

Human Rights Law in Tunisia in the Post-Arab Spring Era

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Abstract

Tunisia was at the heart of the series of uprisings known as the Arab Spring, which resulted in the change of the regime. The people of Tunisia demanded political and social changes for a better economy, democracy, human rights, and equality. Since the uprising in 2011, the changes in law, society and politics have continued. The efforts towards change including public participation, the coalition between civil society organisations and political parties have amalgamated successfully as demonstrated by and recognised in the Constitution of 2014. The study of law and the society of Tunisia constitutes the core of this research aiming to explore why Tunisia is a beacon of hope in the Middle East and North Africa (MENA) and how it has implemented human rights successfully since 2011.

This is explored through the national legislation of Tunisia as well as investigating the role of the United Nations Universal Periodic Review mechanism (UPR). This research investigates the interwoven relationship between these three factors: social movement, civil societies, and the UPR and the outcomes of their cooperation in the law. This research proposes that the UPR mechanism and civil society organisations influenced the progress that Tunisia made in law and policy. The new Tunisian Constitution was developed between 2012 and 2014 with the recommendations of states considered by the Tunisian Parliament and the executive power. The 2014 Constitution included recommendations from states, non-governmental organisations (NGOs) and international organisations suggested from the second cycle of the UPR in 2012. The positive changes in law have continued, with Tunisia welcoming more UPR recommendations, conducting reports and ratifying new voluntary international protocols. Tunisia is progressing, learning, and advancing democracy and its human rights law. However, it has not been without its challenges and whether it can be maintained, particularly in the

current financial crisis and pandemic era, remains to be seen as these factors have already harshly influenced progress on the Tunisian nation.

In Loving Memory of Dr Barbara Harrel-Bond

This research is dedicated to the human rights defenders and those who lost their lives in the name of human rights, equality and freedom in the Middle East and North Africa.

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Abbreviations

AI	Amnesty International
CEDAW	Convention on Elimination of Discrimination against Women
CS	Civil Society
CSO	Civil Society Organisations
EU	European Union
GRO	Grassroots Organisation
HRC	Human Rights Council
HRW	Human Rights Watch
ICCPR	International Covenant on Social and Political Rights
ICESCR	International Covenant for Economic Social and Cultural Rights
INGO	International Non-Governmental Organisation
IO	International Organisation
MENA	Middle East and North Africa
NCA	National Constituent Assembly
NDQ	National Dialogue Quartet
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institutions
SUR	State Under Review
TAN	Transnational Advocacy Network
UDHR	Universal Declaration of Human Rights
UGTT	General Union of Tunisian Workers
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNDP	United Nations Development Program
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UPR	Universal Periodic Review

Thesis Outline

The first chapter explains the original contribution this thesis represents, delimiting its scope and relevance within the current scholarship. It addresses the geo-political coordinates that serve as the background of the Arab Spring, as well as outlining the research questions and methodology. The opening chapter also explains why Tunisia is a relevant case-study from which to analyse the current and potential consequences of the Arab Spring in Tunisia and the region. The chapter introduces the UPR as an analytical tool to explore the influence of intergovernmental processes in changing domestic realities, and especially, through the engagement of the civil society with actors operating beyond their own national borders. It clarifies the impact of the Arab Spring on the legal and political structure of society. The chapter outlines the constitutional changes which took place since the start of the Arab Spring in 2010. Additionally, the changes and challenges to the legal and political system of Tunisia are discussed from a human rights perspective. Finally, it explains the research structure, methodology, literature review, main research questions and the content of the research.

The second chapter uses transnational advocacy network theories, spiral model, and boomerang pattern to analyse the relationship between Tunisian NGOs and international organisations. Within those theoretical frameworks, this chapter seeks to explain the role of national and international organisations in promoting human rights after the Arab Spring in Tunisia. Specifically, this chapter investigates the influence of NGOs on improving human rights in Tunisia, a country with the highest number of INGOs and NGOs in the MENA. The chapter further goes on to explore whether there is a correlation between the unusually high presence of INGOs and Tunisia's surprising compliance/commitment with human rights treaties and whether their involvement affects the implementation of human rights. The chapter also provides an overview of the main NGOs involved in promoting human rights in Tunisia and how they have (or have not) adopted a human rights approach to seek alliances and

implement their work on the ground in a more effective manner. To this end the chapter: provides a snapshot of the main civil society organisations operating in Tunisia to implement a human rights agenda during and after the Arab Spring; highlights the challenges reported in the promotion and protection of human rights following the transitional period; outlines the role of the civil society in reframing the legal framework and any subsequent produce institutional changes from a human rights perspective; and main international human rights instruments and bodies used by civil societies with that aim.

The third chapter examines the legislative processes and administrative practices undertaken to incorporate human rights norms in national law pre- and post-Arab Spring. Likewise, the outcomes of the new constitution on the implementation of human rights will, also be examined.

Chapter four tackles the role of the UN, focusing on the outcomes of the UPR for Tunisia and explores possible explanations underpinning the success of the UPR process in terms of improvement of the human rights situation in Tunisia. The influence of the UPR and transnational activities of the organised civil society on the protection of human rights in Tunisia's transition also will be addressed.

Chapter five will summarise the research outcomes and outline possible further lines of enquiry.

1 The Arab Spring in Tunisia: Geopolitical, Historical and Normative Coordinates

1.1 Introduction

On 17 December 2010, the self-immolation of Mohamed Bouazizi, a street fruit vendor, in Tunisia marked the beginning of the phenomenon of uprisings, the wave of protests and anti-government demonstrations that became known as Arab Spring.¹ The Arab Spring is considered an effect of the Tunisian Revolution, also known as the Jasmin Revolution, that spread among other countries, particularly Libya, Egypt, Yemen, Syria and Bahrain. These anti-government movements led to riots, domestic unrest and change of government across the region and brought about the prospect of a better of quality of life. However, the power vacuum they created resulted in different outcomes, and countries such as Syria, Libya and Yemen have been engulfed in protracted civil conflict ever since.

These series of riots and movements brought hope to liberal politicians and scholars, optimistic that democracy would be adopted and prevail in the Middle Eastern and North Africa MENA political systems,² transitioning power from a dictatorial regime to a more democratic government. They were confident that a democratic government would reform the legal system by providing a human rights regime and recognising civil liberties.³ The Arab Spring changed the image of the Middle East and the Arab world globally.⁴ What had begun as a revolutionary wave of protests and demonstrations, resulted in the dramatic overthrow of three heads of states.⁵ The first of these, President Zine El Abidine Ben Ali, fled to Saudi Arabia in January

¹ Frank Gardner, 'How the Arab Spring began', (BBC, 16 Dec 2011) < <https://www.bbc.co.uk/news/av/world-middle-east-16212447/how-the-arab-spring-began> > access 20 Sep 2015

² Shadi Mokhtari, 'The Middle East and Human Rights: Inroads Towards Charting its Own Path', 10 Nw. J. Hum. Rts. 194 (2012).

³ Ibid

⁴ Kamal Eldin Osman Salih, 'The Root and Causes of the 2011 Arab Uprising', Arab Studies Quarterly 35, 2, 184-206 (2013).

⁵ "Tunisia a protest against Ben Ali left 300 dead, says UN," BBC News, February 1, 2011, <http://www.bbc.co.uk/news/world-arfrica-12335692>

2011, following revolutionary protests.⁶ In February 2011, President Hosni Mubarak resigned after 18 days of widespread protests. Meanwhile, the long-reigning president of Libya, Muammar al-Gaddafi, was killed in October 2011.⁷ Unfortunately, these optimistic expectations were not universal or long-lasting across the Arab states, and critics soon began to question the motives and fruits of the Arab Spring.⁸ In contrast to expected outcomes, the protests in Syria were not successful, and the country continues to be immersed in a civil war to this day.⁹ Enormous consequences are also evident in Yemen with the regime changes resulting in conflict and war between the allies of Iran (Shiite minority, Houthi), and the partners of Saudi Arabia (Sunnis).¹⁰

The Arab Spring started after decades of economic liberalisation in the Middle East and North Africa. (MENA). The economic liberalisation of the MENA states in the early 1990s did not result in the establishment of progressive political regimes.¹¹ Instead, it empowered the elite, and privileged individuals who were in the military and politics,¹² With 30% of national wealth staying under the control of privileged individuals, in some of the poorest countries of the Arab States.¹³ Consequently, inequality restricted the potential for social mobility among

⁶ ‘Arab Spring—Who lost Egypt?’ The Economist, March 1, 2011, http://www.economist.com/blogs/democracyinamerica/2011/03/Arab_spring

⁷ Ufiem Maurice Ogbonnaya, ‘Arab Spring in Tunisia, Egypt and Libya: A Comparative Analysis of Causes and Determinants’ (2013) 12 TJIR 3, 1-15

⁸ Daniel Ronald Fredrick Blitz, ‘The Arab Spring A Parsimonious Explanation of Recent Contentious politics’ (2014) <https://theses.uhn.ru.nl/bitstream/handle/123456789/1120/Blitz%2C_Daan_1.pdf?sequence=1> Access 15 Jan 2016. See also Iffat Idris, ‘Analysis of Arab Spring,’ (2016) GSDRC <<http://www.gsdrc.org/wp-content/uploads/2016/04/HDQ1350.pdf>> Access 20 Oct 2018.

⁹ Ibid

¹⁰ Aljazeera, ‘Key Facts About the War in Yemen,’ 25 Mar 2018 <<https://www.aljazeera.com/news/2016/06/key-facts-war-yemen-160607112342462.html>> Access 20 Aug 2018

¹¹ Spyridon Plakoudas, ‘Causes of the Arab Spring: A Critical Analysis’ (2017) 7 KEDISA 1-9. In regards to Tunisian government violation of human rights in particular freedom of expression, please look at HRW report in 2011, <<https://www.hrw.org/world-report/2011/country-chapters/tunisia>>

¹² Raymond Hinnebusch: “Authoritarian Persistence, Democratization Theory and the Middle East: An Overview and Critique” Democratization, Vol. 13, No. 3 (2006), pp. 373-395; Omar S. Dahi: “The Political Economy of the Egyptian and Arab Revolt”, IDS Bulletin, Vol. 43, No. 1 (2012), pp. 47-53.

¹³ Nadine Sika: “The Political Economy of Arab Uprisings” (Barcelona: European Institute of the Mediterranean, 2012), 8-14.

the youth.¹⁴ The restricted social mobility and severe inequality for the younger generation, coupled with rising unemployment rates, motivated growing dissatisfaction to an alarming extent.¹⁵ The economic reforms and liberalisations, implemented by decrees, strengthened the existing authoritarian regimes while obstructing democratisation.¹⁶

The riots in MENA started during an era of recession, which affected even the world's most advanced economies.¹⁷ The 2008 global financial crisis resulted in low employment levels, poverty, and dissatisfaction amongst ordinary people affecting regions with a long history of financial troubles.¹⁸ As Richard Javad Heydarian explained:

“Revolution rarely happens in stagnant, impoverished countries. Revolution is a product of a dynamic process of simultaneous socio-economic change and political decay. Recent history shows that revolutions are most likely to occur in countries that either experience a long period of unprecedented economic growth not accompanied by political reform, or which undergo a sudden economic crisis following a sustained period of economic expansion and liberalisation.”¹⁹

The Arab Spring appears to have reproduced this pattern; the uprising came after decades of aggressive economic liberalisation with substantial social consequences and repressive political rules imposed by autocratic cliques.²⁰ Simultaneously, in Tunisia and Egypt, the political adversaries were oppressed, governments controlled the media, and authorities violated human rights.²¹

¹⁴ Richard Javad Heydarian, *How Capitalism Failed the Arab World: The Economic Roots and Precarious Future of the Middle East Uprisings* (Zed Book, 2014)

¹⁵ Sika, (n.13)16-19; Harun Öztürkler: “Economic Factors behind the Arab Spring, Challenges and Opportunities, Today's Zaman, 10/2/2013.

¹⁶ Hinnebusch (n.12).

¹⁷ Andrea Ansani and Vittorio Daniele, ‘About a Revolution: The Economic Motivations of the Arab Spring’ (2012) 3 IJDC 3, 1-29.

¹⁸ Ibid.

¹⁹ Heydarian (n.14), 29-30

²⁰ Ibid. 30

²¹ Plakoudas (n.11).

A 2002 report by the Regional Bureau for the Arab States of the United Nations Development Programme outlined the common characteristics shared by states in the region.²²

- Regarding civil liberties, political rights, and freedom of media and expression, only Jordan ranked above the international standard.²³
- With regards to public services, bureaucracy, and independence of civil services, only eight of the twenty Arab states ranked above the international standard.
- Regarding public awareness of corruption, ten out of seventeen Arab States ranked above the international standard.
- Regarding the separation of power and independence of the judicial branch, the report categorised almost all Arab States as “black-hole states” in which the executive branches of government control and dictate the rules.
- The power was limited mainly to the hands of presidents. The parliaments had limited ability to select and approve a new president. For example, the Syrian parliament announced the new president to be the former president’s son.
- Most Arab governments were using blackmail as a legitimate tool to maintain power by representing themselves as the only legal guardian against fanaticism and Islamism.
- Most Arab states had a restricted policy on the formation of political parties. The conventional way to deal with the issue of political parties was to ban them.²⁴

At the time of the uprisings, the people of the region, had experienced tyranny, violence, and repression for decades. None of the countries involved had experience with a democratic transition. In the words of the Arab human rights practitioner Moataz El Feghery: “one reason

²² See UNDP Report < http://hdr.undp.org/sites/default/files/reports/263/hdr_2002_en_complete.pdf > Also see James L. Gelvin, *The Arab Uprising: What Everyone Needs to Know* (OUP, 2012) 4-5

²³ International Standard in this context mean average.

²⁴ Ibid. 5-6 & Egypt Human Development Report, 2010; <http://www.undp.org/Default.aspx?tabid=227>

behind the popular revolt in the Arab states has been a lack of respect for human rights. For decades, people in Tunisia, Egypt, and Libya have been subjected to the repressive regimes with poor human rights records”.²⁵

In these oppressive environments, a series of mass protests formed, and young people made a stand for the change they believed was possible. The popular slogan “shaeb yorid isghat o nezam” (people want to change the regime) spread in most Arab states.²⁶ Therefore, the Arab Spring was a call for ‘freedom, social justice, and bread,’ comparable to the French revolution’s slogan of *Liberté, égalité, fraternité* in 1789.²⁷ Arguably, the gap between rich and poor, denial of political freedom, and the failure of traditional power to recognise the new youth movement contributed to the uprisings.²⁸ Hence prevalent hypothetical causes include corruption, financial crisis, the lack of freedom and democracy, poverty, inequality, and lack of human rights and justice.²⁹ However, it is widely posited that the primary cause of the Arab Spring was linked to the oppressive and vicious nature of the Arab regimes, with most Arab states routinely using physical and psychological pressure to remain in power.³⁰ Hope rose among the people of the MENA when some Arab countries such as Tunisia moved towards a different system and regime, and the people of Tunisia were encouraged for the first time in their history to participate in a democratic political process.³¹

The only country where Arab Spring had fulfilled some of the promises attached to this social movement was Tunisia. Between 1956-2011, Tunisia was organised as a one-party state. The Arab Spring in 2010 resulted in the collapse of the Ben Ali regime. From 2011 until the

²⁵ Illias Bantekas & Lutz Otte, *International Human Rights law and practice* (CUP 2013) 42.

²⁶ Fatma Naib, ‘Egypt: The revolution continues,’ (Al Jazeera, 7 May 2011) <https://www.aljazeera.com/blogs/middleeast/2011/03/8536.html> Accessed, 12 Sept 2018

²⁷ Heydarian (n.14)

²⁸ Salih (n.4)

²⁹ Ibid. 184-206.

³⁰ Salih (n.4)184-206.

³¹ Gelvin (n22).

first elections held in 2014, civil society was actively providing a platform for political parties to be involved in the transitional period and empowering the establishment of democracy. The efforts of the four civil society organisations conforming the National Dialogue Quartet were recognised by the Nobel Peace Prize committee and in 2015 the Quartet won the prize for its attempts to broker a peaceful political compromise in Tunisia in the wake of the Tunisian Revolution of 2010-11.³² In terms of democratisation, the first elections were held in 2014 and the second in 2019.

For the purpose of the thesis, the focus is on the advances achieved by Tunisia in the field of human rights and the strengthening of civil society. The legal and socio-political literature on the Tunisian Revolution and the Arab Spring is analysed; philosophical, political, and historical origins are investigated to give context to the analysis that follows and explain why Tunisia has been chosen as a case study. Tunisia presents a unique example for the following reasons:

1. Arab Spring: The series of uprisings known as the Arab Spring which started and influenced other neighbouring countries, originated in Tunisia. Tunisia has been the only country with clear positive outcomes, that may reflect good practices from which other countries can draw important lessons.
2. Democratisation and civil society: The country has experienced a democratic transition since 2014, that remains unique in the region. Civil society has played a particularly significant role in the democratic transition.
3. Human Rights: Tunisia has introduced unique human rights reforms into national jurisdiction, including the recognition of gender equality, right to participate in political elections, freedom of expression, or economic rights.

³²The Nobel Prize < <https://www.nobelprize.org/prizes/peace/2015/tndq/facts/> >.

The thesis analyses the influence of the Universal Periodic Review in the transition and legal changes operated in Tunisia by comparing the first cycle that took place in 2008, during the time of Ben- Ali, with the response of the transitional government in 2012 and the democratic government in 2017. The study of this intergovernmental peer-review system where states monitor each other's performance in the field of human rights, provides a useful perspective in understanding the role of political pressure at international level to effect change. Additionally, as it is the view advanced in this paper, addressing a territory with poor human rights records provides a useful perspective to investigate the impact of the international human rights regime at domestic level. While case-studies by themselves are insufficient to prove or disprove any overarching propositions or theories, they can inform, and at times confirm (or discard) the applicability of a conceptual framework to other cases.³³

The Arab Spring was an effective social movement that brought some social, political, and legal changes to MENA states. It constituted a collective and spontaneous movement of ordinary people demanding changes in the regime and political establishment. As discussed in this Chapter, the root causes of the Arab Spring can be explained by a lack of democracy, violation of human rights, the corruption of the those in power, and the impact of the financial crisis. In the MENA, some regimes collapsed during the Arab Spring, and emerging regimes failed to satisfy the expectations they generated (Egypt) or resulted in chaos (Libya). In Syria, civil war, and the rise of fundamentalism (ISIS) stopped the progress of democratisation and a change of regime. Conversely, Tunisia experienced a peaceful transition towards a democratic regime which was characterised by the participation of multi-political parties in power and the establishment of parliamentary democracy. Human rights were protected at constitutional level, with changes in law regarding women's rights, children's rights, minorities and

³³ See Todd Landman, 'Social Science Methods and Human Rights,' in Fons Coomans and Fred Grunfeld and Menno T. Kamminga (eds), *Methods of Human Rights Research* (Intersentia, 2009). 36

immigrants, and the recognition of freedom of religion and assembly. Additionally, Tunisia witnessed the evolution of the participation of civil society in influencing change of power through political discourse, as well as increased cooperation between domestic institutions and international and regional organisations to address the human rights situation.

