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Rights and Liberties in the New Arab Constitutions: The Case of Morocco and Tunisia

Taoufik Abdessadek

Abstract

This paper assesses rights and liberties in new Arab constitutions, taking Morocco and Tunisia as case studies of the uprisings that swept the Arab region in late 2010 and early 2011. In both countries, protests had constitutional ramifications: constitutional reform in Morocco (July 2011) and a new constitution in Tunisia (January 2014). This analysis explores the extent to which, several years later, these two constitutions have met the citizenry's demands for the rights and freedoms they articulate, given the divergent margin of freedom for the exercise of rights and freedoms and the degree of democratization in the two countries. This study attempts to answer two pivotal questions. Firstly, to what extent do the 2011 Moroccan constitution and the 2014 Tunisian constitution respect UN conventions and treaties to protect and uphold human rights ratified by the two states? Secondly, what institutional, constitutional, and practical guarantees exist for the actual exercise of these rights? The study finds that guarantees for economic and social rights in both countries have not markedly improved in the new or revised constitution.

Keywords: Human Rights; Constitution; Democracy; Morocco; Tunisia

Introduction

It is important to consider the value of the political transformations and constitutional experiments seen in some Arab countries after the so-called Arab Spring as expressed in shifts in rights- and liberties-related issues and the extent to which the modern Arab, post-independence state is capable of responding to the objectives of its society and aspirations of its citizens.

Arab peoples have increasingly made demands for full economic, social, and cultural human rights, which are indivisible from political rights and freedoms. Protests in Tunisia (the revolution of 17 December 2010) and Morocco (the February 20 movement in 2011) were an expression of structural dysfunctions associated with state building as well as social conditions primarily linked to the sociological determinants of protest, such as poverty, unemployment, and all manner of marginalization and exclusion.¹

While several countries are currently witnessing a second round of similar protests,² this study will examine the constitutions of two countries that experienced the first wave of protests—Morocco (the constitution of 29 July 2011) and Tunisia (the constitution of 27 January 2014)—in light of the normative framework of international human rights conventions, including the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social, and Cultural Rights (1966), and the demands forwarded in what is known as third-generation human rights.³ This will allow us to understand genuinely significant points and issues: to wit, how the precepts of international human rights law are applied and enacted when moving from theory to practice. It is not enough, after all, for human rights to be merely referenced in a state's constitutional order; such rights must exist and prevail in relations between individuals and groups, and they must be incorporated into decision-making and state public policies.⁴

A consideration of rights and freedoms in constitutional thought goes back to the writings of Aristotle (384–322 BCE), the founder of what today is known as constitutional law and political systems, in which he analysed and categorized the constitutions of more than 158 city-states in Greece, most prominently the constitution of Athens.⁵ Human societies striving for basic rights and freedoms, always forced to reconcile absolute freedom with power's necessary restrictions on the social order, did not end with the Greek city-states. It continued in other ancient civilizations such as Rome and elsewhere, and constituted a prime issue for religions, among them Islam. The Quran functioned as the religious community's constitution, its guidance incumbent on both the ruler and the ruled; it proclaimed rights and set basic rules for administering the affairs of state and believers.⁶

Human rights and liberties would assume a key position in human history as the civil state began taking shape—a state based on the will of the people and the rule of positive law rather than the ruler's absolute authority and clerical thought. A turning point was seen in the constitutional monarchy in England with the drafting of the Magna Carta in 1215, an agreement between the parliament and King John (1166–1216) that restricted the latter's absolute authority and upheld the rights of the people.⁷

Human rights evolved from there, as additional rights and liberties were championed during the European Enlightenment. The writings of philosophers and thinkers in the seventeenth and eighteenth centuries—John Locke, Jean Jacques Rousseau, Denis Diderot, David Hume— informed the American revolution of 1776 and the French revolution of 1789. This was manifested in the US Declaration of Independence, which famously states '...that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness...' ⁸ and in the 17 articles of the Declaration of the Rights of Man and of the Citizen, issued by the French Constituent Assembly. Article 16 of that charter states, 'Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution.'⁹

The continued struggle of peoples and societies for equality and justice and freedom from the shackles of exploitation and all manner of colonialism and servitude further influenced the values

and content of human rights. This was seen most clearly in the enormous contributions of socialist thought and popular revolutions against colonizers in the late nineteenth and twentieth centuries.¹⁰ It is therefore certain that human history will continue its march, searching for answers and solutions whenever challenges appear that threaten humanity and its existence.

This paper will be divided into three parts: 1) rights and liberties in the 2011 Moroccan constitution; 2) rights and liberties in the 2014 Tunisian constitution; and 3) an analysis of the status of rights and freedoms after their inscription in the constitution, analysing the role of institutions and the rule of law and how they are applied in the cases of Morocco and Tunisia.

Rights and Liberties in the 2011 Moroccan Constitution

A consultative committee was appointed by King Mohammed VI (assumed the throne in 1996) on 10 March 2011, tasked with revising the kingdom's 1996 constitution; the new constitution was promulgated by royal edict on 29 July 2011. Chapter 2 of the new constitution on rights and liberties begins with Article 19, which includes and upholds all human rights in general, both first- and second-generation rights, and even third-generation, leaving the rest of the articles in the chapter to flesh out the details. Article 19 states, 'Men and women shall enjoy on equal footing the civil, political, economic, social, cultural, and environment rights and freedoms set forth in this chapter of the constitution and in its other provisions, as well as in international conventions and charters ratified by Morocco, and this within the bounds of the provisions of the constitution and the immutable principles and laws of the Kingdom.'

