rights and responsibilities in the private sphere (i.e., family life)

The study asserts that establishing equality between male and female citizens in the constitution can be achieved through adding an article that stipulates the nondiscrimination between men and women in all rights and responsibilities within all spheres of life (political, economic, social, cultural, and familial). The Constituent Assembly must also always turn to the citizens (male and female) for their input as it drafts the constitution.

The study suggests that the Constituent Assembly reaffirms article 5 of 1959 Constitution which asserts that Tunisia remains committed to respecting human rights in their universality, comprehensiveness, and indivisibility.

The study also notes that even though the Constitution may contain articles asserting equality and nondiscrimination, it can be simply remain “ink on paper” if the Constitution doesn't likewise assert mechanisms to guarantee these rights; such as having an independent Constitutional Court that monitors the constitutionality of laws and ensures the compliance of legislative and executive apparatuses with constitutional principles.

The notion of citizenship entails the equality of everyone in rights and responsibilities. It also entails that the state harnesses all operational and legislative mechanisms to safeguard the principle of equality. Despite all that has been said and written about the status of Tunisian women, Tunisian women never ceased to demand total and effective equality with men because Tunisian laws still discriminate against women in some rights, especially in familial matters such as guardianship, family leadership, and inheritance.

## **I. Introduction**

This research paper by the Arab Forum for Citizenship in Transition (FACT) is a step forward towards reaching the goals of the research team in Tunisia.<sup>1</sup>

The aim of this research is to reinforce civil society's ability to provide proposals and recommendations for decision makers as a means of bolstering notions of citizenship and what it espouses in terms of equality in rights and responsibilities.<sup>2</sup> This project— along with research teams from both Tunisia and Egypt—was supported by the UN Women, allowing us to pursue our research while supporting our greater goal of preserving women's rights, particularly the right to citizenship which is one of the organization's primary concerns.

The constitutional drafting period has rendered the current transitional period all the more crucial. It would not be an exaggeration to claim that the fate of women's rights in Tunisia hangs in the balance during this critical constitutional moment. This research thus aims to consider all the questions pertaining to "citizenship" and how the principle of equality between men and women can be achieved. Furthermore, it was necessary to build on what civil society and political parties have already presented on this topic. This research is therefore a culmination of the various practical proposals presented to the Board of the National Constituent Assembly.

## **II. Methodology**

The methodology and the overall goals of this research are inextricably linked. We opted for a cooperative approach, given that the primary objective is to enable civil society to familiarize itself with the necessary mechanisms and tools that will facilitate decision making and direct it towards supporting citizenship and equality.

In terms of scope, this report comprises two phases: the first is a comparative study of constitutions and the second is an examination of the various constitutional drafts presented to the National Constituent Assembly by civil society groups and political actors.

For the study of comparative constitutions, we utilized the International Academy of Constitutional Law's database which contains most of the world's constitutions. We chose the constitutions that best capture the aim of our research: those which respect the rights of citizens and equality between men and women while avoiding those that perpetuated discrimination. In other words, we chose to select successful examples from mature and established democracies as well as some from countries that only recently experienced their transition to democracy.

Our selection also includes a wide geographic diversity of countries in order to ensure that various cultures were being represented as a means to reinforce the universal nature of the principle of equality.

With regard to the constitutional drafts presented to the National Constituent Assembly, our study is limited to completed projects. We therefore did not include inchoate works presented in the form of ideas or notes. The country cases examined in this study have been collectively

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<sup>1</sup> This study was conducted between July and September 2012 and was made possible with the support of UN Women.

<sup>2</sup> It is to be noted that the National Constituent Assembly has reconsidered this draft and released another draft in September after taking into account some comments and demands from the civil society.

selected by FACT's steering group in Tunisia as examples that are diverse in their ideological leanings as well as their sources (e.g., political parties, individuals, and civil society).

As for the comparison criteria, we have adopted similar standards by highlighting the most problematic issues pertaining to gender equality. These problems include the nature of drafting legislation related to citizenship as well as how to adopt the principle of equality and non-discrimination between citizens more generally. Following that, there is a comparison of the various perceptions of rights, whether civil and political or economic, social, and cultural. The last criterion we have adopted is concerned with equality within the family, the private sphere, which is, in our view, the cornerstone of adopting an effective principle of equality; for, indeed, all other rights—both public and private—are adopted on its basis.

### **III. Conclusions and Proposals**

This study has led to several conclusions:

- The issue of equality between men and women is already established in most constitutions of democratic countries.
- These countries, despite their different historical and social trajectories, are aware that they cannot establish democracy without the adoption of citizenship equality.
- These countries adopted several specific mechanisms to guarantee effective equality and were not satisfied by the mere implementation of general principles.
- These countries managed to develop their domestic legal systems by meeting their international legal obligations while ensuring adequate regulation of their national legislative practices.
- The study of comparative constitutions enabled us to learn what preceding societies were able to achieve in their respective democratic experiences, which thus aided us at studying the various current projects of national constitutions objectively.
- Our study included several constitutional drafts that can be classified into two categories: (1) drafts presented by political parties, including Afaq Tounis or the Tunisia Prospects Party (a liberal party), the Ennahdha Movement Party (an Islamist party), and Al Amal Party or the Labor Party (social-democratic party); and (2) constitutional drafts presented by various players in civil society: The Committee of Experts, the General Trade Union of Tunisian Workers (UGTT), the project of Dean Sadiq Belaid, and “Chabakat Destourna” (Our Constitution Network).
- What can be concluded from these drafts is that the issue of equality between men and women did not get the same attention from every group. Some of the projects did not even allocate a single article to enunciate equality and non-discrimination between male and female citizens, most of which also did not pay much attention to the universal rules concerning human rights (see the project of Ennahdha Movement Party). There are also other drafts which adopted the principle of non-discrimination in general, without specifying specific discrimination against women. (See the project of the General Union of Tunisian Workers, for example). On the other hand, there are other drafts that only referred to the international system related to human rights, an indirect guarantee of equality and non-discrimination, such as the draft of the Dean Sadiq Belaid or the draft of Afaq Tounis Party.

Based on these various viewpoints, it is important to take notice that the diversity of the Tunisian society and its longing for freedom requires a participatory approach to the issues of equality and citizenship. The National Constituent Assembly must therefore take note that the

very notion of citizenship depends upon taking into account the various opinions and expectations of all citizens and members of civil society when drafting a constitution.

The comparative study of constitutions has shown that the issue of equality can be resolved in a single article that enunciates the principle of non-discrimination between men and women in all rights and duties, whether it relates to civil and political rights or economic, social, and cultural rights or family rights. The constituent power can also reach the same conclusion by always referring to both "male" and "female" citizens simultaneously.

The comparative projects we studied prompt us to propose to the Constituent Assembly to stick to what was approved by the 1959 constitution in its fifth article which enunciates that "the Republic of Tunisia shall undertake to guarantee that the human rights enunciated in the present constitution will be exercised in its universality, comprehensiveness and indivisibility." We think that such an international reference would help legislators adopt a principle of equality and non-discrimination among citizens in future legislative endeavors.

The final conclusion is that the constitution could include all the rights and freedoms and can explicitly enunciate the principle of equality and non-discrimination. But all this would remain ineffective if this very constitution does not provide mechanisms that guarantee all these rights and, particularly, the establishment of an independent constitutional court that will guarantee the "constitutionality" of laws and ensure the commitment of the legislative and executive powers to all constitutional principles.

## IV. The Report

The Tunisian revolution did not happen by chance. It was the culmination of years of struggle for freedom, dignity, and equality. These are not merely human rights but they represent deeper notions of human characteristics that we are all born with. They are values that shape the basis of all rights. We therefore expect that legislators undertake all steps to establish and protect those rights.

These rights are part of our humanity which thus renders them universal: people all over the world have to adopt and fight for them regardless of their color, features, sex, language, religion, or any other kind of characteristic.

The Tunisian people have demonstrated that they have longed for freedom, dignity, and equality. Their demands had nothing to do with the implementation of an explicit type of society based on a certain cultural identity or any other such monolith.

From the beginning, the Tunisian people proposed the writing of a new constitution as a means to rid themselves of the previous regime's legislative failures and build a new society based on dignity, freedom, and equality. For these reasons the elections held on the 23<sup>rd</sup> of October resulted in the election of a National Constituent Assembly (NCA) whose sole responsibility was to draft a constitution fit for this new era and its ideals.

The NCA mandates itself as a constituent power above all legislative authorities. This seems appropriate considering that it will provide a blueprint for the new regime's legislative structures.

The NCA is responsible for itself in the pure legal meaning of the term "assembly." From the political point of view, the assembly is not immune to act in any way it sees fit or in any way that could be described as inordinate. The assembly's very existence is the result of a people's will. It has a specific political purpose and a strict commitment to the values of freedom, dignity, and equality. Consequently, the assembly is responsible for acting in a way that is consistent with those values. Anything that goes against the revolution's aims should thus be deemed invalid.

The Tunisians have elected the NCA to guarantee the rights and freedoms that the constitution of 1959 did not provide. The Tunisians will only recognize this constitution if it adopts the principle of equality in rights and duties that is at the core of the notion of citizenship. This is the only galvanizing force that can unite Tunisians.

Citizenship means that all citizens are equally entitled to their rights and subject to the duties of citizenship.<sup>3</sup> The state shall take all legal means to achieve the full realization of the principle of equality.

In spite of what has been said and written about women's status in Tunisia, women have never stopped striving for complete and effective equality with men. The notion of a "complete equality" is necessary given that gender inequality is still an endemic feature in Tunisian legislation and society, especially issues pertaining to the family (e.g., the head of the family, guardianship, and inheritance). The notion of an "effective equality" is necessary because it is the only way of addressing the very deep gap that exists between what is written in the law "in favor of women" and what exists in practice where a dominant patriarchal

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<sup>3</sup> Concerning the concept of citizenship and its legal requirements, see the Lectures of the International Academy of Constitutional Law, the session entitled 'The citizen and the constitution' Tunis 1998.



mentality still prevails that deals with women in relation to their fathers, brothers, husbands, and sons rather than as independent citizens.