1.2 Social Constructivism Theory and State Commitment and Compliance to Human Rights Treaties

The factors explaining the influence of international and social movement in the changes operated in Tunisia during and after the Arab Spring, require the adoption of a perspective on the issue of international law compliance, or most specifically in the context of these pages, of human rights compliance. There are an increasing number of studies in the field of human rights from social scientists and lawyers employing numerous theoretical and empirical approaches to address the issue of commitment and compliance.³⁴ Some of these studies have examined the willingness of a state to become signatories to one or more international human rights treaties.³⁵ Many empirical studies investigate how becoming a state party to a treaty affects human rights at domestic level, while fewer investigate whether domestic laws and policies have been changed to accommodate the new commitment under international law.³⁶ The majority of the empirical studies have examined three main factors that represent the dominant theoretical elements influencing compliance:

1. State interest

³⁴ Linda Camp Keith, 'Human Rights Instruments' in Peter Cane and Herbert M. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP, 2010) 353-375. Jana Von Stein, 'Making Promises, Keeping Promises: Democracy, Ratification and Compliance in International Human Rights Law,' 2015 BJPOL 46, 655-679. Oona A. Hathaway, 'Why Do Countries Commit to Human Rights Treaties?' 2007 JOCR 51 (4) 588-621. Jay Goodliffe and Darren G. Howkins, 'Explaining Commitment: States and the Convention Against Torture,' 2006 TJOP 68 (2), 358-371.

³⁵ Wade M Cole, 'Sovereignty Relinquished? Explaining Commitment to the International Human Rights Conventions, 1966-1999,' 2005 ASR 70 (3), 472-495.

³⁶ Keith (n.34)

2. Domestic politics and institutions.
3. The diffusion of international norms and the embeddedness of state into a global society.³⁷

Therefore, scholars have approached the topic of commitment and compliance through two main theoretical frameworks: either presuming states behave as rational actors or explaining their behaviour because of their socialisation and the diffusion of norms.³⁸ Rational actor theories suggest that states behave as rational agents primarily acting in self-interest.³⁹

The decision by the state, to join or comply with an international treaty is based on an evaluation of the costs and benefits of ratifying and signing said treaties. Realists in international relations emphasise the role of the power of dominance in rational actor theories.⁴⁰ Conversely, international norms and socialisation theories emphasise the transformative power of international normative discourse on human rights. They also promote the role of activism by transnational actors, international organisations and non-governmental actors, who support local efforts to press for human rights commitments and who also, through repeated interactions with state actors, socialise the state to accept new norms.⁴¹ Hillebrecht argues that compliance is domestic, and implementation is political because domestic institutions are critical for compliance; thus, compliance is an inherently domestic affair.⁴² The research underpinning this thesis departs from the models outlined above and aligns with social constructivist approaches that explain a state's behaviour. The approach of social constructivism' to compliance draws on social movement literature to identify the impact of

³⁷ Ibid.

³⁸ Keith (n. 34) 353-375. Also, Elizabeth Stubbins Bates, 'Sophisticated Constructivism in Human Rights Compliance Theory,' 2015 TEJOIL 25 (4). 1169-1182.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Courtney Hillebrecht, 'The Domestic Mechanisms of Compliance with International Human Rights Law: Case Studies from the Inter-American Human Rights System' (2012) 34 HRQ 4, 959-985.

domestic and non-governmental organisations (NGOs) operating in transnational advocacy networks (TANs).⁴³ Social constructivists view material interest as subsidiary to social structure and analyse cases in which new norms, advanced by TANs, change state interest and behaviour, explaining the shift of goals and behaviour unlike neorealists and neoliberals.⁴⁴ They state that social constructivists tend to ignore the influence of state power, particularly within international organisations under which regional and international human rights mechanisms are developed.⁴⁵ However, social constructivists Keck and Sikkink have used the “boomerang effect” and “spiral model” to describe a process in which TANs solicit aid from sympathetic states, international NGOs and international organisations (IOs) against rights-abusing states.⁴⁶ According to the spiral model: “National opposition groups, NGOs, and social movement link up with transnational networks and INGOs who then convince international human rights organisations, donor institutions, and great powers to pressure norm violating states... International contacts can ‘amplify’ the demands of the domestic group, prise open space for a new issue and then echo these demands back into the domestic arena”.⁴⁷ Authoritarian leaders become “entrapped in their own rhetoric” when they argue “over human rights violation” and are ultimately forced by domestic mobilisation, powerful liberal states, and IOs to implement domestic protection.⁴⁸ Human Rights can be considered as a common term in International Law, that is part of the efforts of NGOs for persuading national and international community for accountability and norm change.⁴⁹

⁴³ Neil Stammers, ‘A Critique of Social Approaches to Human Rights’ (1999) 17 HRQ 3, 488-508. N Stammers, ‘Social Movements and the Social Construction of Human Rights’ (1999) 21 HRQ 4, 980-1008.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Margaret E. Keck & Kathryn Sikkink, *Activists Beyond Borders* (Cornell University Press 1998).

⁴⁷ T. Risse, S.C. Ropp, and K. Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (CUP 1999).

⁴⁸ Ibid. 25-26.

⁴⁹ Kate Nash, ‘Is It Social Movements That Construct Human Rights,’ in Donatella Della Porta and Mario Diani(ed), *The Oxford Handbook of Social Movements* (OUP, 2017) 742-751.

This research outlines the main civil society actors engaged in the process of seeking alliances in the international arena to promote the progress of protecting human rights in Tunisia.

1.3 The Social and Political Factors in the Tunisian Revolt

In 1934, the political structure of Tunisia was designed and founded by President Bourguiba and his *Socialist Destourian Party*. The party was established to fight for independence from colonial France, and since achieving this, the party remained the leading political party of the country.⁵⁰ In 1988, under the presidency of Ben Ali, it was renamed as the *Constitutional Democratic Rally* (RCD). Although multiple political parties existed, they were either too weak or seen as politically friendly to the ruling party, and thus not representing true opposition or purpose other than to present the country as a democratic state.⁵¹ The elections were largely state-controlled, and RCD was the persistent winner, often with a questionably high majority vote.⁵² However, elections were celebrated to promote the appearance of a democratic state to the global stage. Political opposition parties, such as *Ennahda* (Islamic Renaissance party) and the *Tunisian General Union of Labour* (UGTT), were oppressed and banned since the 1990s, their leaders often exiled, imprisoned, or tortured, and their supporters assassinated to allow the regime to continue its reign.⁵³ A long-reigning history of being oppressed and ruled by

⁵⁰ Marina Ottaway and Amr Hamzawy, 'Protest Movements and Political Change in the Arab World. Carnegie Foundation' < (Carnegie Foundation Available http://carnegie.matrixgroup.net/files/OttawayHamzawy_Outlook_Jan11_ProtestMovements.pdf)>.

⁵¹ Ibid.

⁵² Clement Henry, 'The Arab Spring: will it lead to Democratic Transitions?' (2011), The Asan Institute for Policy Studies, <http://www.la.utexas.edu/users/chenry/public_html/The%20Arab%20Spring.%20Will%20It%20Lead%20to%20Democratic%20Transitions.pdf>

⁵³ Ibid.

corrupted politics appears to have been the main reason the Tunisian people revolted and demanded change.⁵⁴

1.4 Arab Spring in Tunisia and Human Dignity

Protestors commemorated Mohamed Bouazizi's self-immolation, naming it "Dignity Day" or "Anger Day." Calls for dignity were used by protesters in response to the humiliation they suffered by the arbitrary government and the subsequent unaccountability of authorities towards the people demanding justice.⁵⁵ The slogan used throughout the Arab Spring 'work, freedom, bread,' highlights the people's demands to be recognised as human beings and demonstrates their understanding of, and natural inclinations towards, human rights.⁵⁶

The first underpinning principle of international human rights is dignity. Article 1 of the Universal Declaration of Human Rights (UDHR) states, 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.'⁵⁷ However, to reach this natural demand, the legitimate and fundamental demand for human rights necessitated the establishment of a system which protects freedom and democratic values, especially so during a transitional period such as a revolution.⁵⁸ However, the authoritarian regimes in the Arab world largely failed to respond adequately, instead fortifying their repressive actions in the form of increased violence towards mass protestors; thus, human rights' demands acted as a catalyst in encouraging regime change and ending the brutal reign.⁵⁹

⁵⁴ Tammam Omer Abdulsattar, 'A Critical Analysis of Arab Spring: Case Studies of Tunisia and Egypt' (2015), Master Thesis, Northern Cyprus Campus < <http://etd.lib.metu.edu.tr/upload/12619524/index.pdf>> Accessed 20 Aug 2018

⁵⁵ Iffat Idris, 'Analysis of the Arab Spring' (2016) GSDRC 1- 14.

⁵⁶ Mehran Kamrava (ed), *Beyond the Arab Spring: The Evolving Ruling Bargain in The Middle East* (OUP, 2014) 131-150.

⁵⁷ Article 1, UDHR.

⁵⁸ Kamrava (n.56) 131-150

⁵⁹ Salih (n.4)184-206.

1.5 The United Nations, Human Rights Council, and the Arab Spring

The UN Human Rights Council (HRC) was created in response to the failure of the former Commission of Human Rights in effectively implementing its high standards.⁶⁰ The HRC was created to raise the ability of the main organ of the UN addressing human rights to respond to urgent and chronic human rights situations in specific countries in a timely manner.⁶¹ Among other reforms, the HRC designed the mechanism called the Universal Periodic Review to review the human rights record of all 193 UN member states every five years. Delivering the prospect for each UN member state to review its human rights record and demonstrate the actions it has taken to improve its protection. UPR is a peer-review mechanism in which every state can ask questions and make recommendations to the States under review.⁶² The first UPR cycle ran from 2008-2011, the second from 2012-2016, and the third cycle started in 2017 and will end in 2022.⁶³ The review is based on the national report submitted by the state under review, a compilation of relevant recommendations provided by treaty-bodies and non-treaty bodies and a third report containing information submitted from non-governmental organisations (NGO) and national human rights institutions.⁶⁴

The UNHRC and the Security Council played a fundamental role in the response to the Arab Spring and the complex developments that followed.⁶⁵ and had been dealing with the crisis in the MENA since 2011. In general, the HRC has addressed the crisis in each sub-region

⁶⁰ Theodor Ratchgeber, 'New Prospect for Human Rights: The Human Right Council between The Review Process and the Arab Spring.' (2012) International Policy Analysis FES Geneva, 1-24.

⁶¹ Ibid 1-2.

⁶² See United Nation Human Rights Council, HRC Bodies, Universal Periodic Review < <https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx> > The last access 04/09/2019. Miloon Kothari, 'From Commission to The Council: Evolution of UN Charter Bodies,' in Dinah Shelton, The Oxford Handbook of International Human Rights, (OUP, 2015) 580-620.

⁶³ See UNHCR < <https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx> > also UPR < <http://www.uprinfo.com> >.

⁶⁴ Edward McMahon and Marta Ascherio, 'A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council,' (2012) 18 GG, 231-248.

⁶⁵ Ratchgeber (n60). Laura K. Landolt, 'Externalising Human Rights Commission to Council, the Universal Periodic Review and Egypt,' (2013) 14 HRR, 107-129.

through oral and written reports by Navi Pillay, the High Commissioner for Human Rights, which was presented to the regular sessions in March, June and September 2011.⁶⁶ The HRC's agenda provided room for debates that, at times, resulted in the adoption of resolutions. For example, in 2011, the HRC conducted five special sessions (four on Syria, one on Libya), and asked the UN General Assembly to suspend Libya's HRC membership.⁶⁷

In January 2011, the Office of the United Nation High commissioner for Human Rights (OHCHR) sent a delegate to Tunisia to assess human rights priorities, to define an OHCHR strategy of engagement for the protection and promotion of human rights, and to support the transitional government.⁶⁸ The Minister of Foreign Affairs of Tunisia requested the opening of an OHCHR country office, the first in any North African country, which was finally opened in July 2011.⁶⁹ In her opening speech to the June session, the High Commissioner stressed the positive steps taken by the transitional government of Tunisia that ranged from allowing freedom of expression to improving the rule of law and promoting social and economic rights. She also acknowledged the ratification of four major human rights treaties, including the Optional Protocol to the Convention against Torture and the ratification of the Rome Statute for the International Criminal Court.⁷⁰ Meanwhile, the transitional government had established three domestic institutions to oversee transitional justice processes and to ensure accountability

⁶⁶ OHCHR, 'Report of The OHCHR Assessment Mission to Tunisia,' 26 January-2 February 2011 <https://www.ohchr.org/Documents/Countries/TN/OHCHR_Assessment_Mission_to_Tunisia.pdf>. For further information on the UNSC context, see <http://www.un.org/News/dh/latest/mideast.htm> or <http://www.globalissues.org/article/119/the-middle-east-conflict-a-brief-background>.

⁶⁷ OHCHR, 15th Special Session on Libya, 16th, 17th, 18th, 19th Special Session on Syria <<https://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Pages/SpecialSessions.aspx>>

⁶⁸ OHCHR, 'Report of The OHCHR Assessment Mission to Tunisia,' 26 January-2 February 2011 <https://www.ohchr.org/Documents/Countries/TN/OHCHR_Assessment_Mission_to_Tunisia.pdf>. For further information on the UNSC context, see <http://www.un.org/News/dh/latest/mideast.htm> or <http://www.globalissues.org/article/119/the-middle-east-conflict-a-brief-background>.

⁶⁹ OHCHR, Human Rights in Tunisia <<https://www.ohchr.org/EN/countries/MENARegion/pages/OHCHRTunisia.aspx>>

⁷⁰ United Nations, UN News, Tunisia <<https://news.un.org/en/story/2011/07/381582-first-un-human-rights-office-opens-tunisia>>

for past human rights violations and had also created its first independent National Electoral Commission to supervise the election of a constituent assembly in October.⁷¹

Since the establishment of the UNHRC, Tunisia has been reviewed under three UPR cycles, the first was held on 8th April 2008; the second on 12th May 2012, and the third on 2nd May 2017.⁷² This time scale is pertinent to consider in the context of significant events during and after the Arab Spring as it provides an opportunity to evaluate and analyse the influence and impact of the UPR system on the implementation of human rights in Tunisia after the Arab Spring over a nine year period.

1.6 Literature Review and Original Contribution: A Human Rights Perspective

The wealth of research from differing disciplines offering explanations to the causes, effects, and elements of change associated with the Arab Spring, have mostly adopted an economic, political, social science, or international relations focus.⁷³ However, the literature addressing the Arab Spring from a human rights perspective remains very limited.⁷⁴ Although the impact of the Arab Spring in Tunisia is perceived as positive,⁷⁵ few studies have explored why and how this has been achieved, and why other states involved in the uprisings did not follow the same fate. Ann Vis explains the success of Tunisia by addressing the commitment and compliance of universal human rights norms through the “spiral model” comparing the post-

⁷¹ See Ratchgeber (n.60). Also, OHCHR, Human Rights in Tunisia (n.69).

⁷² The United Nation Human Rights Council < <https://www.ohchr.org/EN/HRBodies/UPR/Pages/tindex.aspx> >

⁷³ Example of research conducted on above subjects, See Heydarian (n.14), Gelvin (n.22). Also, See Micheal J. Wills, ‘Revolt dor Dignity’, in Adam Roberts, Michael J willis, Rory McCarthy and Timothy Garton Ash (ed) *Civil, Resistance in The Arab Spring* (OUP, 2016) 30-52. Leila De Vrise, ‘Paradox of Globalization: New Arab Publics? New Social Contract?’ (2013), 12 PGDT 1114-134.

⁷⁴ Research on degree of Changes from social movements studies, Joel Beinin& Frederic Vairel (ed), *Social Movements, Mobilization and Contestation in the Middle East and North Africa* (Stanford University Press, 2013). Arab Centre for Research and Policy Studies, ‘Political Crisis in Tunisia’ (21 February 2013) < <http://english.dohainstitute.org/release/3e472e88-6613-46d3-9I98-c52b2I5e8af3> > Last access 02/09/2019.

⁷⁵ See John Liolos, ‘Erecting New Constitutional Cultures: The Problems and Promise of Constitutionalism Post Arab Spring’, (2013) 36 BCICLR 219-253. Also see *Polls open in first-Ever Legitimate Tunisian Elections*, Telegraph (Austl) (Oct 23,2011), <http://www.dailytelegraph.com.au/news/breaking-news/ polls-open-in-first-ever-legitimate- Tunisian -election /story-e6freuyi-1226174451783>.

Arab Spring development experienced in Tunisia, Egypt, and Libya.⁷⁶ Nimer Sultany explores the constitutional reform in the post-Arab-Spring era and focuses on legitimacy and constitutionalism.⁷⁷ Existing data indicates that Tunisia is making significant progress in improving the situation of human rights in its territory.⁷⁸ This thesis reviews former findings of the scarce literature covering the topic of human rights progress derived from the Arab Spring, and provides new insights on the significance of the constitutional and administrative reforms undertaken in Tunisia. It hypothesises that Tunisia's success has been characterised by the involvement of the civil society with the international community and the use of international human rights mechanisms to bring about change at domestic level. This hypothesis will be tested through the perspective of the international human rights machinery in Tunisia, and particularly, the UPR mechanisms implemented by the UNHRC. As such, this research contributes towards understanding effective advocacy and strategies to advancing human rights in MENA countries by using Tunisia as a case study. It focuses on the role of civil society organisations seeking alliance with international human rights mechanisms, especially the UPR. This research fills the gap of study on the influence of the UPR and civil society on advancing human rights situation in Tunisia in the post-Arab Spring era.