In the remaining articles of the chapter, the constitution enumerates the rights and liberties enjoyed by Moroccan citizens, including the right to life (Article 20), the right to the safety of their persons and relatives and the protection of their property (Article 21), and the right to be free of any infringement of their physical and moral person by any party. This chapter also prohibits all 'cruel, inhuman, or degrading treatment,' considering 'torture in all forms and by any person' to be 'a crime punishable by law' (Article 22).

The framers of the constitution were careful to implement some recommendations of the Equity and Reconciliation Commission,¹¹ attempting to make a clean break with the grave human rights violations in Morocco, committed by the state against dissidents in the Years of Lead in the 1970s and 80s, during the reign of the late King Hassan II (1961–1999). This attempt is clear in Article 23, which states, 'No person may be arrested, detained, prosecuted, or convicted except in the cases and in conformance with the procedures defined by law. Arbitrary or secret detention and enforced disappearance are among the gravest crimes and expose their perpetrators to the most severe penalties.'

The care of the framers is apparent in other articles as well, among them Article 25, which states, 'Freedom of thought, opinion, and expression in all forms is guaranteed,' and Article 24, which states, 'Every person has the right to the protection of their private life, and the inviolability of the home shall not be infringed. No search may be conducted except according to the conditions and procedures set forth in law.' The final paragraph of that article states, 'Freedom to move and

settle in the national territory and leave and return to it is guaranteed to all in accordance with the law.’

Article 29 states, ‘The freedoms to meet, assemble, peacefully demonstrate, establish associations, and enjoy syndicate and political membership are guaranteed,’ with the conditions for the exercise of these freedoms left to the law. The article also adds a provision found in all previous constitutions since 1962: ‘The right to strike is guaranteed; an organic law shall determine the conditions and modalities of its exercise.’¹²

Most of the rights enshrined in the 2011 constitution are enumerated in Article 31, which states that the state and its institutions, with the territorial ‘collectivities’—what are known in some Arab states as provincial or local councils— shall take action to facilitate male and female citizens’ access to health care and treatment; a quality, accessible, modern education; adequate housing; work and the support of public authorities in finding employment or self-employment; and water and a healthy environment, as well as provide the elements of sustainable development.

These rights are also supported by the preamble of the constitution, which states, ‘The Kingdom of Morocco, committed to its irreversible choice, strives to build a democratic state ruled by truth and law. It resolutely continues down the path to cement and strengthen the institutions of a modern state in which everyone enjoys security, dignity, equality, equal opportunity, social justice, and the elements of a dignified life in the scope of the inseparability of the rights and duties of citizenship.’ The preamble adds that Morocco, as an active member of international organizations, is committed to honouring the principles, rights, and duties set forth in international conventions and adhering to globally recognized human rights.¹³

An analysis of the content of the rights and liberties ostensibly enjoyed by Moroccan citizens under various articles of the 2011 constitution must conclude that the constitution enumerates a set of civil rights and liberties. It designates an entire chapter (Chapter 2 on fundamental freedoms and rights) that includes 22 articles in which all manner of rights and freedoms are enumerated, civil and political, as well as economic, social, cultural, and environmental.¹⁴

It also enshrines a set of new privileges for individuals and their civic formations, set forth most explicitly in Article 15, which gives citizens ‘the right to present petitions to the public authorities,’ and paragraph 3 of Article 12, which states, ‘Associations interested in public affairs and non-governmental organizations shall contribute, in the framework of participative democracy, in the drafting, implementation, and evaluation of the decisions and projects of elected institutions and public authorities. These institutions and authorities must regulate this participation in accordance with the conditions and modalities defined by law.’ In addition, Article 13 states, ‘The public authorities shall take action to create bodies for consultation with the purpose of involving social actors in the drafting, implementation, and evaluation of public policies.’¹⁵

The question here is not, as some assume, about how expansive these rights and freedoms are. Nor is it whether and how they are inscribed in statute. The fundamental question is about the guarantees provided by the constitution and the degree to which these are vague and open to more than one interpretation. This becomes clear when the articles’ content is closely compared. After several articles elaborate rights and liberties at length, Article 31, for example, effectively denudes

them of any genuine guarantee or commitment by limiting the state's responsibility 'to facilitate access' to them rather than specifying them as duties incumbent on the state toward its citizens.¹⁶

In addition, there is the question of the constitution's conception of the rights and liberties within it, which is contradictory. The preamble affirms the Kingdom of Morocco's adherence to globally recognized human rights,¹⁷ meaning that the constitution conceives of human rights as universal. However, other articles narrow the scope of these rights and freedom by linking them to national identity and the Kingdom's immutable principles.¹⁸

It is noteworthy that the 1996 constitution offered better guarantees for some rights and liberties, although it was not as liberal in granting rights and freedoms when compared to the 2011 constitution, which is more expansive in scope while narrower in actual content. For example, in regard to the rights and liberties enumerated in Articles 9 and 13 in the 1996 constitution, the text states that 'the constitution guarantees' instead of the phrase 'are guaranteed' in the 2011 version, which is more pliable. The 1996 text states that 'work and education are a right,' meaning that the state is required to give citizens this right. In contrast, Article 31 of the 2011 constitution says simply that the state shall take action to facilitate access to the rights it enumerates, which does rise to the level of a right and prescribes no obligation.¹⁹

Rights and Liberties in the 2014 Tunisian Constitution

Writing a constitution—a framework regulating the political life of societies living in a phase of transition from one political situation to another—is a highly contentious endeavour, one that highlights the stark differences between social forces, political parties, and elites' ideologies.²⁰ Such contention was certainly present in Tunisia, as demonstrated by the constitution writing process. The National Constituent Assembly delayed writing the constitution for more than a year, although it was originally scheduled for completion in late 2012, and it issued several drafts following observations and criticisms from various parties. The final version was approved by 92 per cent of assembly members on 26 January 2014 and the new constitution promulgated the following day.²¹