For these reasons, women demonstrated from the first days of the revolution as a means to bring an end to unfair legislation and discriminatory mentalities.

Furthermore, the parties and lists of candidates who took part in the elections of October 23, 2011 made a conscious effort to place gender issues at the fore of their programs and campaigns. Even before that, members of the High Commission for the Realization of Revolution Objectives, Political Reforms and Democratic Transition discussed the adoption of the principle of equality between men and women in all aspects of political participation and reached a consensual agreement by adopting parity and alternation between men and women in all electoral lists.

This decision was met with great satisfaction by associations, organizations, and parties. Women groups considered it a first step towards the full realization of their rights.

The October elections resulted in 63 women winning seats in the NCA (which comprises 217 seats). This figure would have been higher—perhaps closer to half of the assembly—had the election law enunciated a stricter alternating system for the head of any list.

It was the expectation of Tunisian men and women—particularly feminists and ardent democrats—to have a constitution that adopts a law which guarantees the equality between citizens and serves as a basis of human rights.

The principle of equality in rights and duties implies that the state will adopt domestic legislative measures and laws compatible with that principle.<sup>4</sup> The first of these measures obviously lies in a strong constitutional framework. When ranking the various legal systems, international law comes between domestic law and the constitution. In essence, the constitution prevails as the most important legislative authority but the internationalization of constitutions has become a norm nowadays.<sup>5</sup> A great number of modern constitutions (especially those of the countries that have experienced a democratic transition) have adopted democratic principles by respecting the Universal Declaration of Human Rights within their constitutions, thus rendering this hierarchy ambiguous.

Some would object that these principles would be in opposition with the sovereignty of a state as its choice of a given political regime or its relation to its citizens should be regarded as a domestic matter, one that international law has no right to interfere with. This question was however resolved years ago: when a state ratifies an international convention, it limits its freedom in certain fields and is in fact the very expression of that given state's sovereignty.<sup>6</sup>

The establishment of democratic principles, human rights, and the rule of law is the criteria for interaction among democratic states as well as being the condition that international financial institutions lay down before taking steps towards assisting or co-operating with a given country. This is known as democratic legitimacy in international law<sup>7</sup> and serves as a form of international surveillance of a state as far as rights and freedoms are concerned.

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<sup>4</sup> See the general comments of the United Nations Human Rights Committee and mainly the comment N°4 1981 related to the article 3 of the International Declaration.

<sup>5</sup> (Translated) See the Dissertation of Helen Torar, 'the internalization of national constitutions' The Alep legal Publications, Lebanon 2010.

<sup>6</sup> Wimbledon decision of 17<sup>th</sup> August 1923, The Permanent Court of International Justice(CPJI)

<sup>7</sup> See Slim Laghmani "Towards the democratic legitimacy", an article published in a collective book entitled "the new aspects of the international law", Paris 1994 (Pedone). See also Salwa Hamrouni "the democratic empowerment", an article published along with other articles offered to the Dean Yadh Ben Achour, Tunis, University Publishing Center, 2008

People are discriminated against when the law espouses rights and duties that are based not on their legal positions, but rather on their ethnic, economic, social, political, religious, and national positions.<sup>8</sup>

Discrimination against women is referred to in Article 1 of The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): “The term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Tunisia ratified this convention in July 1985. It is worth noting that the second transitional government decided to lift all reservations Tunisia made when ratifying the convention, maintaining, however, the general declaration on not taking any actions or producing legislation that conflicts with the first section of the constitution. In all cases, the Tunisian state remains obliged to comply with the convention.<sup>9</sup>

The question this begs however is how far can the constituent powers could go in fulfilling the implementation of equal rights and duties between citizens (men and women) and how can it guarantee an effective notion of citizenship that will live up to womens’ expectations?

The Tunisian experience is unique compared to that of other Arab countries but it remains an incomplete experience as far as the international human rights principle is concerned.

All international laws have adopted the equality principle related to human dignity. Dignity is innately part of us as human beings, and we cannot classify people according to different degrees of dignity. A great number of constitutions have also adopted the principles of equality and non-discrimination even if they have enunciated them in different ways.

We are going compare various existing constitutions and present examples from them that the National Constituent Assembly might take as a reference.<sup>10</sup> These examples reflect a universal direction towards safeguarding the notion of the “citizen”, moving away from the notion of the “subject”. The reader will not find many examples from Arab and Muslim countries. This is mainly because the majority of these countries’ legislative texts suffer from a backwardness regarding citizenship and gender equality. As for the given examples, we present a rich set of examples from diverse backgrounds and cultures that have undergone different democratic experiences.<sup>11</sup>

On the national level, we have chosen to introduce some constitutional drafts that have been presented by political parties and civil society groups. These projects are all complete initiatives i.e., they are in the format of a complete constitution and not merely a set of proposals, recommendations, or general ideas. By including the contribution of civil society groups, we are ensuring that their voices are heard alongside that of political parties.

Our research has enabled us to highlight main themes that serve as objective criteria for a comparative study:

1. equality in citizenship and the gender issue in the legal texts;

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<sup>8</sup> See for example the French Constitutional Assembly Jurisprudence and the Human Rights European Court Jurisprudence.

<sup>9</sup> This decision was made by the government of Mr. al-Baji Qaid al-Sibi but, up until the time of writing this study, concerned state institutions were not informed of this matter.

<sup>10</sup> <http://www.aidc.org.tn/recherche.php> to look at the different constitutions, we have adopted the database of the International Academy of Constitutional Law.

<sup>11</sup> The reader will find examples of the old democracies as well as of the countries that have undergone a democratic transition such as Eastern Europe countries, African countries or Latin American Countries.

2. equality in citizenship and the enunciation of the principle of non discrimination;
3. equality in rights and duties in the political fields;
4. equality in rights and duties in the economic, social and cultural fields;
5. equality in rights and duties in the family field.

## 1. Equality in Citizenship and Gendering of Legal Parlance

For many years now, international human rights organizations have implemented changes in the terminology within their legal texts. They have made a conscious effort to refer to both “men” and “women” whenever needed in order to exclude any interpretation that would restrict certain rights to men and not to women.

Some of the studied constitutions have adopted this rule as well as some of the national constitutional drafts, an approach that will undoubtedly guarantee the principle of citizenships and equality.

### A. Comparative Constitutions

Certain constitutions have adopted the international organizations’ texts—especially ones related to human rights—in using feminine terms and systematically using the terms “men” and “women” after referring to “citizens.”

#### *The constitutions of European countries*

**Austria** (1920): Men and women are referred to explicitly throughout all articles pertaining to human rights.

**Ireland** (1948)

**Norway** (1995)

#### *The constitutions of South American countries*

**Venezuela** (1999): This example is one that ensures that the terms used do not exclude women; we find in all articles of this constitution the adoption of equal rights for men and women and a clear enunciation of these rights. It thus uses the terms male or female citizens, men or women, “the male or female office worker,” “the male or female deputy,” “the male or female minister,” “the male or female president of the Republic,” “the male or female judge.”

#### *The constitutions of African countries*

Here the newer constitutions have taken into consideration the use of feminine terms in the texts even if the overall product is somewhat uneven:

**Central Africa** (1994)

**Morocco** (2011): Balanced terms are not found in all cases—it still uses the masculine terms when referring to political positions like ministers, chairs of parliamentary assemblies, governors, or mayors. The fact that feminine terms are not used in all fields might exclude women from the enjoyment of all their rights.

### B. National Constitutional Proposals

Certain national drafts mention very clearly the gender issue and use feminine and masculine terms when dealing with the citizens of Tunisia.

### *The draft of the Experts' Committee*<sup>12</sup>

The draft of the Committee of Experts enunciates that “men and women are equal in rights and duties” (Article 4), but it does not refer to men and women when dealing with citizenship except in one case where it mentions the candidacy for the presidency of the Republic. Article 4, paragraph 3 states, “The candidacy for the presidency of the Republic is a right to every Tunisian, man or woman that meets the conditions required by a candidate . . .” However, though this enunciation is important, mentioning certain rights and excluding others may result in a counterproductive end product.

### *The draft of Dean Sadiq Belaid*<sup>13</sup>

The draft by Dean Sadiq Belaid includes some articles that clearly enunciate the equality among citizens but this is not done systematically, which might allow for an interpretation that excludes women:

Article 31 states, “The Republic shall undertake to ensure the equal rights of its citizens, men and women, to the enjoyment of all economic, social and cultural rights set forth in the constitution.”

Article 33 states, “The Tunisian Republic shall guarantee to all Tunisians, men and women, the right to health care.”

The draft does not take the gender issue into account when dealing with political rights. In Article 50, for instance, the term used is “man” or in Article 83, the term “man” is used when dealing with the candidacy for the presidency of the Republic: the candidate has to be a “Tunisian man” and “his” religion Islam.

This is discriminatory on two levels: on the one hand, it discriminates against women as it does not clearly enunciate that the candidacy is a right for both men and women. On the other hand, it discriminates on a religious basis as it enunciates that the president of the Republic has to be a Muslim which is inconsistent with the principle of religious non-discrimination.

### *The draft of Chabakat Destourna (Our Constitution Network)*<sup>14</sup>

The draft of Chabakat Destourna shows—without any doubt—that Chabakat Destourna (Our Constitution Network) is determined to achieve equality between citizens. It enunciates very clearly and systematically that rights have to include both men and women:

In Article 5, we find a definition of citizenship: “Citizenship is the common denominator for all Tunisians, men and women, and the common denominator between Tunisian citizens—men and women—and the State.”