1.7 Research Aim and Research Questions

By considering the reasons for choosing Tunisia as a case study, the primary purpose of the thesis is to illustrate the impact of a regional social movement in the enjoyment of human rights

⁷⁶ See Anne Vis, 'Beyond the Arab Spring (The Influence of Transnational to Promote Rule Consistent Behaviour in The Research of Universal Human Rights,' MSc diss, Erasmus University Rotterdam, 2017.

⁷⁷ Nimer Sultany, *Law and Revolution (Legitimacy and Constitutionalism After the Arab Spring)* (OUP, 2017).

⁷⁸ The Human Rights Watch organisation indicates the success of Tunisia in progressing human rights in their 2018 annual report. See in Human Rights Watch, *World Report 2019 (Events of 2018)*, (Seven Stories Press, 2019), 582-587.

in Tunisia, through the lenses of the United Nations mechanisms for the promotion and protection of human rights, mainly the UPR. The international attention paid to the Arab Spring generated impetus to translate local demands into claims before the international community. The thesis seeks to answer the following issues, that have merited little or no attention by existing scholarship:

1. Legal framework, institutional design and policies characterising the democratic transition of Tunisia post-Arab Spring.
2. The influence of the UPR and transnational activities of the organised civil society on the protection of human rights in Tunisia's transition.
3. Engagement with the UN human rights machinery and compliance with human rights treaties.

1.8 Methodology

Addressing the research question requires the identification and analysis of the legal and institutional changes introduced by Tunisia as a response to the social demands that sparked the Arab Spring. The collection of necessary data and primary and secondary sources is based on desk-research. The research focuses on the study of the changes introduced in the Constitution and other domestic legislation in the field of human rights, especially *equality between women and men, right to non-discrimination, freedom of expression, association and assembly, the independence of the judiciary, protection from torture and other forms of ill-treatment, the protection of the rights of the minorities, the right to life, and the protection of economic, social, and cultural rights*. It also relies on the governmental, non-governmental and intergovernmental reports that have informed the transition to a democratic system and the decisions underpinning the current direction. The research will identify and analyse the engagement and commitment of Tunisia with international human rights obligations. These

finding will serve as the basis to contextualise state compliance at international level by analysing relevant judicial decisions, and legislative reforms.

A central part of this project is the attempt to evaluate the role of civil society as influential actors that use the transnational space to bring about change at the domestic level. Using as a methodological tool, the coordinated actions of civil society in the context of the Universal Periodic Review (UPR), the researcher will use the empirical evidence available on UPR reports from governments, the Office of the High Commissioner on Human Rights and Civil Society, the OHCHR database, UPR_info databases as well as the official database from the Tunisian governments on outcomes of this mechanism.

The thesis also addresses the available institutional channels and policies that facilitate (or hinder) the participation of civil society in the design and implementation of the promotion and protection of human rights. This analysis includes identifying the public budget assigned to civil society. This research addresses the role of civil society during the transitional period, and the role of the National Dialogue Quartet in the implementation of democratic transition. Particular attention is paid to the reports on the human rights situation in Tunisia written by the Nobel Peace Prize committee, Euro-Med Rights, International Federation for Human Rights, Amnesty International, Human Rights Watch, Article 19, Jamaity, La plateforme de la société civile tunisienne, and International Alert.

The findings and conclusions of the research rely on existing scholarship material addressing the impact of transnational activities of non-governmental organisations on domestic policies. The author scopes existing literature on the Arab Spring that addresses the geopolitical coordinates that explain the changes implemented in Tunisia to advance the situation of human rights and democratise the country. Commentaries from grass-root movements provide context and empirical data to understand and interpret the singularities and

common traits Tunisia presents compared with other MENA countries involved in the Arab Spring.

2 Civil Society, Non-governmental Organisations and Human Rights in Tunisia

This chapter addresses and clarifies the concept of civil society and its role in Tunisia's social, cultural, and political development through history. The previous chapter explored how civil society, institutionalised political parties, and people collaborated to change the regime and bring democracy and pluralism to Tunisia.

The history of civil society and civil society organisations in Tunisia is investigated to better understand how they functioned and to draw comparison between past and present. Additionally, how they work collectively to help develop democracy in the country and prevent the abuse of power by any political party. It also explores the way in which civil society creates transnational advocacy networks, and how they have been functioning and promoting human rights in the region and cooperating with other civil society movements and organisations in the MENA.

This chapter clarifies the civil society organisation's activities and role in the post-Arab spring era in building the democratic environment necessary for holding free elections and keeping the peace between Islamist and secularist political parties. It also addresses its role in drafting the constitution and protecting human rights within the constitutional framework. Finally, the chapter highlights the diversity of positions and clash between the Islamic and secular political parties, articulating the role of the former in progressing and preventing developments in law, democracy, and human rights.

2.1 Social Movement, Civil Society, Human Rights, and the Arab Spring

Studies of social movements help to gain a better perspective about what has happened in the MENA since 2011 and the role of civil society in advancing the movement. Social movements can be defined as “a loosely organised, sustained effort to promote or resist change in society that relies at least in part on the non-institutionalised form of collective action.”⁷⁹ They are not formally organised but rather considered to be a network of interaction of shared goals, beliefs, and concerns.⁸⁰ This definition is related to the Arab Spring; it was collective, rooted in people without leadership, and brought together heterogenous groups.

Human rights scholars have been more focused on the role of institutions, policies and normative frameworks depending on states and intergovernmental processes than on the role of social movements in shaping and developing the human rights agenda.⁸¹ The main reason is that human rights are essentially an institutional phenomenon and there is little reference in human rights literature detailing the social process connecting pre- or meta-institutional forms of human rights.⁸² In interdisciplinary literature, it is common to categorise human rights movements as a form of social movements.⁸³ Alston and Goodman emphasise that, “In today’s world, human rights is characteristically imagined as a movement involving international law and institutions, as well as a movement involving the spread of liberal constitutions among states.”⁸⁴ Aryeh Neier, former executive director of Human Rights Watch states that, “the international human rights movement is made up of men and women ... who are united by their

⁷⁹ Doug McAdam, Robert J. Sampson, Simon Weffer, and Heather MacIndoe, ‘Theory Will Be Fighting in the Streets: The Distorting Lens of Social Movement Theory’ (2005) 10 MAIJ 1, 1-18

⁸⁰ Ibid. 1

⁸¹ Stammers (n.43)

⁸² Ibid.

⁸³ Ibid and Catherin Eschle and Neil Stammers, ‘Taking Part: Social Movements, INGOs, and Global Change,’ (2004) 29 *Alternatives*, 333-372.

⁸⁴ Philip Alston and Ryan Goodman, *International Human Rights law in context: Law, Politics, Morals* (OUP, 2012) 59.

commitment to promote human rights for all, everywhere...” He goes on to list civil liberties as “the fundamental rights to which they are committed.”⁸⁵

The Tunisian revolution was essentially a social movement with an emphasis on the application of human rights. Religious and human rights movements both share common ground that connect them to social movements. However, human rights movements are more relevant to transnational advocacy networks than social movements.⁸⁶

Social movements and TANS are differentiated from each other in the following ways. Social movements involve the formation of collective identity amongst ordinary people as well as the elite. Social movements are different from interest groups without mutual goals or the set goals by professionals employed in NGOs.⁸⁷ Social movements are based on who we are and who we oppose; in the case of the Arab Spring, the ordinary people and activist formed social movements against the government. On the other hand, TANS focus solely on the transformation of elites aims and often those values represent the aim of the NGOs and INGOs.⁸⁸ Social constructivists Keck and Sikkink are concerned with reforming the collective identity of international elites.⁸⁹ They assume that all actors involved in TANS have the same shared values and common discourse. They must effectively assume that grassroots organisations (GROs) construct human rights in the same way that NGOs represent their campaign at the international level. Unlike INGOs, GROs are not organised and financially funded and hierarchy and bureaucracy do not exist. INGOs like Amnesty International have a relationship mostly with victims of a violation of human rights. Apart from this, the relationship between INGOs and NGOs and GROs is not clear.

⁸⁵ Aryeh Neier, *The international Human Rights Movements: A History* (Princeton University Press, 2012) 2.

⁸⁶ Nash (n.49).742-751.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Risse, Ropp, & Sikkink (eds) (n.47).

The cooperation between different sectors and movements of the civil society, people and political parties advanced the revolution which resulted in the change of the regime. In previous chapters, the role of civil society briefly mentioned, as civil society in Tunisia played an important role in developing and organising social movements. In the post Arab Spring era, civil society remains a vital element enable progressive changes. The following part is the role of civil society in advancing human rights law.

2.2 The Concept of Civil Society and Civil Society Organisations in Tunisia

The idea of civil society originated in the work of Aristotle, who described them as a community of citizens who share the same interests but who are separate from government.⁹⁰ Despite Western genealogy, the term translated quite like its origin in Arabic, *muj'tema al-madani*, used in both MENA and Tunisia studies.⁹¹ Since Aristotle, there have been numerous definitions used commonly for political research. Helmut K Anheier defined civil society as "a collective of institutions and organisations and individuals located among the family, the state, and the market, in which people associate voluntarily to advance common interest. It functions primarily as a check on state power."⁹² Meanwhile, the World Bank defines civil society as " The wide array of non-governmental and not-for-profit organisations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious, or philanthropic considerations. Civil Society Organisations (CSOs) therefore refer to a wide array of organisations: community groups, non-governmental organisations (NGOs), labour unions, indigenous groups, charitable

⁹⁰ Michael Davis, *The politics of philosophy: a commentary on Aristotle's politics* (Rawman&Littlefield Publishers ,1996).

⁹¹ Eva Bellin, "Civil society in Formation: Tunisia," in Ed. Augustus Richard Norton. *civil society in the Middle East* (E.J. Brill,1995). 121.

⁹² Hemit K, Anheier, 'How to measure civil society,' *London School of Economics*. Available at <http://fathom.lse.ac.uk/features/122552/> [Accessed 11 Jan 2021].

organizations, faith-based organisations, professional associations, and foundations."⁹³

In Tunisia, civil society includes the institutionalised groups of independent people from the government and the governmental policy with no intention to seek power.⁹⁴ This definition distinguishes them from all political and religious parties who actively seek political recognition and attaining power. Tunisian non-governmental organisations, charities, religious and civic groups are included in this definition.

The scholars who commented on the Arab Spring through the lenses of classical social movement theory considered that the "awaking of civil society" was underway in MENA.⁹⁵ Social movements were interpreted as both signs and development of this trend that would bring democratization to the region.⁹⁶ The root of human rights activism is embedded in the history of civil society in Tunisia. In order to comprehend how they have adapted and influenced Tunisia's current human rights status and political regime, it is paramount to acknowledge the pre-existing foundations and mechanisms of these civil society organisations through their history predating the Arab Spring.

2.3 The History of Civil Society Activities in Tunisia

Civil society activities were more visible globally during and immediately after the Arab Spring than previously. Civil society organisations were a critical player in the transition of power in Tunisia. And they were well organised during and after Jasmin revolution and helped to lead the country to democracy. However, there has not been enough focus on their history and

⁹³ World Bank, 'The Unfinished revolution bringing opportunity, good jobs, and greater wealth to all Tunisians' (2014) *Development Policy Review*, Report NO. 86179-TN.

⁹⁴ Ibid.

⁹⁵ Joel Beinin and Frederic Vairel, 'The Middle East and North Africa Beyond Classical Social Movement Theory,' in Joel Beinin and Frederic Vairel(ed), *Social Movements, Mobilization, and contestation in The Middle East and North Africa* (SUP, 2013).

⁹⁶ Ibid

trajectory prior to Arab Spring.⁹⁷

Tunisia has a long history of well-established civil society organisations in comparison to other countries in the MENA.⁹⁸ To understand the role of civil society, it is necessary to look at the conceptual understanding of civil society in the MENA rather than relying solely on western literature and western interpretation.⁹⁹ By doing so, one can understand the original functions performed by civil society under the Ottoman and French colonial empires.

The history of civil society is not limited to the colonial period, but it is rooted in Tunisia's early history under Berber and Ottoman rule. Pre 1881, civil society organisations were rudimentary in comparison to their modern counterparts.¹⁰⁰ Several empires had conquered Tunisia but it always retained a significant degree of sovereignty. Early Tunisia was exposed to the influence of many different political systems. Carthage (located in modern-day Tunis) served as the capital city, spanning thirteen centuries under the Phoenicians, the Carthaginians, the Romans, the Vandals, and the Byzantines. However, from time to time, the Berber population asserted their independence and succeeded in forming short-lived kingdoms, such as Massinissa, Jugurtha, and Juba.¹⁰¹

These non-centralised governance systems, operating under a central form of government with regional autonomy developed under Ottoman Empire.¹⁰² Under the Ottoman Empire, the region known as Ifriqiya was divided into three ojaks, or "regencies," – Tripoli,

⁹⁷ Alexander P. Martin, *Tunisian Civil Society (Political Culture and Democratic Function Since 2011)* (Routledge, 2020).

⁹⁸ Zuzana Hudáková, 'Civil society in Tunisia: from islands of resistance to tides of political change,' (2019) *The Journal of North African Studies*, Available at DOI: [10.1080/13629387.2019.1702532](https://doi.org/10.1080/13629387.2019.1702532) > accessed 10 Jan 2021.

⁹⁹ Martin (n.97).

¹⁰⁰ Asma Moalla, *The regency of Tunisia and the Ottoman Porte 1777-1814*. (Routledge, 2004).

¹⁰¹ Christopher Alexander, 'Authoritarianism and Civil Society in Tunisia,' (1997) *Middle East Report 205*. Available at <https://merip.org/1997/12/authoritarianism-and-civil-society-in-tunisa/> Accessed 14 Jan 2021.

¹⁰² Christopher Alexander, *Tunisia: Stability and reform in the Modern Maghreb*. (Routledge, 2010).

Tunis, and Algiers, forming these states' modern borders.¹⁰³

The Ottoman Empire's decentralised structure allowed the North African states greater autonomy than many other colonial territories.¹⁰⁴ This tolerant form of governance kept local government systems intact to support civil and political life despite colonial rule. Among the states under Ottoman rule, Tunisia stood out as incredibly progressive.¹⁰⁵ For instance, from a legislative perspective, Tunisia was the first state in the region to adopt a bill of rights (1857) and a constitution (1861), and the first Muslim state to abolish slavery (1841-1846). It was also the first country in the region to recognise unions, philanthropic groups, and to apply the Islamic terms of the waqf (donation based on the will of the dead person to a good cause) in legal documents or charitable foundations. Common throughout the Ottoman Empire, these extensive networks constitute significant examples of the "autonomous working" of civil society and the public sphere in this era.¹⁰⁶

French colonialism (1881-1956) was a regressive factor in developing civil society in Tunisia. It impeded civil society's development via colonial rule institutions that attempted to suppress the civil society organisations and the active public sphere that already existed.¹⁰⁷ Simultaneously, the colonial experience resulted in an expansion of civic thought via importing liberal French values and increased political activism through movements against the occupation.¹⁰⁸

Before the arrival of the French, Tunisia had a developed structure of associations and

¹⁰³ Moalla (n.100)

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Moalla (n100). Roula Khalaf, "Tunisia: After the revolution," *financial times magazine*, May 6,2011, Accessed 12 Jan 2021. <http://www.ft.com/intl/cms/s/2/9272ed50-76b9-11e0-bd5d-00144feabdc0.html#axzz3WRdOP4Tw>. Amor Boubakri. "A prospective opinion on the Tunisian revolution," *Bitterlemons International*, Mid East Round Table Blog Vol 10 (4). Accessed 14 Jan 2021. <https://www.bitterlemonsinternational.org/previous.php?opt=1&id=376>.

¹⁰⁷ Kenneth Perkin, *A history of modern Tunisia*. (CUP,2014). pp15-45.

¹⁰⁸ Emma C Murphy, 'Ten years on: Ben Ali's Tunisia,' (1997) *Mediterranean Politics* 2 (3) pp114-122.

political bodies fully capable of governance. Victoria Chambers and Claire Cummings articulate this dynamic: "When Tunisia became a French protectorate in 1881, it already had a centralised political structure with a developed administrative apparatus, borders which were largely accepted by its relatively homogenous population and strong interactions between the political centre in Tunis and rural groups, based on a long history of external trade."¹⁰⁹

The French administrative structure kept many Tunisian institutions intact. The *Bey*¹¹⁰, the prime minister, and his advisers remained in place, and the Tunisian system of caids, *khalifas*, and *shaikhs*¹¹¹ was retained in local government.¹¹² However, sufficient power rested with a select few: the French forces' resident-general, the French director-general of finance, and the *controleurs civils* (civil controllers). Tunisian courts were recognised, and their code modernised, though French courts tried Europeans. An institution known as the *Grand Conseil*, considering separate elected Tunisian and French sections, was given budgetary responsibilities.¹¹³

The French did not destroy Tunisian systems of governance, choosing instead to preserve them or include Tunisians in new ones, maintaining Tunisia's political identity in a way that allowed it to carry through to the post-colonial era. This contrasts starkly with Algeria, where the French directly annexed the country and put strict French administrative structures in place, leaving it less ready to govern post-independence.¹¹⁴ The protectorate administration in Tunisia also established municipal governments, improved infrastructure transport, and

¹⁰⁹ Victoria Chamber and Claire Cummings, "Building Momentum: Women's empowerment in Tunisia." (2014) *Policy brief*. Overseas Development Institute.

¹¹⁰ Bey is Turkish term (in Arabic Bay) for ruler, or the member of ruling family, the head of the tribe and important official.

¹¹¹ All terms can be interpreted (religious and political leadership) Sheikh (religious leader) Khalifa (the religious and political ruler) caid a Leader).

¹¹² Martin (n.97).

¹¹³ Veronica Baker, "The Role of Civil Society in the Tunisian Democratic Transition," (2015) *Undergraduate Honours Theses*. 1-69.