The new constitution preserves the shape of the civil state as aspired to by the constitution of the first republic in 1959,²² thanks to a focus on consensus and participation in the drafting process instead of the logic of win-lose and conflict. The new constitution went even further, however, in explicitly affirming the nature of the civil state, stating in Article 2 that Tunisia is a civil state based on citizenship, the will of the people, and the sovereignty of law. This article may not be amended. At the same time, Article 1 affirmed Islam as the national religion,²³ while paragraph 1 of Article 6 states that the state is the guardian of religion and the guarantor of freedom of belief, conscience, and the exercise of religious practices for all citizens within the framework of the rule of law and citizenship.²⁴

The 2014 constitution, consisting of 149 articles in ten chapters, devotes Chapter 2 to rights and liberties (Articles 21 to 49).²⁵ The most significant rights recognized are those related to the value of human life and the requirements for a dignified life, such as the right to work, health, education,

and a safe environment.²⁶ The first three articles of the chapter (21–23) articulate the foundation on which all other rights rest.

Article 21 states, ‘Citizens both male and female are equal in rights and duties and are equal before the law without discrimination. The state shall guarantee citizens, male and female, individual and civic rights and freedoms and provide them with the conditions for a dignified life.’ Article 22 states, ‘The right to life is sacred and may not be infringed except in the most exceptional cases as regulated by law,’ while Article 23 affirms state protection for ‘human dignity and physical integrity. It prohibits psychological and physical torture. The crime of torture is not subject to a statute of limitations.’²⁷

Other than the freedoms guaranteed in the general principles, those freedoms enumerated in Articles 31 and 37 are the most valuable and the most meaningful in increasing freedom in Tunisia in the post-Ben Ali era. Article 31 states, ‘Freedom of opinion, thought, expression, information, and publication is guaranteed. These freedoms are not subject to prior censorship.’ Article 37 states, ‘Freedom of assembly and peaceful demonstration is guaranteed.’²⁸

The constitution puts all restrictions on the exercise of the rights and liberties it sets forth in one article instead of appending a restriction to each one, as is the case with many other constitutions, such as the Moroccan one. These restrictions are enumerated in Article 49, which states, ‘The law shall define the limitations on the rights and liberties guaranteed by this constitution and their exercise so as not to undermine their essence. These limitations can only be established as required by a democratic civil state and with the aim of protecting the rights of others, or pursuant to the requirements of public order, national defence, public health, or public morals, and provided these limitations are proportionate to their objectives. Judicial authorities shall ensure the protection of rights and freedoms from any infringement. No amendment may undermine the human rights and freedoms guaranteed in this constitution.’²⁹

It is therefore clear from this and the analysis in part one that the new constitutions of Morocco and Tunisia, despite a difference in the scope of the rights and freedoms they set forth—which is largely attributable to their divergent political experiences and the nature of their systems of governance—both draw substantially on the content of international human rights laws. They also both grant many freedoms³⁰ that were lacking or not so explicitly enumerated in the two countries’ previous constitutions.

In order to more closely read the constitutional experiences in Morocco and Tunisia, such that the rights and freedoms enumerated in the constitutional text are not viewed as empty words and articles, part three of this paper will look at the various legal and institutional trajectories that followed from the constitution, as well as any attendant development programs and plans. This will allow us to examine these rights and liberties as they exist in the daily lives of citizens, more than eight years and nearly six years after the new constitutions were adopted in Morocco and Tunisia respectively.

The Role of Institutions and the Rule of Law

The case of some constitutions promulgated over the last three decades in the wake of democratic transitions, such as in Eastern Europe and Africa in the late 1980s and early 1990s, demonstrates that drafting and adopting a constitution is not necessarily a desirable end in and of itself.³¹

However democratic any one constitution is or whatever principles and references are copied into its provisions, according to research on the development of constitutional thought, a constitution's fundamental, qualitative value lies in the objectives and avenues it opens toward the establishment of a modern democratic state.³² This is a state of institutions with the rule of law and the separation of powers, in which citizenship is an operative concept and there are guarantees for the exercise of rights and freedoms, established through constitutional foundations for areas of deep interest to society, such as the economy, education, and health.³³

The case of Morocco

After the revised constitution was promulgated in Morocco following a popular referendum in July 2011, there was much opposition to it from the February 20 protest movement and its allied political and social forces, which viewed the document as a kind of largesse that differed little in its value and essence from previous constitutions.³⁴ Following from the constitutional reforms, early legislative elections were called for 25 November 2011. With a turnout of 61 per cent (13 of 21 million eligible voters), the elections saw the Islamist Justice and Development Party (JDP) win the biggest bloc of seats in the parliament (107 of 395).³⁵

Based on the result, the JDP formed a government on 3 January 2012 led by its then secretary-general Abdelilah Benkirane. Benkirane was appointed prime minister by the King pursuant to Article 47 of the new constitution, which stipulates, 'The King shall appoint the prime minister from within the political party that leads in elections for members of the House of Representatives and based on their results.' This was the first time a government had included Islamists—at least those who accepted political participation—given the rules and limitations of the Moroccan political system,³⁶ although the JDP had participated in political life since 1997 and its members had been elected to parliament.