The draft further states, “Citizenship means that all citizens are entitled to the civil, political, economic, social, and cultural rights of citizenship and equally subject to the duties of citizenship.” And it adds that “the bearer of the Tunisian Nationality shall be considered as a male and female citizen.”

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<sup>12</sup> This draft was written by the Committee of Experts, a group of well known professors and law experts, chaired by Dean Yadh Ben Achour, former Dean of the Faculty of Law, Politics and Social Sciences of Tunis. It was formed by The High Committee for the Realization of the Objectives of the Revolution, the Political Reform and Democratic Transition as a means to prepare the majority of legal texts that would lay the groundwork for the democratic transition.

<sup>13</sup> This project was prepared by Dean Sadiq Belaid, well known public intellectual and constitutional law professor in Tunis. He was the former Dean of the Faculty of Law and political Sciences of Tunis

<sup>14</sup> *Chabakat Destourna* consists of university professors and civil society activists as well as citizens and university students. Their draft was written on the basis of a participative methodology based on proposals, remarks and amendments in an open-minded fashion.

Article 55 states, “Men and women shall have the right to enjoy national wealth.”

Article 56 states, “All Tunisians, men and women, are recognized the right to a decent work.”

#### ***The draft of Afaq Tounis Party (Tunisia Prospects Party)<sup>15</sup>***

Some articles within the Afaq Tounis Party draft clearly enunciate the rights of both male and female citizens to certain political or economic rights.

Article 55 states, “The equal right of Muslim Tunisians, men and women to run for the presidency of the Republic shall be guaranteed if they meet the candidacy conditions.”

Article 17 states, “All Tunisians, men and women, are recognized the right to decent housing.”

Article 18 states, “All Tunisians, men and women, are recognized the right to decent employment.”

Article 19 states, “The Tunisian Republic shall guarantee to all Tunisians, men and women, the right to health care.”

#### ***The draft of Ennahdha Movement Party<sup>16</sup>***

The gender issue is not mentioned in the Ennahdha Movement Party draft and is dominated by masculine terminology.

Article 3 related to equality does not mention Tunisian women: “All male citizens shall be equal in law.” Article 47 enunciates, “the candidacy for the membership of the Deputy Assembly shall be a right to every male elector.” Article 67 states, “Every male Tunisian elector shall have the right to run for presidency.”

The absence of women as citizens in the draft produced by Ennahdha Movement Party is due to the religious background of the movement. Many legal studies related to human rights have proven that the religious background is always used to restrict these rights, especially women’s rights.<sup>17</sup>

#### ***The draft of the General Union of the Tunisian Workers (UGTT)<sup>18</sup>***

The whole draft of the General Union of the Tunisian Workers also only uses masculine terms. Only Article 8 enunciates that citizens have equal rights and duties without discrimination of any kind be it sex, color, religion and birth or political and trade union affiliation.

This article seems to be a sufficient guarantee to ensure the adoption of the principle of equality in rights and duties as it has enumerated the different causes of discrimination. It is also unique in that it is the only draft which mentions discrimination based on trade union affiliation.

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<sup>15</sup> This draft was inspired by the draft proposed by the Committee of Experts chaired by Dean Yadh Ben Achour, as well as the ones proposed by the Dean Sadiq Belaid, *Chabakat Destourna* and the General Union of the Tunisian Workers (UGTT). Thus, the influence of these projects is obvious in many of its articles.

<sup>16</sup> The draft was put together with the help of the party’s members through direct participation or through the internet. It also took into consideration the opinions of a number of jurists and members of civil society

<sup>17</sup> See Souhaima Ben Achour, “The interpretation of the Family Law in Tunisia between the religious backgrounds and the claim for fundamental rights”, a collective book, ‘Law and Interpretation’, the Faculty of Law Sciences of Jendouba publications, 2010

<sup>18</sup> This project was prepared by a team of trade union experts in consultation with university professors and legal experts. The project is the expression and expectations of one of the most important components of Tunisian civil society: the UGTT, which also happens to be the most important trade union in Tunisia.

It is important to note that despite the fact that many Tunisian trade unionists are members of the General Union, none of them were elected to the NCA despite the democratic election held after the revolution.

*The draft of Al Amal Party (The Labor Party)<sup>19</sup>*

The participation of men and women in the political field is clearly enunciated in the Al Amal Party draft. Article 59 states that the participation of men and women in the political field is a condition for the success of a democratic regime. Apart from that, there is no consistent mention of both men and women in all the other articles.

*The draft of the project of the National Constituent Assembly (August 2012)*

Apart from the preamble, in which the equality principle among citizens (men and women) is enshrined—as well as some additional suggestions about the candidacy for the presidency—the gender issue is not specifically highlighted.

**C. Recommendations**

It is of a great importance that the constitution enunciates very clearly—in every relevant article—that both men and women enjoy equal rights and equal duties. This point may seem repetitive, but repetition is an effective way to prevent legislators from falling in the trap of excluding women in certain parts of legislation. On the other hand, using feminine terms in the texts serves as a continuous reminder of the obligation to put content into practice.

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<sup>19</sup> This project has been prepared by a team of experts of the party in consultation with legal experts. And in spite of being a new party, the *Al Amal Party* has been able to present a complete project of a constitution.

## **2. Equality in Citizenship and the Explicit Enunciation of Non-discrimination**

Equality in citizenship (i.e., equality in rights and duties and non-discrimination between men and women) has been adopted in most political regimes and is no longer questioned. Even countries that do not respect this principle use it rhetorically and boast about their full respect for equality between all citizens—men and women.

Equality and non discrimination are the fundamental bases of human rights. To achieve the full recognition of these rights is the fast track to progress.

A constitution that enumerates all rights and freedoms without explicitly stating that these rights should be shared equally by all members of society can never uphold the values of citizenship and democracy. All international conventions whether universal or regional have adopted the principles of equality and non discrimination. The best examples lie in fundamental texts like the Universal Declaration of Human Rights or the two covenants related to human rights. These texts emphasize the importance of the principle of equality even before outlining the different ways it can be exercised.<sup>20</sup>

Article 2 of the Universal Declaration of Human Rights enunciates that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without any distinction of any kind such as race, color, sex, language, religion, political or other opinions, national or social origins, property, birth or other status without any distinction between men and women.”

In the International Covenant on Civil and Political Rights, Article 3 states, “The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

Article 3 of the International Covenant on Economic, Social and Cultural Rights enunciates, “The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”

A constitution has to guarantee not only the principle of equality in citizenship but also the prevention of all forms of discrimination. Most constitutions have adopted this principle. When the article is about rights and freedoms, the principle of equality comes first in that article.

### **A. Comparative constitutions**

#### *The constitutions of African countries*

**South Africa** has chosen to include the principle of equality among the four values that are the foundations of the republic.

Article 1 of the constitution (1996) states,

The Republic of South Africa is one, sovereign, democratic State founded on the following values:

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<sup>20</sup> The Universal Declaration of Human Rights that was adopted by The United Nations in December, 10<sup>th</sup>, 1948, then the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights that were adopted by the General Assembly in 1966. The Tunisian Republic ratified these conventions in March 18<sup>th</sup> 1969 unreservedly.



- a. Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- b. Non-racialism and non-sexism

**Morocco** (2011): Article 6 of the Moroccan constitution enunciates, “The public powers shall lay down the right conditions that will allow the generalization of the effective freedom of citizens, men and women, the equality and the participation in the political, economic, cultural and social fields.”

**Guinea** (1990): Article 8 of the Guinean constitution states, “Men and Women shall have equal rights.”

**Senegal** (2001): Article 7 of the Senegalese constitution holds that “All human beings are equal in law. Men and Women are equal in rights.”

**Kenya** (2002): Article 35 of the Kenyan constitution enunciates, “Women have the right to an equal status with men with equal opportunities in political, economic and social fields . . . . Women shall have equal dignity rights with men.”

**Equatorial Guinea** (1988): Article 20 of Equatorial Guinea’s constitution holds that “Discrimination shall be banned when it is made on the basis of ethnic, race, sex, language, religion, political thought or any other kind such as social or economic status or birth . . . . Women, irrespective of their marital status, shall have equal rights and privileges on all life levels, whether private or public, in the civil, political, economic, social and cultural fields.”

#### *The constitutions of Western democracies*

**Germany** (1949): Article 3 of Germany’s constitution states, “Men and Women are equal in rights.”

**Spain** (1978): Article 14 of Spain’s constitution holds that “All Spanish people are equal in law without discrimination made on the basis of birth, race, sex, religion, opinion or any other personal or social kinds.”

**Portugal** (1976): Article 13 of the Portuguese constitution enunciates, “All citizens are equal in dignity on the social level and equal in law.”

**Belgium** (1994): Article 1 of Belgium’s constitution states, “Equality between men and women shall be guaranteed.”

**Finland** (2000): Article 6 of Finland’s constitution asserts, “All people are equal in law. No one shall be discriminated against on the basis of sex, origin, language, religion, opinion, health, disability or any other kind.”

**Greece** (1975): Article 4 of the Greek constitution asserts that “Greek men and women shall have equal rights and duties.”

**Sweden** (1974): Article 2 of Sweden’s constitution enunciates, “The public powers shall achieve the realization of equality, freedom and dignity for all citizens.” Article 16 states, “Law shall not favor any citizen on the basis of sex unless the view is to achieve the realization of equality between men and women or is concerned with the military duties or any other public administrative post.”

#### *The constitutions of Asian countries*

**Cambodia** (1993): Article 45 of the Cambodian constitution enunciates, “Women shall not be discriminated against.”

**Vietnam** (1992): Article 63 of the Vietnamese constitution states, “All citizens, men and women, are equal in rights in the political, economic, cultural, social and family fields.”