¹¹⁴ Wilfrid Knapp, *North West Africa: A political and Economic Survey*. (OUP, 1977) 346.

strengthened the central government's ability to extend to the more challenging peripheral and tribal areas of Tunisia.¹¹⁵ French colonialism had economic influences that arguably continue to this day through mining raw materials, exploiting labour, the dislocation of agricultural labourers, and the gradual process of privatisation and centralisation of land.¹¹⁶

In Tunisia, trade unions, first established in the early 20th century, played critical roles as political bodies and early civil society organizations.¹¹⁷ Mohamed Ali al-Hammi founded the General Federation of Tunisian Workers in 1924. With Farhat Hached in 1946, the country gained the single most potent non-governmental institution in Tunisian history: the General Union of Tunisian Workers (UGTT). Hached was initially a member of the French General Confederation of Labour (CGT), where he learned of union activism and how to organise it. After 15 years being in the CGT effectively, he split from it to create the UGTT, thus demonstrating the direct influence of the French colonial experience on the growth of Tunisian civil society in that time.¹¹⁸ The UGTT quickly grew in popularity and power and even gained support from international institutions. With its increasing influence, the UGTT placed pressure on the ruling French for more social and political rights for Tunisians.¹¹⁹

During Tunisia's period as a protectorate, the French worked to create a modern and loyal elite among well-educated Tunisians to protect their colony and subsequently approved a charter to promote civil and sophisticated discussion in 1896. This initiative resulted in the creation of the Khaldun Society (*AlJam'iyah Khalduniya*, named after the famous Tunisian philosopher and historian Ibn Khaldun), which served as a cultural society that aimed to link modernity

¹¹⁵ Clement Moore Henry, "Post-Colonial Dialectics of Civil Society," 11 in Yahia H. Zoubir, *North Africa in Transition: State, society, and Economic Transformation in the 1990*.

¹¹⁶ Alexander (n.102).

¹¹⁷ Mohamed-Saleh Omri, "Trade Unions and the construction of a specifically Tunisian protest configuration." *Open Democracy*, September 24, 2013. Accessed Jan 14, 2021. <https://www.opendemocracy.net/mohamed-saleh-omri/trade-unions-and-construction-of-speceficlly-tunisian-protest-configuration>.

¹¹⁸ Ibid

¹¹⁹ Ibid

with "rootedness" (*asalah*).¹²⁰ The association offered free courses on European topics and provided a forum for intellectual and philosophical debate among Tunisians. This institutionalised the French exportation of political and social theory to Tunisia and contributed to the increased embedment of French culture among the Tunisian elite. Within a decade, the *Khalduniya* attracted some 150 people at its lectures and nearly 5000 readers in its library.¹²¹

In December 1905, the *Khalduniya* was followed by the establishment of a different association, the *Sadikiya*. In addition to creating a "meeting ground" for reformers, the *Sadikiya* tasked itself with popular education and followed various French prominent figures (including French Roman Catholic activist Max Sangnier and his movement, 'the *Sillon*'), organising lectures and seminars. Both organisations provided civic education and forums of debate critical to civic thought evolution among the Tunisian elite.¹²²

Civil resistance against the French colonisation, existed from the end of the World War II to 1956 via illegal informal networks and formal associations that the authorities periodically suppressed.¹²³ Such networks and associations were known as the '*pays reel*,' (real country) in contrast to the '*pays legal*,' (legal country) which were the associations within the public sphere allowed by the French protectorate. The concept of a *pays reel* suggests a broader understanding of civil society than may typically be recognised in Tunisia's analysis.¹²⁴ In other terms, '*pays reel*' referred to illegal associations and civil society aiming at creating an independent Tunisia. Therefore, Tunisia's cultural critique tradition – expressed through public meetings, associations, and protest movements – dates back at least to the decolonial struggle

¹²⁰ The society of Ibn Khaldun was to create the link between the Tunisian past and cultural heritage with modernity in the west. (Mainly French).

¹²¹ Mohamed-Saleh Omri (n.117).

¹²² Ibid

¹²³ Knapp (n.114) 355.

¹²⁴ Ibid

against French colonialism in the 1930s and 1940s.¹²⁵

Tunisian scholar Nouri Gana notes evidence of ‘cultural and critical economic capital’ in the formation of the intellectual Against the Wall Group (*jama' ittahta al-sur*), which brought together a heterogeneous collection of scholars and helped raise awareness about the colonial condition through regular meetings and debates organised in popular cafés.¹²⁶ He also notes the significance of Tunisia's foremost national poet, Abul-Qasim al-Shabbi. Tunisia's prominent national playwright, Mahmoud al-Messadi, wrote about freedom, political paralysis, and defiance of French colonialism.¹²⁷ Early protesters used Al Shabbi's poetry in Tunisia and Egypt, his lines signifying ‘an evocation of the inextricable relationship between foreign and indigenous forms of oppression, and the need to fight both.’¹²⁸ Tunisia’s protracted anti-colonial struggle (compared with Morocco, which had a shorter period of struggle) provided an incubation period for developing strong nationalist organisations and civil society.¹²⁹

During the colonial period, Tunisian civil society evolved to support community needs and challenge the French power. The expansion of unions, non-governmental organizations, academia, public education, the media, combined with the development of a nationalist independence movement against the French, highlighted civil society's growth during colonial occupation.¹³⁰ Led by the future president of Tunisia, Habib Bourguiba, and assisted by the powerful UGTT labour union, the French were expelled, culminating in the revolution of 1956, which was a unifying and defining period for Tunisian society.¹³¹ The collaborative actions of the labour unions, human rights advocates, and other community groups instilled in Tunisians

¹²⁵ Baker (n.113)

¹²⁶ Nouri Gana. “Tunisia,” in Paul Amar and Vijay Prashad (ed). *Dispatches from the Arab Spring: Understanding the New Middle East*, (University of Minnesota Press, 2013).1-23.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Nouri Gana (n.126). Corinna Mullin, “Tunisia’s Revolution and the Domestic-International Nexus,” in *Routledge Handbook of the Arab Spring: Rethinking Democratization*, ed Larbi Sadiki. (Routledge, 2015)89

¹³⁰ Henry (n.115).

¹³¹ Ibid.

a recognition of the power that civil society could exercise over the state. The groups that fought against French occupation continued to exist in Tunisia and formed the basis of an active civil society.¹³²

In 1987, after Zine, El-Abidine Ben Ali gained power and replaced Habib Bourguiba in a bloodless ‘medical’ coup. For a short period, the government accepted civil society organisations but soon, the systematic oppression against political oppositions and civil society against Ben Ali began. The Ben Ali regime's most significant opponent, the Islamist opposition (*Ennahda*), was banned from organising as a political party. Political activists who were against the system faced with arrest, harassment, and exile.¹³³ After Ben Ali applied oppressive policy to control Islamist’s political activities, he was assured that the Islamist association posed no immediate threat to his hegemony. He was certain that other groups are not threatening his government, therefore, he permitted other groups continue their activities such as human rights lawyers’ organisations. These organisations' existence helped Ben Ali present his government as being more democratic than it was to his western allies. Indeed, Ben Ali behaved in an almost paradoxical manner by masquerading as a human rights supporter while simultaneously suppressing genuine activists.¹³⁴ During Ben Ali’s presidency, civil society was heavily regulated and limited due to the regime's oppressive and controlling nature.¹³⁵

However, in 2008, a series of uprisings in Gafsa broke out in response to the economic, financial crisis, and the high regional unemployment rate.¹³⁶ These uprisings were coordinated by various civil society organisations in Gafsa, including members and leaders of the regional General Union of Tunisian Workers (UGTT), and leaders of the Tunisian League for Human

¹³² Shelly Deane, “Transforming Tunisia: The Role of Civil Society in Tunisia’s Transition,” (2013) *International Alert*. 13

¹³³ Bellin (n.91).124. H.J.Wiarda, *Civil society: the American Model and Third World Development*. Found in Shelley Deane (n.132).

¹³⁴ Ibid.

¹³⁵ Martin (n.97). 44-45.

¹³⁶ Ibid.

Rights (LTDH). These leaders were active alongside protesters and were sometimes able to serve as mediators in the negotiations with the local authorities.¹³⁷ The power to organise and unite different organisations illustrates the high level of trust and tolerance which was held among civil society organisations at the time.¹³⁸ Indeed their collaboration in organising the uprising was so compelling as to signal the beginning of the revolution, which would ultimately end Ben Ali's presidency in 2011.

Information regarding the Gafsa uprisings remains limited and unclear even after the regime's collapse. However, these events clearly show evidence of strong opposition to the government from civil society prior to the Jasmin revolution.¹³⁹ "Tunisia's spirit of solidarity' signalled the start of the revolution and the starting point for freedom of association and institutional reform for civil society activists."¹⁴⁰ Shelly Deane ascribes the success of Tunisian civil society to their unity, as the key factor for a successful revolution.¹⁴¹ Hence: "Despite regime regulations and repression, Tunisia's civil society groups benefited from the relatively cohesive, tolerant makeup of Tunisian society, a society free from ethnically driven conflict. Historically, economic cleavages proved the most pervasive cause of social conflict in Tunisia leading to revolution."¹⁴²

During the period immediately after the regime's collapse, civil society organisations and opposition parties were granted a legal status, which allowed them to perform a democratic role and contribute to change.¹⁴³ Civil society effectively held the interim government to

¹³⁷ Eric Gobe, "The Gafsa mining basin between riots and a social movement: moaning and significance of a protest movement in Ben Ali's Tunisia. (2010) *Working paper*. Available at <https://hal.archives-ouvertes.fr/file/index/docid/557826/filename/Tunisia-The-Gafsa-mining-basin-between-riots-and-social-movement.pdf>. Martin (n.97). 50.

¹³⁸ Ibid.

¹³⁹ Landry Signe and Remy Smida, "Actions of the Tunisian Army in Gafsa in 2008 and during the Uprising 2011," (2016) ASPJ 38-56.

¹⁴⁰ Deane (n.132).

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Martin (n.97). 56.

account, amplifying popular demands and ensuring the old regime's transition was not controlled.¹⁴⁴ Within ten months, the civil society organized and monitored the first election in October 2011 for seats in the National Constituent Assembly (NCA), whose deputies would be elected to write the new constitution.¹⁴⁵

The Tunisian provisional government was effective in facilitating new changes. They reformed state laws, encouraging greater civic involvement, and allowing more political parties to be established and to participate in the democratic transition.¹⁴⁶ The new policy was also applied to secure democratic transition; this policy included the removal of specific individuals from the government who might have prevented democratic transition. Pressure from the public and civil society became more progressively organised.¹⁴⁷ The next step of the interim government was to create equal opportunities for women and youths' participation. To achieve this goal, the provisional government advised that 50 percent of party lists had to comprise women, and at least one member of the party-list should be under 30 years old.¹⁴⁸

Meanwhile, Mohammad Ghannouchi, the head of the provisional government, recommended drafting new association laws, providing several positive protections for NGOs. The electoral system was designed to increase pluralism and prevent exclusion.¹⁴⁹ A proportional representation system was established by implementing the 'Hare Quata with the largest reminders' method, thus ensuring that no singular party monopolised the election and that smaller parties would also be represented. The decision to implement an electoral system that disperses power and fosters inclusiveness proved to be effective as it later prevented

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid and also see Emma C Murphy, "The Tunisian elections of October 2011: a democratic consensus," (2013) *Journal of North African Studies* 18 (2) 231-247.

¹⁴⁷ Ibid.

¹⁴⁸ Murphy (n.108). 231-247.

¹⁴⁹ Ibid.

Ennahda, the strongest party on 23rd October elections, from dominating the assembly.”¹⁵⁰

A new legal framework in the transitional period strengthened civil society's activity and protects civil society organisations.¹⁵¹ Decree-law 88 (2011) guaranteed the freedom to form and join associations and undertake civic activities.¹⁵² It also empowered and facilitated the role of civil society to participate in society. It created a more straightforward process for registering and establishing new civil society organisations. Subsequently between 7000 to 10,000 new associations, unions, and professional organisations were registered within ten months of the revolution.¹⁵³

Revolution often destroys a country's administrative institutions, and for a significant period, the country faces chaos or civil war.¹⁵⁴ However, in the Tunisian's case, the state's institutions remained active after the Ben-Ali regime collapse. Tunisia did not require establishing new institutions, allowing civil society to improve the system and reform it. These powerful institutions prevented Tunisia from descending into disorder or civil war like other MENA countries (Syria, Egypt, Libya).¹⁵⁵ The transition happened gradually and efficiently because of the pre-existing political parties, institutional structure, and democratic culture of cooperation and compromise.¹⁵⁶ Tunisian tradition of constitutionalism and rule of law helped

¹⁵⁰ Martin (n.97).⁵⁷ Also Murphy (n.108).

¹⁵¹ Deane (n. 132). See Decree 88. Available at <http://www.icnl.org/research/library/files/Tunisia/88-2011-Eng.pdf>.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Sultany (n.77). Zaid Al Ali and Donia Ben Romdhane, “Tunisia's new constitution: progress and challenge to come,” *Open Democracy* February 16, 2014. Accessed 15 Jan 2021. <https://www.opendemocracy.net/arab-awakening/zaid-al-ali-donia-ben-romdhane/tunisia-%E2%80%99s-new-constitution-progress-and-challenges-to->. Andrew Engel, “Libya as a failed state causes, consequences, options,” (2015) *Washington Institute for Near East Policy*. Available at www.washingtoninstitute.org/policy/analysis/view/libya-as-a-failed-state-causes-consequences-options. (Access 15 Jan 2021).

¹⁵⁵ Ibid.

¹⁵⁶ Alfred Stephan, “Tunisia transition and Twin Tolerations,” (2012) *Journal of Democracy* 23(2),89-103.

the transition as the main legal framework was respected.¹⁵⁷

Ghannouchi complied with Articles 56 and 57 of the 1959 constitution, governing the succession in power, to allow Mebazaa to be president.¹⁵⁸ However, the transitional government faced many challenges, starting with the need to reform the police, judiciary, local government, and the state bureaucracy.¹⁵⁹ Corruption and negligence by the former regime also needed to be addressed.¹⁶⁰ One of the transitional government's primary tasks was to draft a new constitution to improve human rights and freedom of expression, balance secular and Islamist ambitions, respect pluralism, recognise multiple political parties, and promote the democratic practice.¹⁶¹ The government requested help from regional and international organisations and other countries while keeping the state's sovereignty and independence to achieve this aim. Tunisian civil society was constrained and confined under colonialism and authoritarianism, yet it played a prominent role during the revolution and the democratic transition.¹⁶²

In summary, civil society had existed, survived, and developed from Beylical rule via French colonialism to the twenty-first century. The semi-autonomous Tunisian monarchy under Ottoman control allowed civil society to perform an independent financial function that limited the potentially repressive government of Bey. During the French protectorate, the civil society organised themselves for resistance and soon managed to create an independence movement; the critical role of civil society at independence was nevertheless lost in the post-independence era.¹⁶³ Due to the authoritarian regime of Habib Bourguiba and Zine-El Abedine

¹⁵⁷ Isabel Schafer, "The Tunisian Transition: Torn Between Democratic Consolidation and Non-Conservatism in an Insecure Regional Context," (2015) *European Institute of the Mediterranean*. Accessed 14 Jan 2021. Available at [Coberta25 \(die-gdi.de\)](https://www.die-gdi.de/Coberta25).

¹⁵⁸ Martin (n.97).

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Murphy (n.146).

¹⁶³ Alexander P. Martin (n.97).

Ben Ali who controlled public activity. It restricted civil society's activity, but independent civil society survived and established a network between opposition groups and protesters before the 2011 revolutions.

As part of a general programme of social reform, the number of NGOs increased under Bourguiba and Ben Ali's administration. However, they did not have enough power to criticise authority or the regime, and their work did not have a meaningful impact in governmental policies.¹⁶⁴ Tunisia was dominated by societal control with constant interference in the personal and private lives of its citizens to ensure compliance with governmental rules. Prior to the Arab Spring, Tunisia's civil society was largely on a virtual platform; supported and spearheaded by the diaspora created from forced exile. As such, the revolution in Tunisia can be viewed as an internal revolt, led by opposition abroad in Paris and London, with civil society organisations supporting the people.¹⁶⁵ Although Tunisia has not historically been a democracy, it does have a long history of civic engagement in the public sphere via unions, associations, and a tradition of protest movements and other forms of political activism.¹⁶⁶

Tunisia's historical experience and strong institutions placed the country in a conducive position to complete a democratic transition successfully.¹⁶⁷ The success of civil society and civil society organisations in shaping post-revolution Tunisia is clearly a sign that even weak civil society under an authoritarian regime can help the process of democratisation during the transitional period.¹⁶⁸ In 2015, the (TNDQ) received the Nobel peace prize and is considered a further sign of the success of civil society organisations.

The following section will explain the methods that have been used by civil society to

¹⁶⁴ Amel Ahmed and Giovanni Capoccia, 'The Study of Democratization and the Arab Spring' (2014) 6 MELAG 1-31.

¹⁶⁵ Ibid.

¹⁶⁶ Alcinda Honwana, *Youth and Revolution in Tunisia*. (Zed Book, 2013). Amin Allal (n.95).

¹⁶⁷ Martin (n.97).

¹⁶⁸ Baker (n.113).

communicate and develop their activities and promote democracy in Tunisia.

2.4 Transnational Advocacy Network and Post Arab Spring Era in Tunisia

Social constructivism theory emphasises the transformative power of international normative discourse on human rights.¹⁶⁹ It acknowledges the role of activism by transnational actors, international organisations, and non-governmental actors, who support local efforts to lobby for human rights commitments and who, through repeated interactions with state actors, encourage the state to accept new norms.¹⁷⁰

As Margaret E. Keck and Katheryn Sikkink clarify: “Advocacy networks are significant transnationally and domestically. By building new links among actors in civil society, states, and international organisations, they multiply the channels of access to the international system.”¹⁷¹ One of the main actors in civil society is NGOs. Non-governmental organisations connect citizens and governments, holding the government accountable and advocating for citizens’ interests.¹⁷² To influence state and governmental policies more effectively, civil society organisations can choose to engage external partners and international organisations, pressuring states from the outside.¹⁷³ This effective method is called the boomerang effect, which helps the civil society organisations reach out for help, secure their work, and protect themselves from authorities.¹⁷⁴ During and after the Arab Spring, Tunisian civil society organisations had the advantage of creating this network and benefit from it.

Several international organisations influenced Tunisian civil society, through their agenda and available financial means.¹⁷⁵ Cooperation with similar organisations abroad and

¹⁶⁹ Stammer (n43).