Moroccans had high expectations of the JDP and Benkirane, hoping they could restore trust in politics and the importance of partisan and popular participation in decision making, as well as respond to urgent economic and social demands, particularly by boosting per capita income, creating jobs, and stopping the decline of health and educational conditions, all of which had placed Morocco toward the end of Arab and international human development indices.³⁷ Expectations were especially high as the JDP government came in amid a dynamic popular climate in the wake of the Arab Spring and the emergence of the February 20 movement in Morocco. It was also believed that the 2011 constitution had granted significant new powers to the government and a greater margin for action that was not available to previous governments, explicitly giving the government executive tasks.³⁸

But many of these expectations were dashed. Benkirane's government lost its mandate with the legislative elections in October 2016, and today the government of Saadeddine Othmani (2016–2012) has been in office for more than half its term without making any notable economic and social improvements in the lives of many Moroccans. His government has also not made any tangible progress on honouring the rights upheld by the new constitutions when compared to the period before its promulgation.³⁹

Despite progress made by Morocco in indices measuring health, education, and per capita income, the country continues to rank low on the human development index (HDI). According to the UNDP and its Human Development Report, from 2011 to 2018 Morocco placed between 119 and 130 of 180 nations,⁴⁰ coming in at 121 in the latest report in 2019. It scores 0.676 on the HDI with an average per capita income of \$7,480, behind Tunisia and Algeria, which were ranked 91 and 82 respectively.⁴¹

Considering the 2011 constitutional reforms, neither the Benkirane nor the Othmani government made any political achievements or real change,⁴² whether in terms of their ability to exercise power as a genuine partner to the King, the real *de facto* and *de jure* power-holder,⁴³ or the influence they enjoy as an executive authority, which would re-value politics within institutions and encourage Moroccans to participate in elections.⁴⁴ It is to former Prime Minister Benkirane's credit that he was able to introduce a new way of communicating with the public that abandoned the typical condescension with which the political elite and power brokers address citizens for a more down-to-earth language that made him better able to engage with people.⁴⁵

The status of human rights in Morocco is currently deteriorating and affecting important constitutional freedoms, such as freedom of expression and the right to protest. As we noted above, the constitution provides no real guarantees for their exercise and they remain largely captive to constitutional interpretations, which rely on an analysis of the structure of the constitutional text and its democratic manifestations.⁴⁶ This goes beyond legal formalism to touch elements of decision making related to the rule of law and the principle of accountability and the value of institutional work based on the separation and independence of powers.⁴⁷ This is clear from the arrest and harsh sentencing of dozens of activists in Hoceima and the Rif in northern Morocco on 26 June 2018, which included sentences of up to 20 years in prison for some leaders of the popular movement, the *Hirak*,⁴⁸ which began in late October 2016 after a fish peddler was killed by a garbage truck.⁴⁹ Other activists in Jerada, located in eastern Morocco, were sentenced to prison on 17 March 2018 for terms of two to four years⁵⁰ following city-wide protests in late 2017, sparked by the death of young coal miners working in unsafe conditions without hope for better jobs.

Numerous other people were prosecuted and sentenced in 2018 and 2019, among them journalists and bloggers, on charges of infringing sanctities and the Kingdom's immutable principles and casting doubt on its institutions after they expressed their opinion of the state's developmental and political choices (some of them holding the King directly responsible), the corruption rampant throughout all sectors of the country, and the growing class divide between a minority enjoying the privileges of power and a monopoly on wealth and public utilities and a

majority of middle- and lower-class citizens watching their purchasing power erode and resisting marginalization and poverty.⁵¹

All this indicates that this is more about the authorities and rulers sliding into and utilizing historical contexts and the balance of political power in their engagement with critical voices, the opposition, and human rights issues than an expression of a clear, determined political will to move toward a democratic state ruled by law and institutions.⁵²

Despite the experience of the 1998 coalition government, arising out of a political consensus between the late King Hassan II and much of the opposition, during which the secretary-general of the Socialist Union of Popular Forces, Abderrahmane Youssoufi, assumed the post of prime minister, and despite two decades of a new era under the current King, who assumed the throne in 1999, with all the economic projects and developmental and rights-g geared reforms that ushered in—major infrastructure improvements, the National Human Development Initiative, the Justice and Reconciliation Commission⁵³—Morocco continues to exist in a grey, liminal zone between authoritarianism and democratization, taking one step forward only to quickly retreat.

This liminality is evident in the reports and recommendations of international organizations focused on human rights and democracy. So we find some praise for Morocco's efforts to advance basic rights and liberties, most recently from the UN Committee Against Torture in December 2019, which gave Morocco an A ranking after it passed a law establishing a national torture prevention instrument and gave the National Human Rights Council, as a national, constitutional institution, the mandate for its enforcement.⁵⁴

Yet other reports from no less important international organizations have noted Morocco's failure to make real inroads in the advancement of human rights and basic freedoms. For example, Freedom House's *Freedom in the World* report for 2018, issued in February 2019, classified Morocco as 'partially free' and ranked the country as fourth among Arab states, giving it 39 of 100 points based on indicators such as the electoral process, political pluralism, government performance, freedom of expression and belief, the formation and rights of civic organizations, the rule of law, and individual rights.⁵⁵

The case of Tunisia

Tunisians' devotion to effecting political transition via a constitutional framework reflects the experience and particularity of Tunisia in the modern era and the deep-rooted idea that 'every process of transformation or transition is rooted in a constitutional framework.'⁵⁶ Since the mid-nineteenth century, with the formation of the modern state, there has been an attempt to ground politics and political experience in a constitutional document. In 1861, Tunisia became the first Arab state to adopt a constitution; already in 1857 it had issued a declaration of rights.⁵⁷