**Japan** (1946): Article 14 of the Japanese constitution holds that “All citizens are equal in law. There shall be no discrimination in the social, economic and political fields on the basis of race, belief, sex, social or family status.”

#### *The constitutions of Eastern European countries*

**Hungary** (2003): The Republic of Hungary guarantees the equality of men and women in civil, political, economic, social and cultural rights.

**Uzbekistan** (1992): Article 46 of Uzbekistan’s constitution states, “Men and Women shall have equal rights. Any discrimination against women shall be considered discrimination against the human dignity of women.”

**Poland** (1997): Article 32 of the Polish constitution states that “All are equal in law. No one shall encounter discrimination in the political, social and economic fields.” Article 33 enunciates, “In Poland, men and women shall have equal rights in the political, social, economic and family fields.”

#### *The constitutions of Latin American countries*

**Brazil** (1988): Article 5 of Brazil’s constitution enunciates, “Men and Women shall have equal rights in the constitution.”

**Columbia** (1991): Article 43 asserts, “Men and Women shall have equal rights. Women shall not be subject to any discrimination.”

**Paraguay** (1992): Article 48 of Paraguay’s constitution states, “Men and Women are equal in civil, political, social and cultural rights. The State shall implement the laws that shall achieve the realization of the equality principle and allow women to participate in the public field.”

**Venezuela** (1999): Article 21 of the Venezuelan constitution holds, “All people are equal in law. Discrimination and non respect of the principle of equality in rights, duties and freedoms on the basis of race, sex, opinion and social status shall be invalid. Law shall guarantee that the legal and administrative bases are effective and positive steps shall be adopted in favor of marginalized or discriminated against groups.”

### **B. National Constitutional Proposals**

#### *The draft of the Experts’ Committee*

The draft of the Committee of Experts places the right to equality and to non-discrimination in the introduction of the article dealing with rights and freedoms. It makes it clear from the beginning that all rights set forth shall be guaranteed by the constitution.

The experts have adopted the methodology found in various constitutions as well as that found in many of the international human rights texts.

Article 3 states, “All citizens are equal in rights and duties and no discrimination shall be exercised on the basis of race, religion, sex, regional belonging or language.” It should be noted here that the statement does not end with “or any other form of discrimination”, a statement often found in international texts as a means to prevent other forms of discrimination, for example on the basis of a certain ideology or sexual orientation, from taking place.

Article 27 enunciates, “The administration shall be neutral with citizens and discrimination on the basis of sex, religious or philosophical beliefs, political choices or regional belonging shall be banned.”

As for freedom of belief, the Committee of Experts showed an awareness that the first article of the constitution enunciating that Islam is the state’s religion might lead to discrimination on the basis of religion for minorities living in Tunisia. Thus Article 5 expresses that the “freedom of thought, belief or conscience is absolute and religious practices are guaranteed to all without any distinction.”

Article 4 clearly enunciates non-discrimination against women: “Men and Women are equal in rights and duties and the State shall guarantee this by promulgating laws and regulations to criminalize violence against women and adopt equality and parity in the political, economic, and social and personal status fields.”

This draft thus undoubtedly ensures the notion of equality in citizenship.

### ***The draft of Dean Sadiq Belaid***

Chapter 1, Article 9 of the Dean Sadiq Belaid draft states, “Rights and freedoms shall be guaranteed in law and without any distinction of any kind.” The chapter hints at the role of the legislative authority in ensuring that the principle of non-discrimination is protected.

Chapter 1 Article 12 enunciates, “All citizens are equal in rights and duties and they are equal in law.” One should note the meaning of the term “equality in law.” Equality means that the law will be applied in the same way to all citizens. Equality in law does not necessarily prevent discrimination as the law, on its own, could be discriminatory. Therefore this draft has inserted the phrase “principle of equality” at the beginning.

Article 30 holds that “Political parties shall undertake to ensure that all kinds of violence, extremism, racism and all kinds of discrimination are banned.” This article obviously urges political parties to include non-discrimination in their objectives. With regards to discrimination against women, this article seems to make do with the Personal Status Code. Despite its importance, the code is still short of providing complete equality in rights and duties between men and women: “... political parties shall undertake to ensure the participation of citizens in the political field on the basis of democratic principles and shall respect ... the principles related to the Personal Status.”

### ***The draft of Chabakat Destourna (Our Constitution Network)***

Many articles in the Chabakat Destourna draft deal with the principle of equality between citizens.

Article 21 states, “Tunisian men and women are equal before the law and in law.” It also very clearly expresses that the equality between men and women shall not be violated: “The principle of equality between the sexes shall not be violated.”

The draft also includes an article that expresses the obligation of public powers at guaranteeing the principle of equality. Article 22 enunciates, “Public powers shall guarantee the effective equality and to undermine this principle is only permitted if parity shall be guaranteed.” The article implies that undermining the principle of equality is permitted only in the guise of “positive discrimination” or “affirmative action” though these terms are used without further elaboration.

That a state has guarantees equality by ensuring more rights to certain groups of citizens over others is a normal phenomenon prevalent in many countries. But it is important to determine

these situations clearly and make sure they are exceptional. The latter articles deal with equality between the sexes.

The draft emphasizes on the other hand the general principle pertaining to equality between all people despite their differences in stating that “Equality shall be exercised without discrimination of any kind on the basis of sex, religion, color, race, language, social origin, disability or any other status.” This article is very clear about excluding all, and not only some kinds of discrimination as we have seen in other drafts.

#### ***The draft of Afaq Tounis Party (Tunisia Prospects Party)***

There is a similarity between the Afaq Tounis Party draft and the draft drawn up by the Committee of Experts.

The preamble enunciates, “Individual and common basic freedoms shall be guaranteed without any discrimination of any kind on the basis of sex, language, religion or region according to the Universal Declaration of Human Rights and the international reference urges the State to adopt the principle of equality and any other kind of human rights principles.”

Articles 3 and 4 are also similar to the draft of the Committee of Experts in stating that “Citizens are equal in rights and duties and discrimination on the basis of race, religion, sex, regional belonging or language shall be banned.”

Article 32 holds that “The administration shall be neutral regarding citizens and discrimination on the basis of sex, religious and philosophical beliefs, political orientations or regional belonging shall be banned.”

Article 4 deals with equality between men and women and enunciates, “Men and Women are equal in rights and duties and the State shall undertake to ensure equality is implemented by promulgating the laws that shall achieve the incrimination of violence against women in order to adopt equality and parity in the political, economic and social fields along with the Personal Status Code.”

#### ***The draft of Ennahdha Movement Party***

Article 3 of the Ennahdha Movement Party draft is the sole article that deals with equality: “All Tunisians are equal in law.”

It is important to note that the principle of non-distinction and non-discrimination against women is missing from this draft. As explained above, when the text uses the term “equality before law,” it does not imply total equality in rights and duties, which leads us to assume that the overall draft does not adopt the principle of equality and consequently the principle of citizenship.

#### ***The draft of the General Union of Tunisian Workers (UGTT)***

This draft deals with the principle of non-discrimination in a general way. Discrimination against women is not specifically enunciated.

Article 8 states, “Citizens are equal in rights and duties and in law without discrimination on the basis of sex, color, religion and birth or political and trade union opinions.” It is important to note that “language” is not enunciated the way it is in other drafts whereas we know that Tunisia has a Berber minority that does not use the Arabic language.

### *The draft of Al Amal Party (The Labor Party)*

The Al Amal Party draft is similar to most of the others. It deals with equality before the law but not with laws explicitly pertaining to rights and duties. Article 17 states, “All Tunisians are equal before the law” and when dealing with non discrimination, the article enunciates, “Discrimination on the basis of birth, race, sex, religion, opinion or personal and social condition shall be banned.” The draft obviously does not give discrimination on the basis of gender the attention it deserves. Instead, it keeps to a more general definition that includes discrimination on the basis of sex. Nevertheless, it assumes a broader definition of discrimination including social and personal forms, a feature missing in the draft drawn up by the Committee of Experts.

### *The constitution of 1959*

Article 6 of the 1959 constitution enunciates, “All citizens are equal in rights and duties and they are equal before the law.” This article has proved insufficient at preventing discrimination against women. On its own, it has not been able to allow male and female citizens to equally enjoy full citizenship. So what will the constitution of the revolution bring forth?

### *The draft of the project of the National Constituent Assembly (August 2012)*

**Preamble:** The NCA draft states that the constitution shall be written “In order to found a democratic, republican and participative regime ... the power shall be achieved on the basis of human rights and freedoms, supremacy of the law, independence of the judicial power, justice and equality between all citizens, men and women and between all categories and regions ...”

**General principles:** Article 6 holds that “All citizens are equal in rights and duties and they are equal in law.” Article 10 asserts, “The State shall undertake to ensure the realization of women’s rights and the welfare of the family entity.”

**Rights and freedoms:** Article 22 holds that “Citizens are equal in rights and duties in law without discrimination of any kind.”

Apart from the term “equality in law” that we have explained above, such phrases as “The Republic shall ensure for citizens, men and women,” are not enunciated anywhere nor are phrases such as “The State shall ensure the equal rights and duties of citizens, men and women” or “The State shall not perform any act aimed at discriminating against any kind of citizen, men and women.”

Article 10 however enunciates a serious blow to the status and dignity of women. While the protection of women’s rights is vaguely expressed in an article on family, it merely highlights the NCA’s opinion about women: they are regarded not on the basis of being citizens that enjoy equal human rights as men but on the basis of their fundamental role within the family.

As for article 22, the obscure terminology and ambiguity might lead to problematic interpretations. Even if it gives the impression that it adopts the principle of equality, the phrase “before the law” brings us back to a previously mentioned loophole which would be best replaced by the phrase “in the law” or “according to the law.”