¹⁷⁰ Keck& Sikkink (n.46).

¹⁷¹ Ibid 1-2.

¹⁷² David Lewis, “Non-Governmental Organisations and Civil Society,” (2016) *LSE Research Online*, Available at [Lewis- NGOs and civil society.pdf \(lse.ac.uk\)](#). Accessed 15 Jan 2021.

¹⁷³ Keck& Sikkink (n.46).

¹⁷⁴ Ibid.

¹⁷⁵ Jan Erik Refle, “Tunisian Civil Society and international link,” *Conference Paper at The European Workshop in International Studies (EWIS)* April 2016. Available at [\(PDF\) Tunisian civil society and its](#)

UN human rights bodies play an essential role in defending human rights.¹⁷⁶ An empirical study by Jan Erik Refle showed a strong connection between pro-democratic civil society organisations in Tunisia and western and international development support actors. He demonstrated that the organisations he interviewed had their activity largely sponsored by western organisations.¹⁷⁷ The more dominant sponsors of pro-democracy NGOs are European; among them, Oxfam, the Friedrich Ebert Foundation, and the European Union are the biggest donors. This connection helps civil society organisations prepare impartial reports from the government and give more practical advice on how the government can improve human rights records before international bodies, including the UPR.¹⁷⁸

2.5 Civil Society Independence from Political Parties in the Post-Arab Spring Era

The previous regime established total control of organisations and NGOs creating a legacy of a lack of trust which needed to be confronted and broken down.¹⁷⁹ Decree-law 88 (2011) sought to circumvent the overlap between the political sphere and civil society activities by encouraging civil society members to avoid participating in political parties. Article 9 states “Founders and directors of an association must not be among those who assume the central management posts in political parties.”¹⁸⁰ Organisations view their independence from affiliation to political parties for reasons relating to trust with pride.¹⁸¹

[international links \(researchgate.net\)](#). Accessed 14 Jan 2021. Also see European Neighbourhood Policy and Enlargement Negotiation, countries of the region (Tunisia). Available at [Tunisia | European Neighbourhood Policy And Enlargement Negotiations \(europa.eu\)](#). Accessed 20 Jan 2021.

¹⁷⁶ Martin (n.97).

¹⁷⁷ Refle (n.175) Martin (n.97).

¹⁷⁸ The relation between civil societies and the UPR will be explained in Chapter sixth.

¹⁷⁹ Interview conducted by Martin (n.97). To see further information regarding *I-watch* [I WATCH ORGANISATION - أنا يقظ - من نحن؟](#). Accessed 16 Jan 2021.

¹⁸⁰ See Decree 88. Available at <http://www.icnl.org/research/library/files/Tunisia/88-2011-Eng.pdf>.

¹⁸¹ Martin (n.97).

Mouheb Garoui, one of the *I-Watch* staff members, explained how *I-Watch* (a watchdog organisation established to ensure transparency and fight corruption) maintained the balance of independence without being exclusionary.¹⁸²

“We have extremely strict rules, *I-watch* does not accept, members that belong to political parties; however, the main principle in *I-watch* is ‘No exclusion’ so these members with political affiliation don’t have access and cannot be involved in lobbying and advocacy projects. You can be a member and watch what we are doing, but you cannot get involved in the projects, especially the elections. If you want to get involved in *I-watch*, you must resign from your political party. We do not discourage young people from joining political parties, but we do not match or work together. Choose civil society or political parties. The board members are not in anyways allowed to join political parties or even express their Facebook page affiliation or alignment with political parties.”¹⁸³

The interview results conducted by Alexander P. Martin on the role of civil society organisations in the post Arab Spring era indicate that some organisations are performing a democratic function acting as regulators to hold the state accountable.¹⁸⁴ For example, it reports that: “*I-watch*, *OpenGovTN*, and *Al Bawsala* are seeking to enhance Tunisia’s democracy by making electoral and parliamentary processes more transparent. While Tunisian civil society played an important role during the revolution and transition, these results evidence how civil society vibrancy has developed. Furthermore, the data reflects a genuine understanding of the Oppositional-Resistance role CSOs perform.”¹⁸⁵

¹⁸² I-watch is the organisation that established in 2011 and their main goal is to make the government responsible to the people and fight against corruption. [I WATCH ORGANISATION - أنا يقظ - من نحن؟](#). They are inclusive in terms of being independent from political power, but they are welcoming people from different backgrounds.

¹⁸³ Martin (n.97).

¹⁸⁴ Ibid.

¹⁸⁵ Interview conducted by Martin (n.97) To see further information regarding *I-watch* [I WATCH ORGANISATION - أنا يقظ - من نحن؟](#). Accessed 16 Jan 2021.

2.5.A. Activities of Newly Established Civil Society (Post-Arab Spring Era).

The newly established civil society organisations have faced different challenges from historical and well-established institutions, which led society to organise and participate in the rally against the Ben Ali regime. These institutions benefited from the transnational networks that prior civil society organisations had already established. The new organisations needed to define their relationship with the newly elected government, their strategic objectives, and their association with secular-liberal or religious organisations.¹⁸⁶ To highlight how their activities address the modern era in Tunisian politics, the objectives of four domestic organisations are explored in terms of impact and diversity.

Al Madanya is an NGO that was established after the collapse of Ben Ali's regime with the aim of assisting sociocultural and economic development in Tunisia. The founder, Uday is a businessman who has worked largely in the USA's business sector and has not been involved in any humanitarian projects before. Immediately after the Arab Spring had begun, Uday wanted to get more involved in the future of the country. An example of this is providing transport for school children.¹⁸⁷

Femmes et citoyenneté is another organisation established in the post-Arab spring era to support greater rights for women in Tunisia based on the spirit of helping others. It was a book club initially and gradually developed into a firm organisation that supports low-income women who had an experience of domestic violence, individuals affected by the heavy snowfall and floods in Kef in 2011-2012 and helping low-income families. Alongside empowering women and supporting and protecting women's rights, they also supply books and clothing for schools in more impoverished areas of Kef. Soraya, one of the organisations' officers' stated that because of the nature of their activity to involve everyone and engage with

¹⁸⁶ Ibid

¹⁸⁷Ibid. For seeing more information about NGOs, see [Human Rights | arab.org](http://HumanRights|arab.org)

the community, there was no resistance to their activities. They have received funding from Spanish and German bilateral institutions to fund their organisational activities. Having strong financial support helps them to be successful in addressing the humanitarian demands of the community.¹⁸⁸

Association on voix d'Eve is a non-profit association created on 6th March 2012 to empower women's voices and help them find their rightful place in society. The members are driven to promoting critical and constructive reflection on the conditions of women in Tunisia to ensure effective participation in development in all areas: cultural, social, economic, and political.¹⁸⁹ The organisation describes its mission and vision as fighting against all forms of discrimination based on gender, promoting democratic culture, and promoting the involvement of women in public life by strengthening their capacities and supporting their leadership.¹⁹⁰

L'Association de Recherches sur la Démocratie et le Développement (ARDD) was established immediately after the Tunisia uprising in February 2011.¹⁹¹ Ghizlan, one of the founders of the organisation, explained, "We all lived the revolution and cried out for our dignity and liberty, as we engaged ourselves then in the future of our country. We suffered years under the family of Ben Ali as they betrayed the social and political objectives of the country."¹⁹² The association's objective is to explain the "democratic transition" to the public and raise awareness of the repression and corruption that characterised the former regime. ARDD has also organised events on topics such as 'the media and the revolution', 'the environment and the revolution,' and women's rights, each of which have involved a series of seminars and discussions with different political and civil society experts.¹⁹³

¹⁸⁸ Martin (n. 97). For further information about the organisation, see <https://www.peaceinsight.org/en/organisations/association-femmes-et-citoyennete/?location=tunisia>

¹⁸⁹ For finding more about *Associate on voix d'Eve* see: [Voix Eve \(voix-eve.org\)](http://Voix Eve (voix-eve.org))

¹⁹⁰ Ibid

¹⁹¹ Martin (n.97). To see further information regarding *L'Associate de Recherches sur la Démocratie et le Développement (ARDD)* IDH Tunisia.

¹⁹² Ibid.

¹⁹³ Martin (n.97) To see further information regarding Shams organisation.

Along with domestic organisations, several regional and international organisations have had a significant impact in facilitating the democratic transition and human rights development in post-Arab Spring Tunisia.

Euromed Rights, which was previously called the Euro-Mediterranean Human Rights Network (EMHRN). It is a non-governmental organisation aiming at promoting cooperation and dialogue between countries on both sides of the Mediterranean Sea.¹⁹⁴ Its mission is to promote and strengthen human rights and democratic reform at the regional and national level by creating network opportunities and encouraging civil society cooperation. Their work in Tunisia aims at “reinforcing and creating synergies between national and international civil society actors and the independence state instances in four areas: justice reform, women rights and gender equality, individual freedoms and the establishment of independent institutions.”¹⁹⁵ This NGO has an extensive track record leading the “tripartite dialogue” between civil society, the Tunisian government, and the European Union (EU). The goal is to enhance human rights standards in the EU and Tunisia bilateral relations, in gender equality, the rights of migrants and refugees, justice reform, and economic and social rights.¹⁹⁶ Their work has had a tangible impact in terms of legal development of the country and in the creation of human rights monitoring system under the auspices of NGOs, the government, and the European Union. The advocacy aspect of *the Euromed rights* also focuses on the empowerment of the judiciary.¹⁹⁷ After the transition of power to the new democratic system, *Euromed* has focused on creating a platform for better relations between the public and governmental institutions to protect human rights and democratic rights in Tunisia.

¹⁹⁴ *Euromed rights organisation*: Available at [EuroMed Rights - Tunisia](#). Accessed 20 Jan 2021.

¹⁹⁵ Ibid

¹⁹⁶ Ibid

¹⁹⁷ Ibid

2.5. B. Restriction of Activities for Civil Society Organisations in Post-Arab Spring Era

Articles 3 and 4 of the Decree Law (September 2011) state that associations must observe the principles of the rule of law, democracy, plurality, transparency, equality, and human rights in their activities. Associations are prohibited from implementing activities that incite violence, hatred, intolerance, or discrimination based on religion, gender, or religion.¹⁹⁸ NGOs and civil society can generally operate freely, but the main barriers are cultural stigma around specific issues such as LGBTQ rights and pressure from conservative religious groups.¹⁹⁹ For example, the *Shams*, an NGO that openly defends the rights of the LGBTQ community faced interference from the government.²⁰⁰ Since *Shams* was established in May 2015 the state prosecutor has filed five cases against the association because of campaigns against *Shams* by religiously conservative groups. These cases have cited the incompatibility of the association's activities with its bylaws and claim that its actions violated public order.²⁰¹ The association has been accused of trying to normalise and promote homosexuality and act against Tunisia's customary law, creating a hostile and volatile environment.²⁰² The association took legal action against the government's accusation to defend their activities explicitly and to prove that there was no evidence against them in the court to indicate that they were violating Article 3 and 4 of Decree Law.²⁰³ In February 2016, the Administrative Court overruled the suspension decision and dismissed the case against the association.²⁰⁴

¹⁹⁸ Decree Law, 24th September 2011.

¹⁹⁹ Martin (n.97) To see further information regarding Shams organisation, Shams Tunisia | arab.org. Accessed 21 Jan 2021.

²⁰⁰ Ibid

²⁰¹ Ibid

²⁰² Ibid.

²⁰³ Decree law has a new Draft amendment 11th February 2022.

²⁰⁴ Ibid.

2.6 Social Media, Public Movements and Civil Society in Tunisia (Pre, and Post-Arab-Spring Era)

Edwige Fortier describes the situation before the Arab Spring in Tunisia by quoting the words from the director of the United Nations human rights organisation in Tunis “Before Ben Ali, people were not free to do this (establish and association) for fear of engaging directly or indirectly in the political system with the regime; but now this spirit of ‘electorism’ is resurfacing, and in a way, the creation of all these associations is a symbol of resisting a dictatorship.”²⁰⁵ The uprising in 2011 that ended the Ben Ali regime started with the self-immolation of an individual, Mohammad Bouazizi, the young vegetable-seller who lived in small-town Sidi Bouzid near the Gafsa. The area had a long history of resistance against French rule as well as a history of protests and resistance against Ben Ali before the Jasmin revolution.²⁰⁶

The Tunisian revolution was different from the prior uprisings in many aspects and the public was well informed of Mohammad Bouazizi's story. One of the most significant revolutionary features was the use of social media platforms (especially Facebook and Twitter) to organise and help create the network between the protesters and political parties in exile and the international community.²⁰⁷ Protesters highlighted the critical role of social media in the mass demonstrations in central Tunis in the final days before Ben Ali's departure through the slogan “Thank you Facebook” in reference to the social networking website.²⁰⁸ The commentators used different words to address the uprising in the Arab world by calling it “Twitter Revolt.”²⁰⁹ The role played by the internet, social media, and mobile technology such

²⁰⁵ Edwige Fortier, *Contested Politics in Tunisia (Civil Society in a Post-Authoritarian State)*. (CUP,2019). 95.

²⁰⁶ Ibid, Martin (n.97) Baker (n.113). 1-87.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Honwana (n.166). Martin (n.97), Baker (n.113).1-87.

as camera phones, in spreading information and mobilizing the public would seem to support the notion of a “Facebook” or “Internet” revolution.²¹⁰

In summary, social media created a platform for opposition parties, civil society, and people to communicate and establish the network and organise demonstrations against the Ben Ali regime.²¹¹ Since the collapse of the administration, the public have continued to express their criticism of the elected government's decision by social media platforms in a more dignified and unreserved manner both during the transitional and current period.²¹² This gives total autonomy to the public to exercise the right to freedom of expression.²¹³

In line with a trend visible in most new democratic countries, Tunisia faces challenges in fully practicing and implementing democracy. To overcome these obstacles, Tunisia needs to invest in expanding the activity of NGOs and civil society. Civil society and NGOs are not keen to be funded by government and state for fear of losing independence and being a puppet of the government. Neither does the government have an interest in funding NGOs and civil society activities.²¹⁴ For political parties, governments, and civil society to benefit from each other and improve human rights law in Tunisia, trust and accountability to each other and the public is essential.

2.7 Islamism, Religious Civil Society, Social and Political Division in Pre and Post Arab Spring

Religion has always played a vital role in the political and sociocultural dynamics of the MENA. Before the Arab Spring, Islamists were banned in North Africa. Secularist, and authoritarian governments of North Africa (Libya, Algeria, Egypt, Tunisia, Morocco) restricted and controlled their activities. Any political activity of an Islamist group was considered a

²¹⁰ Ibid.

²¹¹ Honwana (n.166).

²¹² Martin (n.97).

²¹³ Ibid.

²¹⁴ Ibid.

crime against the constitution of the state. Authorities arrested and charged them with an act of terrorism and endangering state security.²¹⁵ The region has always had social division between secularist and Islamist groups and mistrust between them is longstanding.²¹⁶ Tunisia is a country with a Muslim majority; it has a history of conflict and disagreement between secularist and Islamic movements, and this conflict was fuelled by authoritarian regimes.²¹⁷ Islamists labelled themselves as a cultural, social and political movement and resistance that was diverse but had one common ground: the desire to implement Islamic law (Shari'a).²¹⁸ However, interpretation of Islamic law remains varied and controversial among scholars and practitioners.²¹⁹

Most Islamist associations were not present in the public and private sectors before the Arab spring. Their role was mostly limited to religious ceremonies and small commercial activities. Historically, Islamists have designed their activities based on the political environment and the demands of the public. They have acted progressively in different periods of history developing and expanding their activities in conjunction with post-independence and post-nationalist movements during the independence struggle.²²⁰ As explained in this chapter, Islamist political groups became more active in the post-Arab Spring era, enjoying more freedom to express their ideology and advertise and recruit new affiliates. Before this time, they mainly acted as underground and illegal parties.

Islamist organisations are as heterogeneous as other forms of social movements.²²¹ Islamists theorise their beliefs, policy, and actions under the influence of the surrounding social

²¹⁵ Holger Albrecht and Eva Wegner, "Autocrats and Islamists: Contenders and Containment in Egypt and Morocco," (2006) *The journal of North African Studies* 11(2). 123-141. Alaya Allani, "The Islamists in Tunisia Between Confrontation and Participation:1980-2008," (2009) *The journal of North African Studies* 14 (2) 257-272.

²¹⁶ Fortier (n.205).

²¹⁷ Perkins (n.107).

²¹⁸ Rory McCarthy, *Inside Tunisia's Al-Nahda, Between Politics and Preaching*, (CUP, 2018).

²¹⁹ Ibid.

²²⁰ McCarthy (n.218)123-125.

²²¹ Fortier (n.205).

and political environment. Therefore, they adopt and shape themselves according to the era. For instance, in the 1970s they were influenced by the independence of Tunisia and endorsed democracy and pluralism as well as the role of the civil state in 1980s. The post-2011 period marked the beginning of a new phase of adaptation in which the meaning Islamist leaders gave to their movement's actions were transformed once more.²²²

The main Islamic political party in Tunisia, Ennahda, is Sunni.²²³ They established the rule of law based on their own interpretation of Islam; developing both political and economic theories to guarantee their path to power. Ennahda and its pioneers are considered part of a 'social movement.' They represent a collective challenge based on shared purpose and solidarities and engaged in sustained interaction with authorities, elites, and opponents.²²⁴ The party's origin can be traced back to 1972 when Rachid Ghannouchi founded the originally named *Al Jamaat al Islamiyah*. In 1981, he changed the name of the party to the *Mouvement de la Tendence Islamique* (MTI). Finally in 1989, the party became known as the Ennahda²²⁵ Movement.²²⁶ Their manifesto for the first democratic election after the Arab Spring was to bring justice and equality to Tunisia. Their focus was not merely to practice Sharia but to implement social justice.²²⁷ Unlike other Islamist groups in the region, their ideology was not to spread Islam or enforce Sharia to people to return to the 'Golden Era of Islam.'

Juxtaposed to Ennahda is the Islamic Group *Jihadi Salafi*. They have a different approach towards the practice of Islam and were involved in the political future of Tunisia.

²²² McCarthy (n. 218).123-125. Malika Zeghal, "Competing Ways of Life: Islamism, Secularism and Public Order in the Tunisian Transition," *Constellations* 20(2) 259. Francesco Cavatorta and Fabio Merone, "Post Islamism, Ideological Evolution and la Tunisianite of the Tunisian Islamist Party *al-nahda*," (2015) *Journal of Political Ideologies* 20(1). 32

²²³ McCarthy (n.218).