The adoption of the 2014 constitution is the most significant step in the democratic transition in post-Ben Ali Tunisia. Upon adoption, legislative elections were called for on 26 October 2014 followed by presidential elections on 25 November, thereby concluding the transitional phase with the peaceful rotation of power.⁵⁸ There can be no doubt that this trajectory was bolstered by the democratic elements incorporated into the constitution, in terms of the nature and form of the civil

state and political system—a mixed parliamentary-presidential system—as well as the guarantees given for individual rights and freedoms, and the distribution and independence of authority, which precluded the centralization of power in any one body.⁵⁹

This represented a clear political success: it put Tunisia on the path to creating a unique Arab democracy out of the Arab Spring, turning the page on the police state that violated human rights, and embarking on a real transition through the formation of the Truth and Dignity Commission and the constitutional requirement for transitional justice in all spheres by a particular deadline (Article 148).⁶⁰ Nevertheless, today the country faces challenges and development issues that impact a broad swathe of Tunisians, most significantly the urgent need to improve the critical socioeconomic situation, which has changed little since the beginning of the revolution. In fact, it may have worsened in the past few years according to data and indicators. According to official data from the National Institute for Statistics in 2019, GDP growth in the first nine months of that year came in at 1.1 per cent, while the unemployment rate exceeded 15 per cent and consumer inflation came in at 6.3 per cent.⁶¹

Tunisians' dissatisfaction with the economic and social rights they enjoy—the ability to find a job, income improvements, actual access to educational and health services—has led them to repeatedly protest the outcomes of the revolutionary experience and the policies of the new ruling elite, despite the gains made in fundamental political and civil liberties, such as freedom of expression and opinion, freedom of association, and freedom of assembly. Since 2011, Tunisia has been ranked first among Arab countries in reports from international organizations and agencies looking at democracy and freedom.⁶²

This concrete vision of democracy and change—exemplified in the revolutionary slogan 'dignity, bread, and justice'—helped propel an independent, unknown candidate, Kais Saied, to the presidency following a run-off election on 13 October 2019. Saied won 72.71 per cent of the vote, compared to 27.29 per cent for Nabil Karoui, with turnout of 55 per cent (3,892,085 voters), according to the Supreme Independent Elections Commission.⁶³

The overwhelming support for the current president could be attributed to voters' view of him as an honest person with a simple, credible, quasi-populist discourse that stands in direct opposition to the ideas and corruption of the post-Ben Ali system.⁶⁴ It can also be read as a rejection of the conventional politics and mentalities of existing parties, both those in the government majority and the opposition,⁶⁵ which have failed to solve the country's socioeconomic problems nine years after Ben Ali was deposed and despite more than one president and government.⁶⁶

The legislative elections of 6 October 2019, conducted between the presidential election and the run-off, surprised analysts. On one hand, voter turnout did not increase: it came in at 41.70 per cent in 2019, compared to 69 per cent in 2014. On the other hand, the strength and influence of political parties clearly declined. This was particularly true of major parties with substantial organizational and mobilization capabilities and a coherent ideological, identity-based, and geographic base, such as the secular Nidaa Tounes, which won just three seats compared to 85 in 2014, and the Islamist Ennahda, which won 52 of 217 seats. Although it won the largest plurality in the 2019 elections, it still won less than its 69 seats in 2014.⁶⁷

To a great extent, these results reflect the fact that most Tunisians are less interested in ideological and doctrinal conflicts than in someone who can secure better living conditions, combat corruption and the squandering of public monies, and champions a more just, equitable economic policy that could reduce class and geographic disparities.⁶⁸

Conclusion

Issues of rights and liberties in new Arab constitutions, and the cases of Morocco and Tunisia, lead us to conclude that the objective of a constitution is not simply to enumerate a set of economic, social, and cultural rights and affirm respect for freedoms, although this is important and valuable. Rather, it is to institutionalize public debate and function as the basis of a social and political contract, which is critical for the development of state institutions and thought about development models and plans based on people's needs for a dignified life, improvements in their daily lives, and better quality and access to health and educational services.

Citizens in Morocco and Tunisia today, despite the countries' divergent contexts, political trajectories, and constitutions, view reality from the perspective of the margins available to them to express their opinions and ideas as well as their prospects for overcoming unemployment and moving up the social ladder to secure a better future for themselves and their children.

We have seen that although a large segment of Tunisians enjoy the democratic space to express their political and ideological freedom, they nevertheless confront multiple socioeconomic crises. Many Tunisians refrained from voting in the 2019 legislative and presidential elections as a way to express their dissatisfaction. In Morocco, although the 2011 constitution guaranteed some freedoms of opinion and expression, this has not stopped the authorities from arresting and imprisoning individuals and activists who expressed their opinions and criticized official policies.