## **C. Recommendations**

### **On Definition of equality:**

Equality means the full enjoyment of rights and freedoms by all citizens, men and women. To achieve the full realization of equality, the state shall take legislative and practical steps to protect individuals and specific groups from discrimination.

**On Banning discrimination:**

The state shall ban all forms of discrimination on the basis of race, belief, language, social, regional or cultural belonging, gender, or any other form related to individual identity.

**On Banning discrimination on the basis of gender:**

The state and society shall eliminate all kinds of discrimination against women in the political, economic, social, cultural, and family domains.

Discrimination means any distinction, exclusion, or restriction made on the basis of sex that has an effect nullifying the recognition of women's rights and fundamental freedoms in the political, economic, social, cultural, and civil domains or impairing the ability of these women to exercise their rights, irrespective of their marital status.

### 3. Equality in Rights and Duties in the Political Sphere

The participation of women in the political field is a telling criterion of her role in a given society. Political participation does not only mean the right to vote or the right to run for political office but also the right to take key decisions at the national level that have wide economic, social, and cultural ramifications.

The following international texts refer to the principle of equality between men and women in the political domain:

The International Human Rights Declaration (Article 21)

The International Civil and Political Rights Covenant (Article 25)

The conventions related to non discrimination against women such as:

The Political Women Rights Convention (1952)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003) (Article 9 enunciates the concept of positive discrimination to incite women to participate in the political field.)

It is important, nevertheless, to note that in spite of the texts mentioned above, the participation of women is still very rare in most countries. Women do not always have access to the decision-making positions even in democratic states. Some states are still trying grapple with the factors that hinder women from accessing the decision-making positions: the reasons lie in gender discrimination at the social level. It is not just the state and its institutions that must adopt the principle of non-discrimination against women in the civil and political fields but society at large, especially in patriarchal societies which consider women apathetic about politics.

#### A. Comparative Constitutions

##### *The constitutions of Western democracies*

**Portugal** (1976): Article 109 states, "The democratic regime shall be achieved by the full and effective participation of men and women in the political field ... The State shall guarantee equal opportunities and non discrimination in the recruitment in the public administration and the participation in the civil and political field."

**France** (1958): Article 1 enunciates, "Law shall ensure the equal right of men and women to take in charge the deputation and elective positions, the social and professional responsibilities. Article 4 holds that "Political parties shall undertake to guarantee that the rights enunciated in article 1 will be exercised."

##### *The constitutions of Latin American countries*

**Argentina** (1994): The Argentinean constitution holds that "Actual equality of opportunities for men and women to elective and political party positions shall be guaranteed by means of positive actions in the regulation of political parties and in the electoral system." (Article 37)

### *The constitutions of African countries*

**South Africa** (1996): Regarding the election of the President of the Republic of South Africa, its constitution states, “The African National Congress shall elect a man or a woman among its members to the position of president of the Republic.”

On the election of the prime ministers of the provinces, Article 128-1 enunciates that “Following the 1<sup>st</sup> session after the election and when there is a need to provide for a vacant seat, the elected Province Legislative Committee shall elect a man or a woman among its members to take on the position of Prime Minister of the Province.”

Regarding the composition and the election Article 46-1 holds that “The African National Congress is composed of no less than 350 and no more than 400 men and women members who shall be elected according to the electoral mode.”

**Morocco** (2011): The new Moroccan constitution encourages the participation of women in the political field and refers to citizens (men and women) in most articles that deal not only with the legislative democracy but also the participative democracy. The constitution refers to the equality of chances but does not adopt the principle of parity which was one of the major demands of the Moroccan Women’s Associations.

Article 7 states, “The parties shall take appropriate steps to realize political guidance for the citizens, men and women, and participation in the national and public field.”

Article 11 enunciates, “The public powers shall adopt the appropriate means to enhance the participation of citizens, men and women, in the elections...”

Article 14 holds that “Citizens, men and women, shall have under conditions and clauses laid down by a regulatory law, the right to petition legislative authorities.”

Article 15 asserts, “Citizens, men and women, shall have the right to present petitions to the public powers ...”

Article 27 states, “Citizens, men and women, shall have the right to attain the information held in the hands of the public administration, the elected institutions and the committees that are in charge of the public administrative sector.”

Article 30 enunciates, “Every citizen, man and woman, has the right to vote and to run for the elections ... The law shall enunciate requirements that shall achieve equal opportunities for men and women to access electoral positions.”

### *The constitutions of Asian countries*

**Japan** (1946): The participation of women and non discrimination on the basis of the gender is not clearly enunciated, but the constitution adopts the principle of non-discrimination in a general way. Article 44 states, “Law shall lay down the conditions to the candidacy of the members of the two chambers and their electors without discrimination of any kind on the basis of race, belief, sex, social and family status, study level, property or income.”

### **B. National Constitutional Proposals**

We must make preliminary observations about our source material. For this part of the paper, we look closely for articles which explicitly recognize the political rights of men and women like the right to vote or run in elections. The drafts which lacked these articles often included articles that recognized equality of political rights more vaguely.



### ***The draft of the Committee of Experts***

The participation of women in the political field is mentioned only once in this draft with regards to their opportunity to run in a presidential election. The Committee obviously considered this as the only future contentious issue for women, which is strange given that Tunisian women have, until now, not been able to serve as governors and only few have succeeded at being mayors. Article 40, paragraph 3 of the Committee's draft states, "Running for the presidency of the Republic shall be the right of every Tunisian man or woman, who answers the eligibility criteria and who reaches the age of at least a full forty years and seventy years at most on the day of submitting his or her candidacy."

### ***The draft of Dean Sadiq Belaid***

This draft of Dean Sadiq Belaid refers to women only in Article 6, paragraph 2: "The rights of women shall be guaranteed, especially those enunciated in the Personal Status Code, and fully recognized again by this new constitution and the following legislations and enunciated as well in the international conventions which Tunisia has ratified . . ."

It is important to note that the issue of women is dealt with vis-à-vis international conventions that guarantee equal civil and political rights. The draft does not explicitly enunciate the role of women as candidates or voters, despite the fact that women already suffer from marginalization in the political field and as decision makers in civil society.

To rely solely on international obligations would have been sufficient if we were in an old established democracy, which mirrors its commitments in domestic legal texts. In the case of Tunisia and the question of the participation of women in politics, the constitution ought to be very clear in upholding the principle of non-discrimination in the political field and the principle of equal opportunities between male and female citizens.

### ***The draft of Chabakat Destourna (Our Constitution Network)***

The Chabakat Destourna draft is unique in that it is the only one which gives a definition of citizenship in its preamble while enunciating all political rights of women. Its preamble states, "Citizenship is founded on all civil, political, economic, social and cultural rights enjoyed by citizens, men and women, recognized by the Constitution and they are equally subject to the duties and responsibilities incumbent on them."

The draft also defines the citizen as "each holder of the Tunisian nationality." The draft ensures that men and women share the same rights equally: civil and political rights, the right of physical integrity, the right to move freely, the right to a passport and the right to access administrative documents. As for the more specific rights pertaining to political affairs, we find several articles that express the principle of equal rights explicitly:

Article 47 enunciates, "Every citizen man and woman has the right to vote and run for elections in accordance with the requirements of the Constitution and the electoral law."

Article 52 holds that "The statute law determines the minimum number of citizens, men and women, who sign referendum petitions and popular initiative and popular objection depending on the content of the text."

Article 184 states, "To run for the presidency of the Republic is the right of every Tunisian man and woman who is aged 40 on the day of submitting his or her candidacy."

### ***The draft of Afaq Tounis Party (Tunisia Prospects Party)***

The draft only enunciates the possibility of women to run in a presidential election: Article 55 states, "To run for the presidency of the Republic is the right of every Tunisian Muslim man or Tunisian Muslim woman that answers the eligible criteria of a voter, and has reached the age of at least forty years full and seventy years at most on the day of submitting his or her candidacy." Once again, we note that there is a no strict recognition of non-discrimination against women nor for that matter is there a safeguard against religious discrimination.

### ***The draft of Ennahdha Movement Party***

Rather than focusing on the political rights of women, the Ennahdha Movement Party draft refers to the rights of voters and candidates more generally. Article 47 states, "Candidacy for membership of the House of Representatives is the right of every voter who is born of a Tunisian father." We note here that the absence of the "Tunisian mother" as a potential voter. Furthermore, Article 67 does not allow women to run in a presidential election. Considering that there is not a single article that enunciates equality between men and women, this draft makes women's participation in politics impossible and renders the notion of citizenship an inherently male prerogative.

### ***The draft of the General Union of Tunisian Workers (UGTT)***

The UGTT draft makes no effort to support women's political rights and ensure their participation in public life. Even the article that refers to the presidency is very general and written using masculine terms. Article 54 states that "Running for presidency is the right of every Tunisian non-holder of another nationality born of a Tunisian father and a Tunisian mother aged at least forty years old on the day of submitting his candidacy and enjoying all civil and political rights."

### ***The draft of Al Amal Party (the Labor Party)***

Article 28-1 of the Al Amal Party draft guarantees the participation of all citizens in public affairs: "All Tunisian citizens have the right to participate in public affairs, directly or through freely elected representatives in periodic elections by universal adult suffrage." The second paragraph of the same article also states that citizens "have the right to get in some conditions of equality to public positions and responsibilities in conditions laid down by law."

The principle of equal participation of women with men is expressed a clear commitment to equality in political rights in Article 59-1: "Direct and active participation of men and women in the political life is the condition to promote the participatory and democratic regime as well as its means. Law achieves the full realization of equality in the exercise of civil and political rights and non-discrimination on the basis of sex to access public positions."