²²⁴ Sidney Tarrow, *power in movements: Social movements and contentious politics*, CUP, 2011, 9. McCarthy (n.218).

²²⁵ Ennahda, some authors refer them as Al-Nahda.

²²⁶ McCarthy (n.218).

²²⁷ Ibid 1-13 Also see Perkins, (n.107).214-259.

Their intention has always been to establish an Islamic State and are mostly sympathetic with extremist and fundamentalist groups who have a history of violence against civilians and secular political party members. They believe the only legitimate law is Islamic and Sharia law and that human rights law should never be accepted and practised in Tunisia as Islam is superior.²²⁸

Before the Arab Spring, one of Ben Ali's most prominent opposition groups was the Islamist party of Ennahda, led by Rachid Ghannouchi from exile. During the revolution, it played a fundamental role from outside Tunisia leading some of their followers against the Ben Ali regime by connecting with protesters inside Tunisia.²²⁹ Ennahda joined protesters during the uprising that brought down Ben Ali's regime, but they realised this was not the revolution of one group, and this was not a religious revolution.²³⁰ As such, the uprising was not of Ennahda's making.²³¹ In order to better understand why, we must explore the definition of Ennahda's ideology. Ennahda seemed to struggle to define the nature of their party's ideology before the Arab Spring. Rachid, a member of the party imprisoned between 1991-2002 described this internal identity problem when interviewed by Rory McCarthy: "Are we a political movement with an Islamic background? Are we fundamentally an Islamic movement that has a political dimension? Or are we a political movement with no religious dimension? It needs to be theorised to be thought through in-depth. I believe that we have a comprehensive project with politics, economics, religion, art, everything in the Qur'an. But how can we implement this for people? It needs much more reflection."²³²

²²⁸ McCarthy, (n.218).

²²⁹ McCarthy (n.218), 123-125. Malika Zeghal, "Competing Ways of Life: Islamism, Secularism and Public Order in the Tunisian Transition," *Constellations* 20(2) 259. Francesco Cavatorta and Fabio Merone, "Post Islamism, Ideological Evolution and la Tunisianite of the Tunisian Islamist Party *al-nahda*," (2015) *Journal of Political Ideologies* 20(1). 32.

²³⁰ Ibid, 123-125.

²³¹ Ibid, 123-125.

²³² Ibid. 123

Ennahda realised they needed to define their purpose and plan their strategy to compete in elections in the post-revolution era. After they emerged victorious from Tunisia's first free election on 23rd October 2011, their activities focused on strategic leadership choices during a transition away from authoritarian tendencies.²³³ The role of Ennahda changed, and the party was elected in the democratic process to be running power in the country. International media highlighted their moderate position and compromise, something that gained them acceptance among civil society.²³⁴ Some commentators have highlighted the political competition and negotiation between Islamist and secular political groups. Others looked at how Ennahda's political choices influenced internal dynamics within an organisation that had enveloped a diverse membership for many years.²³⁵ “Ennahda combined both a formal political and religious party and a social movement in one organisation. This was not just as a response to authoritarianism but a political process which had opened up to the pluralist competition.”²³⁶ Ennahda, in this new era, has described itself as a civil party with an Islamic reference (*Hizb madanai dhu marji iyya islamiyya*) and later as Muslim democrats.²³⁷ Ennahda shares characteristics with other Islamist groups in the region with similarly superficial ideological visions.²³⁸ The challenge they have faced within their group and movement has been to adopt new democratic competition within a globalised economic world in deep structural and intellectual crisis.²³⁹

²³³ Ibid. 123-125. Malika Zeghal, “Competing Ways of Life: Islamism, Secularism and Public Order in the Tunisian Transition,” *Constellations* 20(2) 259. Francesco Cavatorta and Fabio Merone, “Post Islamism, Ideological Evolution and la Tunisianite of the Tunisian Islamist Party *al-nahda*,” (2015) *Journal of Political Ideologies* 20(1). 32

²³⁴ McCarthy (n.218), 123

²³⁵ Ibid 123-125. Malika Zeghal, “Competing Ways of Life: Islamism, Secularism and Public Order in the Tunisian Transition,” *Constellations* 20(2) 259. Francesco Cavatorta and Fabio Merone, “Post Islamism, Ideological Evolution and la Tunisianite of the Tunisian Islamist Party *al-nahda*,” (2015) *Journal of Political Ideologies* 20(1). 32

²³⁶ Ibid, 125.

²³⁷ Ibid

²³⁸ Ibid

²³⁹ Ibid

In 2013, two vocal critics of Ennahda in Tunisia—Chockri Belaid and Mohamed Brahmi—were assassinated within a few months.²⁴⁰ The assassination of secularist political leaders created suspicion and a hostile environment towards Islamists developed. Moderate Islamists felt compelled to clarify that they were not associating with any extreme ideologies and violent groups.

Tunisians perceived these assassinations as the direct attack to democratisation and re-manifestation of authoritarian rule as well as the inability of Ennahda to keep the country secure and sustainable.²⁴¹ The tension with secular parties has persisted despite the statement of Ennahda declaring that it had no interest in creating an Islamic Khalifa or any form of authoritarian regime.²⁴² Conversely, the Jihadists and Salafists accepted the responsibility for assassination, and Ennahda separated themselves from being involved in their plan and condemned their act of aggression.²⁴³

After the Arab Spring, many Islamist organisations presented themselves as humanitarian and charitable organisations working directly with impoverished communities.²⁴⁴ Several Islamist associations during this period, such as the Saheb Ettabaâ Association of Islamic Culture in Tunis, were also educational and cultural, providing classical Quranic education and literacy to women in mosques across the country.²⁴⁵

After the collapse of the regime, many new actors entered onto the Tunisian scene. A large and highly motivated new group of actors occupied a space in society, raising widespread suspicion regarding these new organisations from Tunisian secular and western-oriented social entrepreneurs.²⁴⁶ Many of these actors and groups worked in underprivileged areas, operating

²⁴⁰ Ibid

²⁴¹ McCarthy (n.218) 123-125.

²⁴² Ibid

²⁴³ Ibid

²⁴⁴ Fortier (n.205).

²⁴⁵ Ibid

²⁴⁶ Ibid

at the local level to supplant the broken state system, and benefitted from external networking, which let them fund their activities. According to the 2013 International Crisis Groups report “*Tunisie: Violences et Défi Salafist*”, Salafist militants became essential actors in the economic life of post-revolution Tunisia, providing academic support to young scholars, conflict resolution between neighbours, and helped with local administrative issues. In many villages and neglected urban areas, these groups had inserted themselves in the informal and underground economy.”²⁴⁷

2.8 The Role of Civil Society in Drafting the Constitution

The constitution drafting process (2011-2014) coincided with a fragile time for Tunisia; in this period, the civil society organisations acted as a facilitator to keep the peace between political parties. Civil society was active in voicing demands and disapproval against draft constitution articles they considered unsatisfactory.²⁴⁸ This period was also the most controversial and vital in Tunisia's history because of the possible clash between secular political parties and religious political parties. The end of Ben Ali's era of oppression meant that civil society and political parties were no longer obliged to adopt the government's state-secularist program.²⁴⁹ As a consequence of changing the old policy, Tunisians exercised the newfound freedom of expression and pluralism.²⁵⁰ Tunisians succeeded to collaborate and respect the diversity of the socio-political space.²⁵¹ Despite the other neighbouring countries experiencing a severe clash between secular authoritarian political parties and Islamists, Tunisians decided to act together despite their differences; they expanded the new political parties and civil society

²⁴⁷ International Crisis Group, “Tunisie: Violences et Défi Salafiste,” (February 2013) *Rapport Moyen-Orient/Afrique du Nord*, <https://www.crisisgroup.org/fr/middle-east-north-africa/north-africa/tunisia/tunisia-violence-and-> no.137.

²⁴⁸ Martin (n.97) 65. Baker (n.113). 44-48. Jason Gluck and Michael Brandit, “Participatory and inclusive Constitution Making,” (2012) United States Institute of Peace, *Peaceworks* No 105. Accessed 20 Jan,2021. <http://www.usip.org/site/default/files/PW105-Participatory-and-Inclusive-Constitution-Making.pdf>.

²⁴⁹ Deane (n.132).

²⁵⁰ Ibid.

²⁵¹ Ibid.

organisations.²⁵² Nevertheless, the ‘intolerance of opposition’ legacy from the previous regime remained, and civil society was not entirely civil or democratic.²⁵³

It was not easy to overcome this barrier without the help of civil society organisations and political parties. “Building trust and tolerance in harmony with freedom and pluralism, while also agreeing to equality for all, could be achieved through open-ended, interactive, cross-cultural, and reflexive process Sadiki describes as the local level development of intellectual and practical capacities, skills, and ethics.”²⁵⁴ Instead of a clash of civilisation, Tunisia experienced the “Twin Toleration”, that is a compromised relationship between religion and secularism in politics during the 2011 election. Religious citizens accepted democratically elected officials of the state to govern and legislate while the state permitted religious citizens to express their views.²⁵⁵ In this context, Ennahda represented a new form of political Islam²⁵⁶, a unique case of being an Islamist party and playing as mediator between Salafists and extremists, and secularists.²⁵⁷

Civil society’s protest became progressively less since the end of Ben Ali regime until the assassinations of left-wing opposition politicians Chokri Balaid and Mohamed in 2013. In response, a protest was held against Ennahda on 25th July 2013. The Islamist party was blamed for the country’s security failures, and the perception of the public was that it had been too lenient on hard-line Islamists.²⁵⁸ The protesters developed into calls for Ennahda to step away from the government. This led to a political deadlock where the National Constituent Assembly (NCA) members froze their membership, and NCA activities were officially suspended and the

²⁵² Martin (n.97)

²⁵³ Ibid. 65

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Tunisia has different Islamist groups, Salafist which categorised themselves as a radical Islamist and some of the groups related to Salafists are extremists and since 2015 their activities are limited. The most popular Islamist groups with moderate view is Ennahda.

²⁵⁷ Martin (n.97). Deane (n.132).

²⁵⁸ Martin (n.97).

Constitution drafting process came to an end.²⁵⁹ Ennahda distanced itself from extremists and continues to do so. Still, Ennahda members accused by other political parties of being lenient toward Jihadists and the public lost faith in their ability to govern and maintain security.²⁶⁰ However, the assassinations had an important impact on unifying the nation.²⁶¹

The four largest and oldest national institutions played a vital mediation role in overcoming the political deadlock. The LTDH, ONAT, the Tunisian Union of Industry, Trade and Craft (UTIC), and UGTT, collectively also known as ‘the Quartet,’ established a ‘national dialogue’ (Hiwar Watani) to confront and address the issue the political transition was facing.²⁶² The mediation process led by the Quartet represents the power and the vital role of civil society in the politics of Tunisia, significantly in the democratisation of the country by assisting the transitional government.²⁶³ The Quartet was awarded the Nobel Peace Prize in 2015.²⁶⁴ On 27th January 2014, the NCA representatives approved the new constitution. The draft was a fair deal for Islamist, secularist, right-wing, left-wing politicians, public and civil society.²⁶⁵ A liberal Constitution representing pluralism in the political environment and unifying the nations was created establishing democratic institutions and building democracy after the autocratic regime collapsed.²⁶⁶

2.9 Conclusion

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Owen Frazer, “Mediation Perspective the Tunisian national Dialogue,” (2014) *International Relations and Security Network*. Available at <http://isnblog.ethz.ch/conflic/mediation-perspective-the-tunisian-national-dialogue>. Accessed 14 Jan 2021.

²⁶³ Martin (n.97). Also look at the diary of the events recorded by Wilson Centre: [Tunisia | Wilson Center](#). Frazer (n.262).

²⁶⁴ Noble Peace Prize (n.32).

²⁶⁵ Anthony Kohn, “Framing the Future, Drafting Tunisia’s Constitution,” (PhD Thesis, 2015) *The institute for Middle East Studies, The Elliot School of International Affairs, George Washington University*. Fortier (n.205).

²⁶⁶ Ibid

This chapter has highlighted the history and important role of civil society and civil society organisations in the pre-and post-Arab spring era on progressing and protecting human rights. This chapter's outcomes confirm that Tunisian civil society organisations played an essential role in the power transition between an authoritarian regime and a democratic one. While, that role has been analysed by some commentators, the long history of civil society prominence in societies have a long history in Tunisian politics, which has been largely absent from academic papers. This chapter also addresses that gap and underlines that civil society organisations (*Jameat almadanyyah*) existed during the Ottoman empire, colonial French, and post-colonial regime. Despite former governments' brutal policy to break and control their activities, they survived. During the Arab spring, they organised demonstrations against the Ben Ali regime, and use their network to communicate with international organisations like Amnesty International, Human Rights Watch, the European Council, and different UN bodies to bring attention from outside and shame the government internationally. Tunisia prominently played a critical role in continuing a successful revolution and being a role model for the region. This could not be achieved without well-founded civil society. These international connections can be beneficial as they are fundamental to sponsor the expansion and activities of civil society organisations, while keeping them financially independent from the government.

After the collapse of the Ben Ali's regime, civil society organisations acted as a middle party between political factions. Additionally, Tunisian civil institutions reunited the country, which was socially and politically divided between secularists and Islamists.

The constant efforts of civil society to democratise Tunisia and protect human rights remain strong.

Civil society organisations positively influenced legislation and drafted the constitution, primarily during transitional periods when the state was unstable, and democracy fragile. The civil society prevented a full crisis between Islamists and secular's parties, ensured

the protection of the rights of minorities and people, as well as the drafting of a constitution suitable for a free and democratic Tunisia. Despite the progressive development in politics, the country struggles with a high unemployment rate and economic crisis. The Covid 19 pandemic has added extra pressure to North African countries' instability and insecurity leading the young to engage in a new series of protests. There have been many violent protests to which the government responded aggressively, deserving the criticism of Amnesty international and other international civil society organisations.²⁶⁷ The country faces a high number of returned and new ISIS's members, which highly endanger the country's security.²⁶⁸

Illegal immigration is also a major current challenge. In this context, civil society organisations can play new roles to develop the country and protect democracy, pluralism, tolerance, and human rights. Despite other MENA states that are fractured and experience tyranny, war, and the lack of political stability, Tunisia has been progressing itself and remains democratic. Although the future is ambiguous in the region, the well-established democratic system in Tunisia with well-functioning civil society can overcome the new challenges ahead. Civil society organisations have been pivotal in monitoring the state's commitments towards human rights and democracy. The relevance of their contribution in the legal realm is explained in the next chapter, especially through the lens of the drafting of the new constitution.

²⁶⁷ See Aljazeera Report on 'hundreds protest in Tunisia on anniversary of revolution,' Available at <https://www.aljazeera.com/news/2021/12/17/hundreds-protest-in-tunisia-on-anniversary-of-revolution>

²⁶⁸ Ibid

3 Legitimacy and Legality: The Incorporation of Human Rights in the Constitutional Framework

3.1. Introduction

The collapse of the regime in Tunisia after the Jasmin revolution in 2011, opened a new door for political and legal changes across the Middle East and North African region (MENA).²⁶⁹ The revolution shaped the new legal system in Tunisia.²⁷⁰ Revolutionaries pushed for constitutional change as a necessary first step towards transitioning to a more democratic state.²⁷¹ The social, political and legal aspects of the revolution are intertwined.²⁷² While some scholars differentiate between political and social revolutions this distinction is artificial and cannot be applied in the Jasmin revolution. Some revolutions are deemed “social” because they produce more immediate and recognisable changes in social and property relations, others have prominent political “character” of regime change.²⁷³ In the context of Tunisia, the political regime changes led to a social revolution. In the legal realm, the transformation of legal frameworks was accompanied by profound changes in social and political norms. The political revolution in Tunisia led to a new constitution and introduced new social and cultural norms.²⁷⁴

²⁶⁹ Katerina Dalacoura, *The 2011 Uprisings in the Arab Middle East: Political Change and Geopolitical Implications*, 88 INT’L AFFAIRS 63 (2012) (discussing the causes of the Arab Spring and its potential geopolitical implications). Rangita de Silva de Alwis, Anware Mnasri, Estee Ward, ‘ Women and The Making of the Tunisian Constitution’ [2017] BJIL 90-149.

²⁷⁰ John Liolos, *Erecting New Constitutional Cultures: The Problems and Promise of Constitutionalism Post-Arab Spring*, 36 B.C. INT’L & COMP. L. REV. 219, 221-24 (2013); *see also* Issandr El Amrani, Op-Ed., *Egypt: A Constitution First*, GUARDIAN COMMENT NETWORK, Jun. 12 2011, <http://www.theguardian.com/commentisfree/2011/jun/12/egypt-a-constitution-first>. (Describing a statement by Egyptian activists that recommends the Tunisian model of political transition).

²⁷¹ Ibid

²⁷² Gizachew Tiruneh, ‘Social Revolution: Their Causes, Patterns and Phases,’ 2014 SJ Open access online in: <https://journals.sagepub.com/doi/full/10.1177/2158244014548845>.

²⁷³ Ibid

²⁷⁴ See chapter three of the thesis, the social and cultural changes through social movement and civil societies, and the reform in legislation in Chapter four.

This is visible for example in the protection of women's rights and gender equality provided in the new constitution.²⁷⁵

Constitutions in the modern era defined institutional structure and basic principle of recognising the rights of citizens as a "higher law". This higher status is manifested in the obstacles towards amendments that cannot proceed through ordinary legislative acts.²⁷⁶ Certain standards found in most constitutions, including the inclusive nature of the law and its binding character for everyone within the jurisdiction of the State.²⁷⁷ They also articulate the legal and political system chosen to govern. It is hard to change the constitution and meet the international legal standard in terms of representation and human rights.²⁷⁸ A constitution outlines the legal and political system of the state, the rights of citizen and the kind of government they have chosen to organise themselves politically.