About the Author

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- ⁹ Al-Khatib, pp. 6–7.
- ¹⁰ Al-Bazaz, Mohammed (2017–18) *Huquq al-Insan wa-l-Hurriyat al-'Ammah* [Human Rights and Civil Liberties] (n.p.), p. 74.
- ¹¹ The commission was formed to address past grave human rights abuses from 1956 to 1999. Its establishment was announced on 7 January 2004 when the King met the late commission chair, Driss Benzekri, and the 17 other members.
- ¹² Bill no. 97.15 setting the conditions and modalities for the exercise of the right to strike was tabled in the House of Representatives on 6 October 2016 under the Benkirane government; it has still not been adopted as law.
- ¹³ The preamble of the 2011 constitution, which is considered an indivisible part of the document.
- ¹⁴ The 2011 constitution, Chapter 2, Articles 19–40, accessed 16 December 2019, <https://bit.ly/2IKwo6B>.
- ¹⁵ The government enacted this important constitutional rights with Law 44.14 defining the conditions and modalities for the submission of petitions to the public authorities.
- ¹⁶ Article 31 states, 'The state, public institutions, and the territorial collectivities shall take action to mobilize all available means to facilitate the conditions for citizens' access, on equal footing, to the right to: health care and treatment; social protection and health coverage; mutually or state-organized solidarity; a quality, accessible, modern education; education on the adherence to Moroccan identity and immutable national principles; professional instruction and physical and art education; adequate housing; work and the support of public authorities in finding employment or self-employment; access to public employment on the basis of merit; water and a healthy environment; and sustainable development.'
- ¹⁷ Preamble to the 2011 constitution.
- ¹⁸ Article 19, 2011 constitution.
- ¹⁹ Article 9 of the 1996 constitution states, 'The constitution guarantees to all citizens the freedom to move and settle in all parts of the Kingdom, freedom of opinion and freedom of expression in all its forms, freedom of assembly, and the freedom to form associations and the freedom to join any syndicate or political organization at its discretion. No limitation may be placed on these freedoms except by law...' Article 13 of the 1996 constitution explicitly states, 'Education and work are the right of all citizens equally.' See a copy of the text on the website of the Moroccan House of Representatives, accessed 19 December 2019, <https://bit.ly/33of00X>.
- ²⁰ Sharp, Gene (2009) *Min al-Diktatoriya ila-l-Dimuqratiya: Itar Tasawwuri li-l-Taharrur* [From Dictatorship to Democracy: A Conceptual Framework for Liberation], trans. by Khaled Dar Omar (Beirut: al-Dar al-Arabiya for Sciences Publishers), pp. 101–02.
- ²¹ Welchselbaum, Geoffrey and Xavier Philippe (2015) 'Le processus constituant et la constitution tunisienne du 27 Janvier 2014: Un modèle à suivre?' *Maghreb Machrek* 223 (1), pp. 49–50.
- ²² The 1959 Tunisian constitution, inclusive of all amendments to 2008, accessed 16 September 2019, https://www.constituteproject.org/constitution/Tunisia_2008.pdf?lang=ar.
- ²³ Article 1 states, 'Tunisia is a free, independent, sovereign nation. Islam is its religion, Arabic is its language, and its system is republican.'
- ²⁴ Paragraph 1 of Article 6 states, 'The state is the guardian of religion and the guarantor of freedom of belief, conscience, and the exercise of religious practices. It guarantees the neutrality of mosques and houses of worship against partisan utilization.'
- ²⁵ The 2014 Tunisian constitution, accessed 17 September 2019, <https://bit.ly/2tsNem8>.
- ²⁶ Article 38 states, 'Health is a right for every human being. The state shall guarantee health care and preventive care for every citizen and provide the necessary capacities to ensure the safety and quality of health services. The state shall guarantee free treatment for those without support and with limited income, and it shall guarantee the right to

social coverage as regulated by law.' Paragraph 1 of Article 39 states, 'Education is compulsory to the age of sixteen. The state shall guarantee the right to free public education at all levels and shall strive to provide the capacities necessary to achieve quality education and instruction.' Article 40 states, 'Work is the right of every citizen, male and female. The state shall take measures necessary to guarantee it on the basis of competence and fairness. Every citizen, male and female, shall have the right to adequate working conditions and a fair wage.' Article 45 states, 'The state shall guarantee the right to a healthy and balanced environment and the right to contribute to a safe climate. The state must provide means to ensure the eradication of environmental pollution.'

²⁷ The 2014 Tunisian constitution, accessed 17 September 2019, <https://bit.ly/2tsNem8>.

²⁸ Ibid.

²⁹ Al-Mejri, Khaled (2017) *Dawabit al-Huquq wa-l-Hurriyat: Ta'liq 'ala-l-Fasl 49 min al-Dustur al-Tunisi* [Parameters of Rights and Liberties: Comment on Article 49 of the Tunisian Constitution] (Tunis: Institute for Democracy and Electoral Assistance).

³⁰ Abd al-Latif, Kamal (2011) 'al-Jadal al-Dusturi fi al-Rahin al-'Arabi' [The Constitutional Debate in the Arab Present], *al-Maghribiya li-l-Siyasat al-'Umumiya* 16, p. 8.

³¹ Madi, Abd al-Fattah (2011) 'Hal Yumkin An Tujhid al-Dasatir al-Thawrat al-Dimuqratiya? Qira'a fi-l-Tajriba al-Dusturiya al-Misriya ba'd Thawrat Yanayir' [Can Constitutions Thwart Democratic Revolutions? A Reading of the Egyptian Constitutional Experience after the January Revolution], *al-Maghribiya li-l-Siyasat al-'Umumiya* 16; Ondoua, Alain (2012) 'La population en droit constitutionnel: Le cas des pay d'Afrique francophone,' *Afrique Contemporaine* 2 (242), p. 92.

³² Tahir, Narjis and Donia Ben Romdhane (June 2013) *Siyaghat Mashru' al-Dustur: Tajarib Muqarina wa Durus Mustafada* [Constitution Writing: Comparative Experiences and Lessons Learned] (Sweden: Institute for Democracy and Electoral Assistance).

³³ Brandt, Michele, Jill Cottrell, et. al (2012) *Wad' al-Dustur wa-l-Islah al-Dusturi: Khiyarat 'Amaliya* [Constitution-making and Reform: Options for the Process] (Lebanon: Interpeace), p. 15.