### ***The constitution of 1959***

This document made no serious effort to encourage women to participate in political life. Nevertheless, women had a presence in political institutions and expressed their political will (their presence in the Parliament was close to the international average though they had very little presence in the government and virtually no presence in regional administrative offices.) As for their right to run for president, Article 40 enunciates, "the candidacy to the presidency of the Republic shall be the right of every Tunisian[male] not bearing another nationality, Muslim born to a Muslim father and mother, and to a Muslim father's and mother's grandfather and this without interruption."

### *The draft of the project of the National Constituent Assembly (August 2012)*

There are several proposals related to the right to participate in a presidential election. Only some of them explicitly refer to women:

**First proposal:** Stipulates that the male or female presidential candidate cannot have another citizenship, must be born of a Muslim from a Tunisian father and mother and must be at least forty years;

**Second proposal:** Running for president of the republic is the right of every Tunisian man and woman born to Tunisian parents and Muslim;

**Third proposal:** Running for president of the republic is the right of every Tunisian;

**Fourth proposal:** Running for president of the republic is the right of every citizen who holds only Tunisian citizenship and none other.

We can deduce from these proposals that the question of women's ability to contest a presidential election has not been settled yet and that the National Constituent Assembly has yet to determine their stance on the right of women to reach high political positions.

Though all the parties and political movements represented in the Constituent Assembly made clear that they had no objection to see women putting themselves forward as presidential candidates, their statements were not expressed in a clear concrete fashion which explains the different tones within the proposals.

It is of prime importance to make this principle clear, especially if there is not an additional article that enunciates the principle of equality.

By merely having an article that gives women the right to run in a presidential election, society at large will begin to accept the idea that women should have the right to participate in political life and hold positions of leadership more generally.

### **C. Recommendation:**

**1.** The state shall undertake to take positive steps and the appropriate means to ensure that women, like men, can participate equally in the political field in order to guarantee:

- (a) The participation of women in the elections without any discrimination;
- (b) The representation of women equally with men in all the electoral phases;
- (c) Women are equal to men on all the levels of decision-making.

**2.** The political parties shall undertake to take steps to ensure the political education of male and female citizens and to guarantee their participation in public life without any discrimination between men and women.

## 4. Equal in Rights and Duties in Economic, Social, and Cultural Spheres

In practice, dealing only with either economic, social, or cultural rights may not necessarily secure the other rights at the same time. Despite the fact that all human rights are interdependent and integrated, the state should make a particular effort to ensure that all people enjoy economic and social rights.

Ensuring non-discrimination in this context is one of the first prerequisite for citizenship. Women, like men, play an important role at generating national wealth and contributing to development. Despite this, they have never enjoyed real equality in the workplace, healthcare, or education nor have they enjoyed full participation in cultural life. Despite numerous pieces of legislation that guarantee the rights of women, Tunisia did not sanction anti-discriminatory measures against women. It is unsurprising therefore that there are a higher number of unemployed women compared to unemployed men or that a higher number of girls drop out of school compared boys. These are just a few of many examples that reveal the consequences of discrimination against women.

Many of the constitutions we studied tried to guarantee the rights of women in different fields such as health, work, and education. These guarantees took several forms and are all an expression of each country's desire to achieve equality. As for the national constitutional drafts we have looked at, they have proposed uneven forms of equality in the economic, social, and cultural fields.

### A. Comparative Constitutions

#### *The constitutions of Asian countries*

**Cambodia** (1993): Article 45 states, "The exploitation of the work of women shall be forbidden."

**India** (1950): Article 39 holds that "The State shall, in particular, direct its policy towards securing – (a) that the citizens, men and women equally, have the right to an adequate means of livelihood... (d) that there is equal pay for equal work for both men and women;"

**Vietnam** (1992): Article 63 enunciates, "Workers, men and women, who have the same employment, shall have the same remuneration. Women workers have the right to the maternity welfare. Women employees and workers have the right to exclusive holiday remuneration and grants before and after giving birth, according to legal requirements."

#### *The constitutions of Western democracies*

**Finland** (2000): Article 6 asserts, "Gender equality shall be guaranteed in the social activities and in the professional life, especially with regard to the determination of salaries and working conditions according to legal requirements."

**Spain** (1978): Article 35 holds that "All citizens have the duty and the right to work, to choose an employment, to evolve thanks to employment and to a remuneration that will allow them to meet their needs and the needs of their families without discrimination on the basis of sex."

**Portugal** (2005): Article 59 states, " Regardless of age, sex, race, citizenship, place of origin, religion and political and ideological convictions, every worker shall possess the right: a) To the remuneration of his work in accordance with its volume, nature and quality, with respect

for the principle of equal pay for equal work and in such a way as to guarantee a proper living;"

Article 68 states, " 1. In performing their irreplaceable role in relation to their children, particularly as regards the children's education, fathers and mothers shall possess the right to protection by society and the state, together with the guarantee of their own professional fulfilment and participation in civic life... 4. The law shall regulate the grant to mothers and fathers of an adequate period of leave from work, in accordance with the interests of the child and the needs of the family unit. "

#### *The constitutions of Eastern European countries*

**Romania** (1991): Article 41 states, "For the same employment, women obtain the same remuneration as men."

**Poland** (1997): Article 33 holds that "Men and Women in particular shall have equal rights in the field of training, employment and career advancement and they have the right to equal remuneration to equal employment, to health care, to work, to administrative positions, to be paid a tribute and to awards."

#### *The constitutions of Latin America*

**Venezuela** (1999): Article 88 enunciates, "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".

**Brazil:** Article 6 states, "The constitution shall guarantee that education, health, work, entertainment and safety, social welfare, protection of the mother and child, help of the needy people are social rights."

Regarding the right to work, Article 7 paragraph 30 states, "Everyone shall enjoy remuneration, job appointment, recruitment standards without discrimination of any kind as to sex, age, color or civil status."

### **B. National Constitutional Proposals**

#### *The draft of the Experts' Committee*

The Committee of Experts' draft is silent about the issue of economic, social, and cultural rights. This omission could be subject to criticism because it does not take into consideration the demands of the revolution which were, primarily, the right to work and right to dignity.

#### *The draft of Dean Sadiq Belaid*

The Dean Sadiq Belaid draft guarantees gender equality in economic, social, and cultural rights on two levels , as Article 31 includes a general provision for equality in these rights.

Article 31: "The Republic shall guarantee to all its citizens, men and women equal rights in the enjoyment of economic, social and cultural rights recognized in the present Constitution."

Furthermore, the draft includes a specific enunciation of the equality in health care, working conditions, and recruitment:

Article 33 states, "The Tunisian Republic shall guarantee to all citizens, both men and women the right to health care . . ."

Article 39 asserts, "Women shall not be discriminated against on the basis of employment conditions in comparison with men for the same job and the remuneration shall be the same as given to men for the same job."

#### ***The draft of Chabakat Destourna (Our Constitution Network)***

The draft of Our Constitution Network explicitly enshrines the principle of equality between male and female citizens in the enjoyment of economic, social, and cultural rights. It seems that the participatory framework which led to the adoption of this draft was a direct response to most, particularly the economic, concerns of Tunisian men and women.

On the fair distribution of wealth, Point 55 of the draft states, "The State shall recognize the right of men and women to enjoy the national wealth and the State shall ensure that it is fairly distributed."

Regarding the equality at work, Point 56 details that "Citizens, men and women, shall have the right to the enjoyment of just and favorable conditions of work safeguarding their fundamental safety, security and dignity without discrimination of any kind and without differentiation in the remuneration or privileges or conditions of employment on the basis of sex, religion, or color and those with special needs shall enjoy the same rights."

On equality in dignity, Point 58 holds that "Every citizen, man and woman, shall have the right to a minimum income that shall guarantee for him/her a decent living in the solidarity system framework." Point 68 of the draft enunciates, "Every citizen, man and woman shall have the right to Social Security coverage . . . . the State shall undertake to guarantee that every citizen, man and woman enjoys the social covering enunciated here." Point 70 of the draft holds that "Every citizen, man and woman shall have the right to a decent housing."

#### ***The draft of Afaq Tounis (Tunisia Prospects Party)***

The draft of Tunisia's Prospects Party adopts the principle of equality between men and women to access decent housing, decent work and health care, without discrimination of any kind.

Article 17 states, "Every citizen, man and woman, shall have the right to decent housing ..."

Article 18 holds that "Citizens, men and women, shall enjoy the right to decent employment under conditions safeguarding their safety, security and dignity without discrimination and without differentiation in remuneration, privileges or conditions of employment on the basis of sex, religion or color ..."

Article 19 asserts, "The Tunisian Republic shall guarantee to all citizens, men and women, the right to health care."

The draft however does not deal with the equal right to education for both men and women, despite the aforementioned point about disproportionate dropout rates from schools.

#### ***The draft of the General Union of Tunisian Workers (UGTT)***

The draft of the UGTT expresses economic and social rights in different ways. Article 24 for instance stipulates that "Health is a basic right of individuals" and that the state shall guarantee social protection "to all citizens." Article 25, on the other hand, guarantees the right to decent work, but it is done in a general way without differentiating between genders:

Article 25 states, "Decent employment is a fundamental right for every citizen, steps shall be undertaken to guarantee this right on the basis of equal opportunities and just and favorable

conditions of work such as remuneration, determination of working hours, right to rest and to holidays.”

The same vagueness permeates the clauses on education i.e., there is no specific article which expresses the right to education for girls, even though Article 21 outlines a general social milieu for the state: “The Tunisian Republic shall undertake to take steps to ensure health, social and cultural services to citizens to guarantee a fair decent standard of living.”

#### ***The draft of Al Amal Party (The Labor Party)***

The draft only expresses the right to work and the right to adequate remuneration. It does not emphasize the principle of equality between the sexes except in relation to work opportunities and there is no further guarantee of other economic and cultural rights. Article 41 states, “Everyone has the right to work . . . . All Tunisians shall have the right to a remuneration that shall achieve their needs and the needs of their families without discrimination of any kind on the basis of sex . . . .”