Constitutions include legal provisions, political and social declaration. As a legal instrument they articulate the relationship between power and justice; defining the scope of state jurisdiction and how the rule of law applies in a given society. The rule of law and separation of powers are two main elements in any democratic system.²⁷⁹

As a political instrument the constitution provides the basis for the decision-making institutions, and the separation of powers between the executive, legislative and judiciary branches. As a social declaration a constitution reflects the national and religious identity of the state and people, the country religious or secular perspective towards law.²⁸⁰ However, the

²⁷⁵ See the section of Constitution making process which Islamist and Secular disagree on implementation for religious law which can threat the rights of women. Also See Nidhal Mekki, 'Tunisia: Equality in Gender and Constitution, [2014] AFCT 1-59.

²⁷⁶ Elliot Bulmer, 'What is a constitution? Principles and concepts,' *International Idea Constitution- Building Primer*, [2017] IDEA 1-28.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Ibid. Also see Sultany (n.77).

²⁸⁰ Ibid.

main aspect of a constitution is legal. Its core is devoted to articulating the rights of people and their relationship with political power.²⁸¹

This chapter explores the importance of constitutions in a post-revolutionary state focusing on Tunisia. It addresses the benefits associated with incorporating human rights at constitutional level comparing the new constitutional order with the legal system predating the revolution. With these aims, the chapter examines the legislative processes and administrative practices undertaken to incorporate human rights norms in national law pre-and post-Arab Spring.

3.2. Legitimacy, the Rule of Law, and Constitutionalism

Legitimacy is defined as “conformity to the law or the rules” and in political science legitimacy refers to the right and acceptance of authority (governing law or a regime).²⁸² In scholarly debate legitimacy has social and normative dimensions.²⁸³ As Michael C. Hudson clarifies, the post-colonial Arab nation state suffered from a legitimacy deficit.²⁸⁴ Although, Arab States have had stability for a long period of time, this does not mean their regime enjoyed acceptability in the eyes of the governed.²⁸⁵ The majority of the MENA states have a written constitution²⁸⁶ and they follow the French code law and Islamic law (Sharia law) for running jurisdiction and legislation.²⁸⁷

As well as the lack of legitimacy, Arab states suffered from ill form of the rule of law (Hakimyat-alghanoon) and the lack of constitutionalism for a long period.²⁸⁸ The rule of law or state of law refers to a legal system in which everyone is equal in the eyes of the law

²⁸¹ Sultany (n.77).

²⁸² Ibid

²⁸³ Ibid 4-5. Nimar Sultany, 'The State of Progressive Constitutional Theory: Paradox of Constitutional Democracy and the Project of Political Justification' [2012]47 HCRCLR 371-381.

²⁸⁴ Michael C. Hudson, *Arab politics: The Search for Legitimacy* (YUP, 1977).

²⁸⁵ Sultany (n.77).

²⁸⁶ Israel does not have a written constitution.

²⁸⁷ Ann Elizabeth Mayer, 'Law, and Religion in the Muslim Middle East' [1987] 35 AJCL 127-184

²⁸⁸ Constitutionalism here defined as limited power. See Michael C. Hudson, (N266).

including the governing public authorities.²⁸⁹ The concept of the rule of law has a close link to the respect for legal norm hierarchy. It means the separation of power and guarantees that fundamental rights are effectively recognised and practiced. Therefore, the concept of the rule of law is unsuited with a dictatorial regime which is often based on the violation of fundamental rights of individuals and groups.²⁹⁰ The rule of law limits the state power by protecting civilians from the arbitrary exercise of power; therefore, no country can have a democracy without ‘state of law’ or ‘the rule of law’.²⁹¹ According to the United Nations Development Program (UNDP), the rule of law definition encompasses the protection of the human rights of individuals and groups equally and should enforce the government to protect citizens who are the subject to the rule of law equally without discrimination. The law should uniformly provide protection against exploitation and abuse of all exposed groups.²⁹² The UN Secretary-General report on ‘Delivering justice: programme of action to strengthen the rule of law at national and international levels’ describes the approach of the UN to the rule of law as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principle of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”²⁹³

²⁸⁹ Tom Bingham, *The rule of law* (Penguin, 2011)

²⁹⁰ Mustapha Ben Lataief, ‘Rule of law Quick Scan Tunisia, Prospect and challenges,’ (2012) Hiil 1-58. Rainer Grote, ‘Rule of Law, Rechtsstaat and Etat de Droit,’ in Christian Starck (ed), *Constitutionalism, Universalism and Democracy: A comparative Analysis*, (Nomos Verlagsgesellschaft, Baden-Baden, 1999).

²⁹¹ *Ibid.*

²⁹² *The Rule of Law and Human Rights, United Nations and the Rule of law*; access:

<https://www.un.org/ruleoflaw/rule-of-law-and-human-rights/>

²⁹³ UN Doc A/66/749, 16 March 2012.

Tom Bingham's description on the rule of law contains similar principles, "All persons and authorities within the state, whether public or private should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future, and publicly administered in the court."²⁹⁴ According to Bingham, the rule of law includes eight principles:

1. The accessibility of the law
2. Law not discretion
3. Equality before the law
4. The exercise of power (Subjected to Law)
5. Human rights
6. Independent adjudication
7. A fair trial
8. The rule of law in the International Legal Order ²⁹⁵

The 1959 and 2014 Tunisian Constitutions will be analysed based on these eight principles to clarify the changes that have been approved in the post Arab spring legal system.

Most of the Arab states are dictatorial regimes; in some ways, this provides stability, and security but no respect for the rule of law and human rights. In the post-Arab spring era, the public questioned this stability and forced the Arab states to reform their political and legal system and change their political agenda to align with international human rights standards. The struggle to achieve a governance structure based on the rule of law is rooted in the history of the Arab World and its origins can be traced back to independence following European colonisation.²⁹⁶

²⁹⁴ Bingham (n. 289). 8.

²⁹⁵ Ibid.

²⁹⁶ Perkin (n. 107).

The Arab states have struggled to define new forms of government and leadership. They often use authoritarian regimes in two forms: Kingdom (*Khalafat*), which is rooted in the early history of Islam or Republic (*Jomhooryat*) with presidential form of government introduced to them by the colonial state.²⁹⁷ In classic and traditional practice of law in the MENA, the regime has total power over people by creating forms of order and discipline. The gulf countries, Saudi Arabia, and Morocco have followed a classical leadership model as kingdoms. Prior to the Arab Spring, Tunisia, the same as Iraq, Syria, Libya, and Egypt had one party leadership and was organised as a presidential republic. In the post Arab Spring era, Tunisia established a democratic system by enacting a constitution and the rule of law.

Tunisia's history is complex in terms of law and politics. It was one of the first regions in the world to have a constitution as mentioned in Aristotle's book 'On the Constitution of Carthage' c.340 BCE.²⁹⁸ Tunisia advanced a reformed and modern legal system in the nineteenth century,²⁹⁹ becoming one of the first countries in the Arab and Islamic world to issue important documents for governance and freedoms. Prior to colonisation, the Constitution was enacted in 1861. After the declaration of independence in 1956, Tunisia called for the election of a National Constituent Assembly to establish a constitutional monarchy. The first post-colonial Constitution was progressive in advancing civil law or the code of personal status in August 1956 that enshrined the principle of equality between women and men and banned polygamy. On 25 July 1957, the National Constituent Assembly declared the abolition of the monarchy and the establishment of the Republic.³⁰⁰ In 1959, a new constitution adopted the presidential system and the principle of separation of powers.³⁰¹

²⁹⁷ See Marina Ottaway & Marwan Muasher, 'Arab Monarchies: chance for reform' [2011] The Carnegie Papers 1-29. F. Gregory Gause, 'Kings for All Seasons: How the Middle East's Monarchies Survived The Arab Spring' [2013] 8 BDCAP 1-33.

²⁹⁸ Perkin (n. 107).

²⁹⁹ Ibid

³⁰⁰ Ibid and see Mustapha Ben Latief, 'Rule of Law Quick Scan Tunisia: Prospects and Challenges' [2012] HIIL 1-62. Kmar Ben Dana, 'The Tunisian Constitution of 2014: A Story of Crisis Resolution' Access online in <https://www.undp.org>

³⁰¹ Ibid

As Nimar Sultany clarifies “Constitutions are a contested terrain that embodies principles and outlines a power structure”.³⁰² Constitution can be defined as a piece of document, or legal norms, or the note on clarifying the border line between politics and power. Positivist scholars regard constitution as a special set of norms on which the authority legitimacy relies to govern people.³⁰³ Rationalists respect constitution because it expresses human rationality.³⁰⁴ For Populists, people are the active authorial agency that creates constitutional meaning.³⁰⁵ Democratic Constitutionalism relies on the vote of the majority. Its legitimacy relies on popular will and to remain politically stable, it should be accepted freely by the masses and not be imposed by the power above.³⁰⁶

While other options were debated between Islamist and secularist members of the Parliament, Tunisians adopted a form of ‘Democratic Constitutionalism’. Some Islamists believed that God’s power is above all people and in any case where the rule of God was violated the law should be voided.³⁰⁷ Tunisia remains a Muslim country and homogenous in terms of ethnic diversity, however, religion remains at the centre of the debate and politics of Tunisia between Secularist and Islamist political parties.³⁰⁸

The Tunisian legal system can be thought of as historically advanced with influences of its rulers during Ottoman and French colonisation and the subsequent implementation of customary French and Ottoman rules, as well as the implementation of Islamic law. As mentioned above, in the post-colonial period, the first independent constitution was written under Bourguiba, the first President of the republic of Tunisia in 1959.

³⁰² Sultany (n.77).

³⁰³ Bulmer (n.276).

³⁰⁴ Ibid. (n. 77).

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ See Constitution Report, ‘The Constitution-Making Process in Tunisia Final Report (2011-2014)’ The Carter Center 1-201. Available at:

https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/tunisia-constitution-making-process.pdf.

³⁰⁸ Article 1 (2014) and Article 1 (1959) Constitution Islam is the religion of the country.

Prior to the Arab Spring, despite monarchical system, republicans followed the separation of religion and politics by using religion mainly for customary law. However, during the reign of Ben Ali, women's and children rights were protected, the law banned polygamy marriage and child marriage was forbidden. Therefore, legal protection existed, but the country remained under one party leadership and other rights were violated on a daily basis.³⁰⁹ The rule of law was not fulfilled as human rights were not protected, leading to the only foreseeable action as outlined in the preamble of the Universal Declaration of Human Rights (1948), "Whereas it is essential, if man is not to be compelled to have recourse, as last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."³¹⁰

Scholars in the disciplinary study of revolution argue that the breakdown of legitimacy has been one of the major causes of the revolt against authority in majority of the worldwide revolution.³¹¹ Although the lack of legitimacy does not necessarily cause a revolution, it may prompt the search for an alternative arrangement.

The making of the Tunisian Constitution was revolutionary instead of reformatory. The new established system rewrote and redefined the Constitution. It did not reform the former legal system, but the new constitution reinvented the new legal system and legislation.³¹²

3.3. Human Rights Law in the 1959 Constitution

The Constitutional National Assembly that drafted the 1959 constitution was established in 1955. The 1959 Tunisian Constitution opened declaring "Tunisia is a free, independent and sovereign state, its religion is Islam, its language is Arabic, and its regime is republic" (Article 1). Article 3 declared that sovereignty belong to the Tunisian people. Article 6 proclaimed the equality before the law for the citizens. Despite the recognition of several fundamental rights

³⁰⁹ Ibid and See The constitution of Tunisia (1959) with Amendment in 2008.

³¹⁰ Preamble of the Universal Declaration of Human Rights (UDHR)

³¹¹ John Foran, *Taking power: On the Origins of Third World Revolutions* (CUP, 2005). Sultany (n.77).

³¹² Ibid

including freedom of thought, speech, press, publication, broadcast, assembly and establishment of associations and organisations (Article 8),³¹³ the Tunisian political system under Ben Ali restricted those rights and gradually moved towards an authoritarian and personalised presidential system. The political pluralism was cancelled at since the beginning of sixties. In the 1960s, the opposition Tunisian Communist Party (*al-Hizb ash-Shuyui at-Tunisi, Parti Communiste Tunisien*) was the first political party which was banned from participating in the politics of Tunisia. The Islamic political Party, Ennahda, followed suit in both the 1970s and 1980s. Several regulations enacted during this period undermined the right to freedom of expression, such as the Code of Press in 1975. This law was implemented during the Bourguiba and Ben Ali presidencies. Ben Ali had announced in his first three years of presidency reforms, plans to strengthen the rule of law and institutions, cancelling the presidency for life and promoting political pluralism. Despite all positive promises to keep the country democratic and reform the institutions, Ben Ali led the country to tyranny and autocratic power.³¹⁴

Articles 18 to 36 of the 1959 Constitution conferred the legislative power to a single chamber called the National Assembly (Chamber of Deputies renamed, *Majlis al-Nuwaab*, in 1981). The Chamber of Councillors (*Majlis-al-Mustasharin*) was added to the Constitution by the 2002 amendment. Article 18 required: “The people shall exercise the legislative authority through the Chamber of Deputies and the Chamber of Councillors, or by referendum.”³¹⁵

Despite the existence of two separate legislative chambers, the legislative power was hollow in practice. The authoritarian political party of Ben Ali restricted and controlled

³¹³ The Constitution of Tunisia 1959 and 2008 Amendment available in English at: https://www.constituteproject.org/constitution/Tunisia_2008.pdf?lang=en

³¹⁴ Perkin (n.107).

³¹⁵ Article 18, Constitution of Tunisia 1959.

legislative authority and expanded the executive power by adding an amendment of the constitution on 27 October 1997.³¹⁶

Articles 37 to 63 of the Constitution addressed the executive branch of the government under the Bourguiba administration. The President's strong hold influenced the National Constituent Assembly that drafted the 1959 Constitution empowering the executive authority. A 1988 amendment gave extensive political power and authority to Ben Ali. Under Article 38 the president is the head of state, exercising many powers including authorising and directing general policy of the state (Article 49). The President is the Commander in Chief of the Armed Forces (Article 44). He is the person who approves diplomatic representatives of the state abroad and recognises the foreign state ambassador. He is the person who accepts treaties, declares war and peace with the consent of Parliament. He can accept or reject the implementation of the laws and exercise the general ordinal power. The president can intervene in the legislative field.³¹⁷

The political system prior to the Arab Spring was suffering from lack of separation of power as the President had extensive power and authorities as summarised above. Parliament acted as a chamber to help the President to reach his desires and projects. The judiciary also suffered from lack of independence which caused corruption and unfair trials. The judges suffered from all forms of abuse and the judicial organisation was subjected to executive authority. The Constitution of 1959 became unsuitable for the modern era and post-Arab Spring. The new chamber processed and transferred Tunisia from a repressive state to a democratic one.³¹⁸

³¹⁶ See Constitution Report, 'The Constitution-Making Process in Tunisia Final Report (2011-2014)' The Carter Center 1-201. Available at: https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/tunisia-constitution-making-process.pdf.

³¹⁷ Sultany (n.77). Blumer (n.276).

³¹⁸ See Carnegie Endowment (For International Peace), 'Arab Political System: Baseline Information and Reforms- Tunisia; available at: <https://carnegieendowment.org>

3.4. Human Rights Law in Drafting the Constitution of Tunisia (2011-2014)

The collapse of the Ben Ali regime brought significant gains for Tunisians. The newly formed government was more open to the rights of freedom of association and freedom of information. Measures were adopted to weaken repressive legal frameworks establishing instead the basis for a fair and pluralistic electoral system fit for democratic transition. A new executive and administrative system for the public was created.³¹⁹ Despite all these achievements, Tunisians were faced with various challenges during their journey to draft a new constitution and create an independent legal system. The transitional period from an authoritarian regime to a democratic one was the most challenging and unpredictable period of Tunisian revolution in terms of gaining and ensuring the trust of all political parties and the public.

Especially negative was the confrontation between the two main political powers: the secularists and Islamists, in their quest to ensure more seats in parliament.³²⁰ It fuelled a highly divisive environment that proved to be a significant obstacle to achieve the challenging goal of drafting a new constitution within a year.³²¹ Both political parties agreed on establishing an assembly for drafting the new constitution: the so called National Constituent Assembly (NCA) comprising 217 members, to be chosen by free election. The NCA was chosen by the people on 23rd October 2011, but progress stuttered with the no agreement on the first three drafts (August 2012, December 2012, April 2013) predominantly due to religious disagreements, as well as an inability to agree on institutional design.

³¹⁹ See Fatima el-Issawi, 'Tunisian Media in Transition' [2012] Carnegie Paper. *The Carnegie Endowment for International Peace*. Nanako Tamaru, Olivia Holt-Ivry & Marie O'Reilly, 'Beyond Revolution: How women influenced Constitution Making in Tunisia (Case Study) [2018] Inclusive Security 1-48.

³²⁰ Sultany (n.77) 254.

³²¹ Ibid.

The release of the first draft was faced with strong criticism from the civil society. The critics considered the language of the constitution poorly. The rights and status of women was ambiguous, and the draft suffered from the lack of protection of the freedom of belief and speech. The issue of women's rights, in particular article 28, which defined the relationship between men and women as "complementary" was confronted by international and national civil society organisations and media.³²² The second draft was released on 14th December 2012, during which time, the country suffered from financial crisis and the lack of improvement in economy. The third draft lacked technical clarity and was not able to convince members of the parliament on the procedural rules, hampered by ambiguity and lack of clarity of the expert's scope of work.³²³

Meanwhile Tunisians struggled with political violence. The assassination of the political party leader Chokri Belaid on 6th February 2013, aggravated the public, sparking protests. In June 2013 tensions heightened further when 30 civil associations signed The Declaration of Tunisia which opposed the draft, although it was supposed to be the final one. Despite a consensus from the Rights and Freedoms Commission (the committee responsible for contributing to the state of individual freedoms and equality via projects of reform), on handing in the report (June 2013) fundamental disputes remained unsolved. With continued political unrest, reignited by the assassination of Mohamed Bralimi (25th July 2013), causing a hostile environment, and with no headway being made, the president of the NCA, Mustapha Ben Jafaar suspended the Assembly in 2013,³²⁴ postponing its activities.³²⁵ The Assembly returned to work after the Labour Union, the Employers' Organisation, the Human Rights

³²² Mekki (n.275).1-59. Also, Silva de Alvis, Mnasri& Ward. (n.269).

³²³ Ibid.

³²⁴ Ibid.

³²⁵ See Constitution Report, 'The Constitution-Making Process in Tunisia Final Report (2011-2014)' The Carter Center 1-201. Available at: https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/tunisia-constitution-making-process.pdf.