³⁴ Protests and demonstrations by the February 20 movement did not stop; they even continued after the King called for constitutional reforms and during the run-up to the referendum in July, although they did decline. Forces and parties allied with the movement also initiated campaigns calling for a boycott of the constitutional referendum, and they convened several meetings and symposia to express their view of the constitution-writing process and the content, believing that the constitution did not differ substantially from previous constitutions in terms of the democratic reforms it offered.

³⁵ Figures from the Interior Ministry, the official body tasked with overseeing elections.

³⁶ al-Ani, Khalil (2016) 'al-Islamiyun al-'Arab ba'd Khams Sanawat min al-Rabi' al-'Arabi: As'ilat al-Mashru' wa-l-Idiyulujjiya wa-l-Tanzim' [Arab Islamists Five Years after the Arab Spring: Questions of the Project, Ideology, and Organization], *Siyasat Arabiya* 18, p. 48.

³⁷ UNDP (2015) *Human Development Report*, pp. 32–33.

³⁸ Abdessadek, Taoufik (2019) 'al-Muqaraba al-Dusturiya li-Qadaya al-Intiqal al-Dimuqrati fi-l-Maghrib: Ishkaliyat Tawzi' wa Istiqlal al-Sultat' [The Constitutional Approach to Democratic Transition in Morocco: The Question of the Distribution and Independence of Authorities], *Lubab* 2 (1), <https://bit.ly/2xF97Ri>.

³⁹ In 2011, Morocco was ranked 130 of 187 states on the HDI and 15 of 20 Arab states. Indicators showed that privation reached 45 per cent; 12.3 per cent of the population is vulnerable to poverty while 3.3 per cent live in absolute poverty.

⁴⁰ UNDP (2019) *Human Development Report*, accessed 20 December 2019, <http://hdr.undp.org/en/data>.

⁴¹ UNDP (2019) *Human Development Report*, p. 301, accessed 20 December 2019, <http://hdr.undp.org/sites/default/files/hdr2019.pdf>.

⁴² According to Global Democracy Ranking, a Vienna-based organization ranking democracies, in 2015 Morocco was still ranked quite low at 99 of 113 states, with a score of 45.3 of 100. See http://democracyranking.org/ranking/2015/data/Scores_of_the_Democracy.

⁴³ Nabil Mulayyin, Mohammed (2017) *Fikrat al-Dustur fi-l-Maghrib: Watha'iq wa Nusus 1901–2011* [The Concept of the Constitution in Morocco: Documents and Texts 1901–2011] (n.p.: Tel Quel Media), pp. 204–05.

⁴⁴ In a meeting with students at the Higher Institute for Media and Communication in Rabat on Wednesday, 1 November 2015, former Prime Minister Benkirane spoke about the limited nature of his government's prerogatives and said that some ministers were operating outside his control. In this, he was repeating what he had said from the moment the February 20 movement took off: that he had come to save the state and guarantee state stability in the face of a public in revolt.

⁴⁵ Benkirane's comments, at times scathing and ironic, were consistently well received in the street and by much of the public due to their spontaneity and simplicity, regardless of their actual political content.

⁴⁶ *Al-Dusturaniya: Mawsu'at Stanfurd li-l-Falsafa* ('Constitutionalism,' from the Stanford Encyclopedia of Philosophy], trans. by Abd al-Rahman al-Mashaal, Hikma, accessed on 22 December 2019, <https://bit.ly/2QcfHnO>.

⁴⁷ Tareq, Hassan (2011) 'Fi al-Dusturaniya al-'Arabiya al-Jadida: As'ilat al-Hawiya al-Muwatana Madaniyat al-Dawla wa Nizam al-Hukm' [The New Arab Constitutionalism: Questions of Identity, Citizenship, the Civil Nature of the State, and the System of Governance], *al-Maghribiya li-l-Siyasat al-'Umumiya* 16, p. 27.

⁴⁸ Tel Quel (2018) 'al-Tafasil al-Kamila li-l-Ahkam al-Sadira fi Haqq Mu'taqali Hirak al-Rif: al-La'iha' [Full Details of the Sentences against Rif Detainees: The List], June 27, <https://bit.ly/2Zk4eXG>.

⁴⁹ Al-Idrisi, Mohammed (2017) 'al-Hirak al-Ihtijaji bi-l-Rif al-Maghribi: al-Asbab wa-l-Ma'alat' [The Protest Movement in the Moroccan Rif: Causes and Outcomes], Barq for Research and Studies, June 1, accessed 17 November 2019, <https://bit.ly/2PJ8L2E>.

⁵⁰ 'al-Maghrib: al-Hukm bi-Sijn Majmu'a min Nushata' Hirak Jirada' [Morocco: Prison Sentences for Jerada Movement Activists], DW Arabic, <https://bit.ly/2EH4I0r>.

⁵¹ According to a statement from the Moroccan Association for Human Rights, the rapper known as al-Kinawi was sentenced to prison on 25 November 2019 after he and two colleagues released his song, 'Long Live the People,' in which he sharply criticized those responsible for the country's poor conditions, holding the King directly responsible as the actual ruler of the state. In 2018, Aziza al-Hamri was sentenced to prison after explicitly criticizing the president and holding him responsible for the injustice against the residents of her Casablanca neighborhood of Ain al-Sabaa, who were arbitrarily evicted from their homes. Mohammed al-Sakaki, known as Mol al-Kaskita, was arrested on 30 November 2019 and referred to trial on various charges, including insulting constitutional institutions; he was sentenced to four years in prison. Mohammed Boudouh, known as Mol al-Hanout, was also arrested on 9 December 2019 and referred to trial on charges of insulting constitutional institutions and legally constituted official agencies. See Lakom2 (2019) 'Huquqiyun: al-Maghrib Yashhad Mawja Jadida min al-I'tiqalat bi-Dhari'at Ihanat al-Muqaddasat' [Rights Defenders: Morocco Sees New Wave of Arrests on Grounds of Insulting Sanctities], December 16, accessed 19 December 2019, <https://bit.ly/2M7mQED>.