#### ***The project of the Ennahdha Movement Party***

The Ennahdha Movement Party project is silent about the issue of economic, social, and cultural rights. This is strange given that the first and basic motive of the Tunisian revolution was the claim to work and dignity.

#### ***The constitution of 1959***

The constitution of 1959 makes no mention of economic, social, and cultural rights but in preamble states, “The Republican regime is the best regime to guarantee human rights and to lay down the equality between citizens in rights and duties and to provide for prosperity with the development of the economy and the use of the country’s wealth to the benefit of the people. It is also the most successful way to care for the family and the right of the citizens to work, health and education.”

Despite the fact that the jurists of the Administrative Court considered these rights to be constitutional and therefore obligatory, the principle of equality in the work place and social and cultural rights are, in reality, absent.

It is important to take note that the amendment of the constitution in 2002 allowed the following addition to the fifth article: “The Tunisian Republic shall guarantee the fundamental freedoms and human rights in their universality, comprehensiveness, complementarities and linkage.” Despite being very general, this paragraph embedded various economic, social, and cultural rights into domestic law.

#### ***The draft of the project of the National Constituent Assembly (2012)***

The terminology used for economic, social, and cultural rights varies from place to place within the draft. At times, it refers to either “human beings” or “citizens” but never fully enunciates non-discrimination between men and women in the enjoyment of those rights.

The article related to the right to work (i.e., Article 14 in the chapter about rights and freedoms) does not enunciate the principle of equality in the workplace nor does it mention remuneration. It only stipulates that “work is a right to all citizens and the State shall do its best to guarantee work in just and suitable conditions.” The expression “do its best” does not constitute an obligation of any sort which renders the article weak and vague.

Article 17 enunciates that access to education is free to all and compulsory up to the age of 16 but makes no explicit mention of women.

### **C. Recommendation**

The constitution should include either of the following provisions:

- A. The state shall guarantee the principle of equality and parity between men and women to work, education, health, and to the enjoyment of all cultural rights.
- B. The state shall guarantee to citizens—men and women—all economic, social, cultural, and environmental rights that are enunciated in international conventions and that have been ratified.



## 5. Equality in Citizenship and Family Life

The term “Personal Status” has a special meaning to Tunisian men and women as it is linked to the Code of 1956 which has been credited with shaping the Tunisian society in which we currently live: a modernizing society built on tight-knit family values. There is no need to dwell on its importance within Tunisian society or on its positive effect on women’s status. But we have to be aware that a revolution that was based on the claim for dignity cannot accept any less than what was already enshrined in the Personal Status Code of 1956.

We have already dealt with the issue of equal participation in the political domain. If we look at the causes of backwardness of Tunisian women in the political domain, we will notice that it is inextricably linked to their status within the family. We wonder, for example, how can a woman be a governor while she cannot govern her children or how can she be a minister or president if she is considered an insubordinate at home?

Democracy is not possible if there is no equal notion of citizenship between men and women—this includes equality within the family and home. It is for this reason that so many democratic countries have enshrined these principles in their own constitutions. All the national projects that have emerged from Tunisia, however, do not give the same importance to the issue of equality within the family.

### A. Comparative Constitutions

#### *The constitutions of Western democracies*

**Portugal** (1976): Article 36 states, “Couples shall have equal rights and equal duties with regard to political and civil capacity and with regard to the upbringing and caring for children.”

**Spain** (1978): Article 32 holds that “Men and women shall have the right to marry on the basis of equality in law.”

#### *The constitutions of Latin American countries*

**Brazil** (1988): Article 226 enunciates, “Rights and duties relating to marriage shall be exercised on the basis of equality between men and women.”

#### *The constitutions of Eastern European countries*

**Armenia** (1995): Article 32 states, “Men and women shall have equal rights to marriage, during marriage and in the event of divorce.”

**Poland** (1997): Article 33 asserts, “Women and men shall have equal rights in the family, political, social and economic fields.”

#### *The constitutions of Asian countries*

**Japan** (1946): Article 24 enunciates “Marriage shall be based only on the consent of both spouses and its maintaining is based on achieving equal rights between the spouses. With regard to the choice of a spouse, property system, inheritance, choice of housing, divorce and other matters relating to marriage and family, law is promulgated on the basis of the dignity of the individual and the fundamental equality between the sexes.”

## **B. National Constitutional Proposals**

### ***The draft of the Experts' Committee***

The Committee chose to include all forms of equality in a single article mentioned above in Article 4, which acknowledges "The principle of equality and parity in the political, economic and social and Personal Status fields." Despite being short, the article alone suffices in summarizing all the foundations of equality in citizenship.

### ***The draft of Dean Sadiq Belaid***

The Dean Sadiq Belaid draft does not enunciate the principle of equality between spouses or equality in Personal Status. Article 35, however, expresses the traditional division of roles in the family by saying that child-rearing is included as part of the "the natural function of the woman" and later by saying that "the family ensures [her] main role in child-rearing." The draft could have benefitted from the inclusion of an article to guarantee equality within the family.

### ***The draft of Chabakat Destourna (Our Constitution Network)***

Our Constitution Network adopted the principle of equality between men and women when it comes to choosing the companion. It chose the term "companion" because it does not refer automatically to the institution of marriage, which sets it apart from most of the other drafts that emphasize the role of the family as well as the role of the state in preserving that institution. Article 31 states, "The Constitution shall guarantee to every citizen, man and woman, the right to choose a companion without discrimination."

### ***The draft of Afaq Tounis (Tunisia Prospects Party)***

The Afaq Tounis draft supports the institution of marriage. Article 16 enunciates, "The State shall protect marriage and family." This terminology leads to the question: what does "the State shall protect the institution of marriage" mean? Does it mean that the State encourages people to marry, and in this case, how? Or does it mean that the conditions of divorce are going to become more difficult?

With regards to the rights and duties within the family, the article stipulates that "Marriage is based on the moral and legal equality within the limits set by the law to guarantee the unity of the family."

One must note that the commitment to the principle of equality is not serious enough, considering that the article comes back to say that the law must set limits to that equality in order to guarantee the unity of the family. This loophole opens the door for discriminatory laws to be passed under the guise of moral legislation aimed at protecting the "unity of the family." The draft states, "The State guarantees social, economic and legal protection for the family set forth in the present constitution, and set forth in the relevant International Conventions that Tunisia has undertaken to guarantee. It also guarantees the broadest possible protection for children and their mothers."

### ***The draft of Ennahdha Movement Party***

The draft of the Ennahdha Movement Party makes no effort to enshrine the principle of equality in family relations or in Personal Status. The party has its own distinct view regarding the nature of the family: Article 26 states that "Every child shall have the right to a safe upbringing and the State shall undertake the steps to guarantee that the family moral needs, working conditions and especially the working hours of the mothers are suitable ..."

In principle, this article looks like it is supportive of women's rights, especially rights pertaining to employment. But in reality, it reflects the stereotypical perception of the role of women by assuming that the only duties of women are taking care of family and child rearing. This is in direct opposition with the principle of equal citizenship. Furthermore, the notion of special working hours for women will only represent an obstacle to career advancement and thus result in further discrimination in the work place.

#### ***The draft of the General Union of Tunisian Workers (UGTT)***

The draft is completely silent on the issue of equality in bearing the responsibility of the family and children. This silence warrants an excuse to continue discrimination between men and women.

#### ***The draft of Al 'Amal Party (The Labor Party)***

Article 37.1 of the Al 'Amal Party draft states, "Everyone shall have the right to found a family and marry in full equality."

Article 37.2 enunciates, "Children born out of the marriage institution shall have the same equal rights as enjoyed by legitimate children."

#### ***The constitution of 1959***

The rights of the family or Personal Status are not specifically mentioned. But Article 8 on political parties enunciates that these parties are obliged to adopt the principles enshrined in the Personal Status Code: "The Parties shall take charge of the citizens in order to organize their participation in the political life and on a democratic basis and they shall respect the sovereignty of the people, the principles of the Republic, human rights and the principles of the Personal status." Then the article adds that the parties shall undertake "the sanctions of all kinds of violence, extremism, racism and all kinds of discrimination."

We can thus assume that by obliging the parties to ban all kinds of discrimination, they would force them to adopt a principle of equality in all rights and duties. Nevertheless, the absence of adequate means to put this article into practice means that it only has rhetorical worth at best.

#### ***The draft of the project of the National Constituent Assembly (2012)***

The NCA draft's Article 28 enunciates, "The State shall guarantee the protection of women's rights and support their achievements considering them as true partners of men in building the nation and their roles within the family shall be complementary."

"The State shall guarantee" is a phrase that indicates a clear commitment and is very different from the terms "shall work on" or "its purpose will be" but what is the scope of this guarantee?

Rather than opting for strict legal requirements found in other democratic constitutions that guarantee equality in the family, this draft simply states that women are the partners of men. Their purpose is to help with the task of nation building while sharing a complementary role within the family institution. The style of language is poetic and literary but lacks enough legal depth to count as the basis of equality. One of the problems of this literary style is that it implicitly conveys a woman's inequality by presenting her as dependent on men.

Furthermore, Article 28 enunciates that men and women shall have the same opportunities in bearing all responsibilities. The notion of "same opportunities" cannot be guaranteed as it assumes the objectivity of all situations.

The protection of women's rights in this draft thus comes not as an affirmation that they are autonomous beings but as partners of men in nation building and playing a complementary role within the family. Terms like “partnership” and “complementary” do not guarantee equal rights between men and women and the notion of complementary keeps the possibility for the establishment of a traditional division of labor within the home. For example, using the term “complementary” warrants that a woman take charge of the children while a man assumes the role of the bread winner or that a woman takes charge of domestic chores while the man takes control of external affairs etc.