A young student in Meknes was sentenced to three years in prison on virtually the same charges on 19 December 2019, while leftist political activist Abdelali Bahmad, known as Bouda Ghassan, is currently being tried before the first-instance court in Khenifra after being arrested from his home in Aguelmous on 17 December 2019. See *Akhbar al-Yawm* (2019), December 23.

The independent press has also been increasingly circumscribed in recent years, as demonstrated by numerous incidents. Taoufiq Bouachrine, the owner and director of the daily *Akhbar al-Youm* was sentenced to 12 years in prison and a fine in 2018 on charges of the rape and sexual assault of women journalists on his staff. Journalist Hamid El Mehdaoui, the manager of the online news site Badil, was sentenced to three years in prison in 2018 on charges related to threats to domestic security. He had been detained in Hoceima in 2017 while covering the Rif protests and was sentenced to one year in prison on charges of chanting with protestors. On 30 September 2019, journalist Hajar Raissouni was sentenced to one year in prison for having an abortion and extramarital sexual relations; after serving a month of her sentence, she was released as part of a royal amnesty. Journalist Omar Radi was summoned by police in Casablanca on 26 December 2019 and referred to trial on charges of insulting the judiciary. He had recently condemned the harsh sentences given to the Rif activists on social media and expressed his solidarity with them. Radi is one of the most prominent leftist figures of the February 20 movement and was known for his investigative journalism exposing financial and administrative corruption in the state bureaucracy and among state officials, including pieces on corruption in land acquisition, education, and sand quarries.

⁵² Azbeg, Hynd Saidi (2014) *Processus de democratization et monarchie constitutionnelle au Maroc*, doctoral thesis for the University of Bordeaux, Montesquieu.

⁵³ The Human Development Initiative was launched on 18 May 2005 as a national socioeconomic program to combat poverty and marginalization by assisting vulnerable communities in operating income-generating activities.

⁵⁴ About the National Human Rights Council, accessed 24 December 2019, <https://bit.ly/2rlcVnS>.

⁵⁵ Freedom House (2019) *Freedom in the World*, accessed 31 December 2019, <https://bit.ly/3air8mx>.

⁵⁶ Al-Warghi, Jalal (2014) *Tunis: Qira'a fi-l-Tajriba al-Dusturiya* [Tunisia: A Reading of the Constitutional Experience] (Doha: Al Jazeera Center for Studies).

⁵⁷ Al-Gharairi, Ghazi (2011) 'Tunis min Ta'sis ila Akhir' [Tunisia: From One Establishment to Another], *al-Maghrib al-Muwahhad* 12, p. 12.

⁵⁸ Dobry, Michel (2000) 'Les transitions démocratiques, regard sur l'état de la transitologie,' *Revue française de science politique* 5, pp. 4-5; Hermet, Guy (1997) 'Le concept de transition démocratique,' in *La transition démocratique: Paradigme nouveau ou acceleration de la modernité?* Cahier de la foundation Abderrahim Bouabid 11.

⁵⁹ Quwayba, Habib (2014) ‘Qira’a fi Dustur al-Jumhuriya al-Thaniya li-Tunis fi Daw’ al-Fasl bayn al-Sulat’ [A Reading of the Constitution of Tunisia’s Second Republic in Light of the Separation of Powers], Walid Fehri blog, March 11, accessed 22 December 2019, <https://bit.ly/36Y3R7v>.

⁶⁰ The commission is tasked with overseeing all phases of transitional justice. Established on 24 December 2013, the commission undertook to expose past violations, bring those responsible to account, and provide restitution to victims to achieve national reconciliation. The commission is covering all violations from 1955 to the date of its establishment. For more about its mandate, see <http://www.ivd.tn/livd/mandat-de-livd/>.

⁶¹ National Institute for Statistics, accessed 23 December 2019, www.ins.tn/ar/communique-de-presse.

⁶² Freedom House (2019).

⁶³ Its website is <http://www.isie.tn/ar/>.

⁶⁴ Gharbali, Fouad (2019) ‘Ra’is Tunis al-Jadid: Sha’bawiya fi Zaman al-Masha’ir al-Hazina’ [Tunisia’s New President: Populism in an Era of Sadness], *as-Safir al-Arabi*, December 24, accessed 2019, <https://bit.ly/2ERFexn>.

⁶⁵ Arab Center for Research and Policy Studies (2019) ‘al-Intikhabat al-Ra’isiya fi Tunis: Qira’a fi Nata’ij al-Dawr al-Awwal’ [Presidential Elections in Tunisia: A Reading of the First-Round Results], September 23, accessed 22 December 2019, <https://bit.ly/2savyLL>.

⁶⁶ Al-Arabi al-Jadid (2018) ‘Sab’ Sanawat ‘ala Thawrat Tunis: Hurriyat bi-Ta’m al-Masa’ib al-Iqtisadiya’ [Seven Years after the Tunisian Revolution: Freedom with the Taste of Economic Hardship], January 12, accessed 19 December 2019, <https://bit.ly/2rn5vAv>.

⁶⁷ Results on the elections commission website at <https://bit.ly/34QXEc0>.

⁶⁸ Raghavan, Sudarsan (2019) ‘In a Blow to Its Political Elites, a Modest Law Professor Is Set to Become Tunisia’s Next President,’ *Washington Post*, October 13, accessed 23 December 2019, <https://wapo.st/2WIHGGe>.