This article is full of literary terms that have very little legal impact. The confinement of women and their rights to the family domain is inconsistent with international legislation and all democratic constitutions.

### **C. Recommendation**

#### ***On the defense of the family***

“The constitution shall undertake to guarantee the protection of the family through the adoption of equal rights for the couple while married and after dissolution.”

The definition of the term “family” should also be clarified so that it includes one-parent families or a family not based on the marriage institution.

#### ***On the institution of marriage***

The legislative power should be the sole power that ought to enact the Personal Status law and to undertake in guaranteeing the equality in rights and duties related to the family.

## V. Recommendations

### 1. Guaranteeing freedoms and rights using precise terms in the constitution

When we talk of 'precise terms', we are referring to the constitution-drafting authority's genuine commitment to guaranteeing certain rights. Nothing threatens freedom and rights like the use of ambiguous and manipulative language within a constitution, which could render certain rights void or unenforceable. Most legal scholars have come to the consensus that such language can be deliberately employed as a means to curtail freedoms and rights. The 1959 constitution is a good example of this where, following a long list of freedoms and rights, the seventh article outlines that "The citizens exercise the plenitude of their rights in the forms and conditions established by the law. The exercise of these rights cannot be limited except by a law enacted for the protection of others, the respect for the public order, the national defense, the development of the economy, and social progress." These provisions paved the way for the introduction of laws which curtailed certain freedoms.

Therefore, it is the constitution-drafting authority's obligation to ensure that the language employed is clear with strict legal parameters rather than relying on mere rhetoric. The committee within the assembly responsible for drafting the chapter pertaining to rights and freedoms actually voted in an article (28) which defines the relationship between a man and a woman within the family. It attempted to echo the language found in most other constitutions that such a relationship ought to be based on the equality of rights and familial duties. The article also refers to the woman as the true partner for a man in the nation-building project while rendering her role within the family as complementary. Yet such language is very much rhetorical and literary and very much lacks serious legal guarantees. It is therefore an inadequate guarantee of equality within society. On the contrary, a closer reading of the language reveals a whole host of contradictions that detract from a woman's dignity.

Furthermore, Article 28 is also meant to guarantee that men and women should have the opportunity to share responsibilities equally. One again, this is an ambiguous definition of equality which does not necessarily guarantee that, in an objective scenario, a woman would be able to exercise such a right fully as enshrined in the constitution.

The notions of partnership and integration cannot in any way inherently guarantee equality between men and women. In fact, the concept of integration within the family allows for a social division of labor within the household which women were the first victims of historically.

The second issue to raise regarding the phrasing of the constitution relates to the limitations imposed on certain rights.

In effect, the protection of women's rights in the post-revolution constitution is therefore threatened by such ambiguous language and unclear phrasing and the imposition of certain limits, which makes exercising her powers impossible.

The UN Human Rights Committee clearly emphasized the need for clearer parameters to ensure the protection of rights in democratic societies and that only the law can properly regulate this.

*Proposal on the issue of restricting rights* (to be added to the end of the section on ‘rights and freedoms’):

No where in the constitution can an aforementioned right or freedom be restricted except using a legal term which applies to society as a whole.

The notion of restriction is necessary in democratic societies and is based on human dignity, equality and freedom, as long as there is a degree of proportionality inherent between a restriction and its cause (for example, Article 12 of the Swedish Constitution: “The restrictions referred to may be imposed only to achieve a purpose acceptable in a democratic society. The restriction may never exceed what is necessary having regard to the purpose which occasioned it, nor may it be carried so far as to constitute a threat to the free formation of opinion as one of the foundations of democracy. No restriction may be imposed solely on grounds of political, religious, cultural or other such opinions.”

## 2. Guaranteeing the supremacy of the constitution as a guarantee for citizenship

*Proposal 1:*

Legislators must respect all the provisions underlined in this constitution, as must all legislative, executive, judicial, state authorities and all other players within society.

Any law or code of conduct that contradicts the constitution is void.

*Proposal 2:*

All political parties are required to adhere to the requirements of this constitution and to stand up for the nation’s democratic values, particularly every citizen’s right to freedom and equality between citizens of both genders.

*Proposal 3: Interpreting constitutional rights*

The judicial authorities must ensure that the rights described in this section adhere to the values of freedom and dignity as enshrined in other democratic and open societies. They must also ensure that the provisions are in line with international legal texts which the state has ratified.

*Proposal 4: Regulating laws constitutionally*

1. It will be permitted for one third of (parliament members?) to challenge any law which they deem as potentially contradictory to the constitution.
2. It will be permitted that one thousand citizens can challenge the constitutionality of a law which has been already been enforced.

*Proposal 5: Revision of the constitution*

There is no way of revising the ‘rights and freedom’ chapter of this constitution.

### 3. Responding to the international standards pertaining to women’s rights

#### *Proposal 1:*

The need to ‘feminize’ legal texts has become an international standard. If the language is ‘feminized’ for the sake of balance, it must be done holistically rather than selectively otherwise it might have the reverse effect of feminizing issues that are particularly ‘women-related’ while disregarding feminine terms in other parts of a legal texts (the way, for example, the constitution only refers to the President, Prime Minister or Minister using only masculine titles).

#### *Proposal 2:*

Internationally ratified and recognized legal texts should be considered part of the domestic legal system and therefore upheld to the highest regard.

The judiciary is responsible for ensuring that all human rights legislation is applied correctly by the rightly appointed state mechanisms.

### 4. Explicit language outlining the fundamental rights of women

The beginning must include a preamble outlining the context of the issue from the perspectives of modernity, Islamic guidance and, more generally, universal principles while also taking into account the Personal Status Code, something which Tunisian society takes great pride in, which legislators should also consider improving.

#### *Proposal related to the definition of equality:*

Equality shall be defined as the ability of all men and women to totally exercise their rights and freedoms. In order to achieve real equality, the state must provide legal provisions to protect certain groups from discrimination.

#### *Proposal related to preventing all forms of discrimination:*

The state shall prohibit all kinds of discrimination on grounds like race, creed, language, social affiliation, regional or cultural, gender or other matters relating to the identity of the individual.

#### *Proposal related to preventing discrimination in society:*

The state and judiciary shall be committed to prevent all forms of discrimination against women in the political, economic, cultural and familial spheres.

Discrimination shall be defined here as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of nullifying the recognition of women's human rights and their fundamental freedoms in the political, economic and social, cultural and civil realms, or preventing them from the ability to exercise such rights, regardless of their marital status, on the basis of equality between men and women.

*Proposal for the creation of a constitutional structure to regulate and monitor discrimination and an appropriate legal text to support it:*

This proposal serves to address the issue of discrimination on the social level (rather than merely the legislative level) which is a problem that can be inherent in society, a problem which the state has a responsibility in overcoming.

*Proposal related to the protection of the family:*

“This constitution guarantees the protection of the family and does this primarily by providing both parents with equal powers in the family domain”

It should be noted that the definition of the family here extends to single-parent families or those formed out of wedlock.

*Proposal related to the institution of marriage:*

The judicial authority will provide clear legal rules for marriage and divorce.

*Proposal related to political participation:*

1. The State shall take affirmative measures necessary to ensure that women will be on an equal footing with men when it comes to participation in the political arena and ensure that:
  - (A) women can participate in all elections without any discrimination;
  - (B) women will be equally represented in all stages of the electoral process;
  - (C) women shall be considered an equal partner to men in the formation of state policies
2. Political parties will ensure that all citizens – men and women – are fully integrated in political life and help them develop their political roles and encourage their participation in public affairs without any discrimination.

*Proposal related to economic, social, cultural and environmental issues:*

The state shall guarantee equality between men and women in their right to employment, education, healthcare and all cultural rights or:

The state guarantees the economic, social, cultural and environment rights of all citizens – men and women – as recognized by international legal standards.



## VI. Conclusion

This research may be partial or incomplete but it should nonetheless be taken seriously by decision makers. Tunisian men and women could have been satisfied with a radical revision of the constitution of 1959. They could have also accepted a constitution drawn up by experts in a matter of weeks. But the demand of Tunisian men and women was to elect a National Constituent Assembly to write a constitution faithful to the demands of the revolution: one which enshrines the values of freedom, dignity, and equality.

The current draft of the constitution is proof that those who undertook this responsibility broke the pledge to write a constitution that is faithful to the demands of the Tunisian people. Although the National Constituent Assembly had already completed their own draft prior to the completion of our research, we can now say that, in comparison to the world's other democratic constitutions and the constitutional suggestions made by other players in civil society, this product is not adequate.

We have yet to see an article that enunciates the principle of equality between men and women; nor for that matter do we see a guarantee for the equality among citizens. There is also no serious mention of women's rights within the family or even of their political rights, such as the right to run in a presidential election.

This constituent power originally committed itself to the basic demand of building a civil state based on the respect of human rights. There is no excuse for why such an aim was not met.

One should therefore take note of the dominating influence that religious elements from the leading party have had on the National Constituent Assembly, an influence that has been used to strike at the foundations of citizenship and prevent the adoption of gender equality. This same influence might later be used to discriminate between Tunisians on the basis of their religious beliefs: the articles pertaining to the candidacy for the presidency is merely one example of that. This same influence might also be used to justify the restriction of fundamental freedoms related to citizenship such as the freedom of expression, conscience, publication, and innovation. One should also pay attention to the seriousness of what this draft espouses with regards to international law and the international obligations of the Republic of Tunisia. Any constitution that marginalizes international law is a constitution that marginalizes human rights. Therefore, the status of international law ought to be given more attention by all political actors because domestic legislation is directly related to conventions that have already been ratified by Tunisia.

To conclude, we must remind our reader what the principle of citizenship means in relation to rights and freedoms. It is a relationship that goes beyond the gender issue and represents the bigger social ideal that we hope to achieve.

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