League, and the Lawyer's Association stepped in to commence a National Dialogue.³²⁶ The National Dialogue within the NCA, and chaired by the President Mustapha Ben Jafaar, eased the way to reach an agreement, and after postponements progress re-started on 25th October 2013. The National Dialogue explored the electoral process, and the Quartet of Tunisian Civil Society Institutions agreed a code of conduct for political parties, with the aim of reducing tensions and improving the consultative process.

President Marzouki and the General Union of Tunisian Workers (UGTT) held separate and successive national dialogues to address the remaining controversial points of contention in the draft as well as addressing political, economic and security issues in Tunisia.³²⁷

Discussions finally resumed on 3rd January 2014 and the final efforts of the NCA to reach an agreement occurred. A national coalition dialogue brought all political parties together and a common ground was found. The NCA approved the Constitution on 26th January 2014 by 200 votes.³²⁸ The following day, the Constitution was officially adopted by the president of the republic.³²⁹

3.5. The Role of Islam in drafting the Constitution

During the transitional period, universal human rights were vulnerable and threatened by different political parties, including the Islamist parties.³³⁰ During the drafting and vetting of

³²⁶ Ibid

³²⁷ Ibid.

³²⁸ Ibid.

³²⁹ See Constitution Report, 'The Constitution-Making Process in Tunisia Final Report (2011-2014)' The Carter Center 1-201. Available at:

https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/tunisia-constitution-making-process.pdf. Also, Hamadi Redissi& Rihab Boukhatia, 'The National Constituent Assembly of Tunisia and Civil Society Dynamics,' Working Paper N2, Euspring Available at <

<https://core.ac.uk/download/pdf/148889056.pdf>

³³⁰ Jog Fedtke, 'Comparative Analysis Between the Constitutional Process in Egypt and Tunisia, Lesson Learnt Overview of the Constitutional Situation in Libya,' (2014), Policy Department DG External Policies, Published April 2014 < [http:// www. europarl.europa.eu/activities/committees/studies.do?langauge=EN](http://www.europarl.europa.eu/activities/committees/studies.do?langauge=EN).

the new constitution and elections, the rights of women and children were undermined and mostly ignored by the Islamic political parties, thus favouring an authoritarian regime.³³¹ Following the Arab Spring, the structure of power in these countries changed as Islamists seized power, leading the international community to raise and escalate concerns about the situation of Christian minorities in Egypt, the rights of women and sexual minorities in Tunisia and Libya, and the overall enjoyment of human rights.³³²

Despite the existence of secular governments in the pre–Arab Spring era, Islam has always played an important role in the legislation and politics of the state. The general discussion over the compatibility of human rights and Islam has continued to impact the approach to drafting the Constitution in Tunisia in the post Arab Spring era. The first ideological battle for drafting a new constitution was the role of Shari'a. El-Nahda's approach towards Shari'a before the first election in October 2011 was to incorporate Islam as the religion of the state as it was in the 1959 Constitution, without constitutionalising Sharia.³³³

Ennahda's policy was to negotiate and make peace with opposing groups. However, after the terrorist attack against the American embassy in Tunisia in September 2012, action was heightened against *Ansar-al Sharia* (one of the Jihadi Salafi groups responsible for the attack), and they were formally banned from being involved in politics and preaching.³³⁴

While moderate Islamic groups like Ennahda have the intention of being involved in a democratic system, their principles for controversial issues such as the protection of children and women have remained unclear throughout their existence, and there is ambiguity as to the

³³¹ Monica Marks, *Convince, Coerce, or Compromise? Ennahda's Approach to Tunisia's Constitution*, (Booking Doha Centre Publication, 2014).

³³² Adel Abdel Ghafar and Bill Hess, 'Islamist Parties in North Africa: A Comparative Analysis of Morocco, Tunisia and Egypt,' (2018) 22 Brookings Doha Centre Analysis Paper, 1.

³³³ Marks (n.331).

³³⁴ Ibid.1-13.

extent they accept the human rights agenda.³³⁵ The fear during and after Arab Spring was that Ennahda might have intentions to transform the government into a theocracy.³³⁶

In 2012, during the first draft of the new constitution, tension was at a peak between the main political parties, that is, the Islamic Party Ennahda and the secular movements including labour, democrat, republic parties as well as the libertarian party known as *Ettakatol*. The main division arose from the differing views on the role of Islam in the new constitution; with polarity of viewpoints: Islamists wished to apply more Islamic rules in the legal system, whilst secularists were opposed to this idea.³³⁷

Ennahda representatives emphasised on many occasions that Tunisian legislation and international treaties approval should be conditional and follow the standards of Islamic law. For instance, regarding the criminal punishment of death penalty, the constitutional assembly rejected the proposal for abolishment of death penalty by arguing that the abolishment of death penalty is in contradiction with Islamic law. Another example suggesting the implementation of Islam in the law, was the suggestion of fining those who ate during Ramadan in public places, breaking the fast. However, the secularist coalition argued that accepting Islam as a main source of legislation was not acceptable because Ennahda did not identify which interpretation of Islamic law Tunisians should follow.³³⁸

³³⁵ Malek Saral, 'The protection of Human Rights in Transitional Tunisia,' (2019) Muslim World Journal of Human Rights, De GRUYTER 1-26. George Sadek, 'The Role of Islamic Law in Tunisia's Constitution and Legislation Post-Arab Spring,' (2013) The Law Library of Congress <<https://www.loc.gov/law/help/role-of-islamic-law/tunisia-constitution.pdf>>.

³³⁶ See Amin Allal, 'Becoming Revolutionary in Tunisia, 2007-2011,' in Joel Benin and Frederic Vairel (eds), *Social Movements Mobilization and Contestation in the Middle East and North Africa*, (Stanford University Press, 2013) 185-205.

³³⁷ McCarthy (n.218). George Sadek, 'The Role of Islamic Law in Tunisia's Constitution and Legislation Post-Arab Spring [2013] The Law Library of Congress Global Legal Research Center, 1-5

³³⁸ Ibid

According to the Human Rights Watch report “The official rejection on August 26, 2018, by Ennahda, of a presidential initiative to establish full equality between men and women in inheritance is a blow to women’s rights in the country”.³³⁹

The restriction of not allowing women to choose their spouse was against the 2014 Constitution that was adopted in the 2014 after the Arab Spring.³⁴⁰ However, longer-term changes in attitude towards new legislation is evident, which suggests progressive behaviour of Ennahda towards human rights law. In 2017, the parliament allowed Muslim women to marry non-Muslims despite the contrast with Sharia Law and the law that was implemented in 1973.³⁴¹ In 2014, Ennahda formed a coalition with the opposition party Nidaa Tounes in an attempt to show their contribution to democratic institution and the stability of Tunisia.³⁴² Soon after the Arab Spring, Tunisian political parties realised the need to assess the recent legislations and to restructure the political and legal order.³⁴³ The most recent constitution in 2014 is the result of new reforms and evaluation of the former laws.

The 2014 Constitution has limited the role of religion and Islamic regulations. Article 1 affirms that the religion of Tunisia is Islam. Article 6 expanded the freedom of expression and religion, as follows “The state is the guardian of religion. It guarantees freedom of conscience and belief, the free exercise of religious practices and the neutrality of mosques and places of worship from all partisan instrumentalisation. The state undertakes to disseminate the values of moderation and tolerance and the protection of the sacred, and the prohibition of all violations thereof. It undertakes equally to prohibit and fight against calls for Takfir and the

³³⁹ Human Rights Watch:< <https://www.hrw.org/news/2018/09/06/tunisia-ennahda-rejects-inheritance-equality?>>. Access 15 July 2019

³⁴⁰ BBC News 17 Sept 2017 < <https://www.bbc.co.uk/news/world-africa-41278610>> Access 15 July 2019

³⁴¹ BBC News 17 Sept 2017 < <https://www.bbc.co.uk/news/world-africa-41278610>> Access 15 July 2019

³⁴² Anouar Jamaoui, ‘The impact of the coalition on Ennahda and Nidaa Tunis,’ 11 March 2015 < <https://www.opendemocracy.net/en/north-africa-west-asia/impact-of-coalition-on-ennahda-and-nidaa-tounes/>>

³⁴³ For understanding the process of writing new constitution see, ‘The Constitution- Making Process in Tunisia,’ < https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/tunisia-constitution-making-process.pdf>.

incitement of violence and hatred.”³⁴⁴ The first part of Article 6 is protecting freedom of conscience, belief, exercise of religion and political neutrality of places of worship. This article prohibits any encouragement towards violence and Takfir.³⁴⁵ Takfir is the practice of denouncing someone who is no longer a Muslim, equal to calling them an apostate and has often been used in modern times to condemn rival politicians or bolster support of Islamic political parties.³⁴⁶ The issue of Takfir was raised during constitutional debates when a member of parliament was called an “enemy of Islam” by a member of the Islamist Party Ennahda.³⁴⁷ Ennahda had originally wanted that Article 6 included Islam solely as a state religion.³⁴⁸ During the controversy, the secularists political parties raised their concern regarding of use of Islam in this article and particularly their fear of being oppressed and persecuted by expressing their opinion by Islamists. Due to concerns over religious extremism and violence, secular political parties were able to add a prohibition of both Takfir and “incitement of violence” to Article 6.³⁴⁹ This article succeeded strongly to promote freedom of religion and prevent religious violence, despite the sensitivity of religious freedom in the MENA region.³⁵⁰

Although, Article 6 is advanced in protecting freedom of religion, some critics argue that by not including the definition of Takfir and being vague, the law is leaving room for authorities to interpretate the law in their own understanding. Article 1 of the Constitution states that Islam is the religion of Tunisia and Article 1 may not be amended. The combination of Islam as the

³⁴⁴ Tunisian Constitution 2014 in English access by <https://www.constituteproject.org>

³⁴⁵ Ibid

³⁴⁶ For definition of Takfir please see Oxford Islamic Studies Online, <http://www.oxfordislamicstudies.com/article/opr/t125/e2319>

³⁴⁷ Ozcan, Sevinc Alkan, ‘The Role of Political Islam in Tunisia’s Democratization Process: Towards a New Pattern of Secularization?’ [2018] 1 *Insight Turkey* 209–26. <http://www.jstor.org/stable/26301075>.

³⁴⁸ Monica L. Marks, ‘Convince, Coerce, or Compromise? Ennahda’s Approach to Tunisia’s Constitution,’ [2014] 10 *BDCAP* 1-30.

³⁴⁹ Ozcan, Sevinc Alkan, ‘The Role of Political Islam in Tunisia’s Democratization Process: Towards a New Pattern of Secularization?’ [2018] 1 *Insight Turkey* 209–26. <http://www.jstor.org/stable/26301075>. Constitution Report, ‘The Constitution-Making Process in Tunisia Final Report (2011-2014)’ The Carter Center 1-201. Available at: https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/tunisia-constitution-making-process.pdf.

³⁵⁰ Ibid

state religion and the state as the guardian of religion could potentially allow the government to take a step in order to preserve Islam that would involve the erosion of religious freedom.³⁵¹ Another article that can be considered as vague is Article 74 with the first part indicating that: “Every male and female voter who holds Tunisian nationality since birth, whose religion is Islam shall have the right to stand for election to the position of president of Republic”. This Article limits the freedom of religion, by explicitly considering that only Muslims can apply for presidency of the country.³⁵² This will be a permanent barrier to any candidates of non-Islamic faith background or those who are atheists. Article 74 is one of the reasons cited by Freedom House preventing Tunisia from getting a full score of 4 out of 4 regarding whether, “various segments of the population...have full political rights and electoral opportunities.”³⁵³ The Freedom House rating ranges from 1 (lowest score) to 4, where 4 is the best score. Freedom House states that “some segments of the population lack full political rights,” noting that “only Muslims may run for president.”³⁵⁴ Tunisia is a very homogenous country with a population who are mainly practicing Sunni Muslim faith.³⁵⁵ However, this article prevents atheist and non-Muslims to apply for presidency, giving a priority to Muslims for political opportunities.³⁵⁶

The constitution-making process was successful in terms of following international norms, however, despite a very well-structured law and protection within law, there remains some concern regarding the role of Islam in the legal system of Tunisia.

³⁵¹ Tunisian Constitution 2014 in English access by <https://www.constituteproject.org>

³⁵² Ibid

³⁵³ Freedom in The World Report 2015; https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2015_complete_book.pdf. Also see Country Profile, Freedom House, <https://freedomhouse.org/country/tunisia>

³⁵⁴ Ibid.

³⁵⁵ Tije Hidde Donker and Kasper Netterstrom, ‘The Tunisian Revolution and Governance of Religion’ [2017] 26 MEC 2, 137-157. [10.1080/19436149.2017.1285469](https://doi.org/10.1080/19436149.2017.1285469)

³⁵⁶ Ibid. also see Hamadi Redissi& Rihab Boukhayatia, ‘The National Constituent Assembly of Tunisia and Civil Society Dynamics,’ [2015] 2 EUSPRIN Access by, <https://ael.pitt.edu>.

3.6 The Role of Women in the Constitution Making Process

After the first general election 2011, Al-Ghannouchi expressed scepticism regarding the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).³⁵⁷ The reservation stated that “The Tunisian Government declares that it shall not take any organisational or legislative decision in conformity with the requirements of this Convention where such a decision would conflict with the provisions of chapter I of the Tunisian Constitution.”³⁵⁸ On 17 April 2014, “the Government of the Republic of Tunisia notified the Secretary-General of its decision to withdraw the declaration with regard to article 15(4) of the Convention and the reservations to articles 9(2), 16 (c), (d), (f), (g), (h) and 29(1) of the Convention made upon ratification.”³⁵⁹

Despite the disagreement between Islamists and secularists in parliament on the issue of equality between men and women, a final report on “*Individual Freedom and Equality*”, commissioned by President Es-Sebsi, was completed on 12 June 2018. The report recommended equality between men and women in inheritance, among other family law issues.³⁶⁰ On 13 August 2018, the President endorsed this recommendation, pledging to introduce a bill to amend the personal status code that would eliminate discrimination against women, except when a person opts out of the equality rule by formally expressing such a wish in his will. On 28 November 2018, a draft law on equality in inheritance was submitted to parliament and it was approved on 4 December 2018.³⁶¹

³⁵⁷ Moataz El Fegiery, *A Tyranny of the Majority? Islamists’ Ambivalence about Human Rights*, FRIDE, 2010, p. 8. http://www.academia.edu/5757217/Islamists_and_Human_Rights_in_Egypt_and_Tunisia {Accessed on 3 July 2015}.

³⁵⁸ UNTC: Tunisia (85), available at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en#85

³⁵⁹ Ibid

³⁶⁰ Other issues include the rights of women to choose their spouse regardless of their religion and equality in work’s place. Al- Jazeera, ‘Tunisia President vows to give women equal inheritance rights’, <<https://www.aljazeera.com/news/2018/08/tunisia-president-vows-give-women-equal-inheritance-rights-180813172138132.html>>. Published 13 August 2018.

³⁶¹ Ibid, also see Nanako Tamaru, Olivia Holt-Ivry, and Marei O’reilly, ‘How Women Influenced Constitution Making in Tunisia,’ Published online March 2018, UNDP, <https://www.inclusivesecurity.org/wp-content/uploads/2018/03/Beyond-Revolution_Constitution-Making-in-Tunisia.pdf>.

Even though by law women's rights were protected in the 1958 constitution, in practice women's rights were hugely violated under authoritarian government. The constitutional reform, provided an opportunity for all activists to address deep-rooted gender inequalities.³⁶² During the uprising, women rights activists as well as women from all political parties and social background joined the cause. Women in Tunisia used the constitution-making process as a vehicle for mobilising local efforts, connecting with gender-rights advocates in other MENA countries and participating in a transnational dialogue.³⁶³ As a result of women participation in constitution making, gender equality, religion-state relations, women's rights in the family, women's rights to political participation, and employment were addressed.³⁶⁴ Women rights' activists relied on a common core of international norms reflected in instruments such as the Convention for the Elimination of Discrimination Against Women (CEDAW), the International Covenant on Social and Political Rights (ICCPR) and the International Covenant for Economic Social and Cultural Rights.³⁶⁵ In addition, the work of mandate holders of UN special procedures of Human Rights Council and the Universal Periodic Review mechanism were effective tools to encourage the Tunisian Parliament to follow international norms and legislation.³⁶⁶ This following chapter will expand on this subject.

In the first democratic election after the collapse of the Ben Ali regime, the elected women members of the parliament were 59 and elected men were 158, accounting for 30% of parliamentary seats. Female members of the parliament were aware of their responsibility to the women in society to promote women's rights and equality. During the drafting of the

³⁶² Mekki (n.275). 1-59. Also, Silva de Alvis, Mnasri, Ward, (n. 269). 90-149.

See Constitution Report, 'The Constitution-Making Process in Tunisia Final Report (2011-2014)' The Carter Center 1-201. Available at: https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/tunisia-constitution-making-process.pdf.

³⁶³ Ibid

³⁶⁴ Ibid

³⁶⁵ Ibid

³⁶⁶ Ibid

constitution women from different political parties cooperated with other civil societies to legalise the protection and equal rights for all. Women were in attendance in all six permanent committees and their role in the National Constitutional Assembly was prominent and vital.³⁶⁷ The 2014 Constitution has been influenced by the presence of women and several sections emphasise gender equality. For instance, Article 20 specifies all citizens, male and female alike, have equal rights and duties, and are equal before the law without any discrimination. Citizens have individual and collective rights to lead a dignified life. Likewise, Article 40 states that both male and female have a right to work based on competence and fairness, and equal opportunity to develop skills and equal pay. Article 46 covers the right of women being protected, taking necessary measures to eliminate violence against women. The State shall seek to achieve equal representation for women and men in elected councils. Article 74 recognises the right of male and female citizens to be nominated for presidency if they hold Tunisian nationality and their religion to be Islam.³⁶⁸

The Tunisian 2014 Constitution is progressive but there are some vague and gendered language that make the readers and critics concerned. It is not clear whether the law is using gendered language to emphasise protecting the citizen rights regardless of being men or women or there remains segregation in language and practice.³⁶⁹ Despite the progressive provisions enshrined in the Constitution, several existing national laws are in direct conflict with the constitutional commitment to end violence against women in all its forms. For example, men are legally recognised as the head of household, which as one Tunisian analyst noted “only works to reinforce economic and social patriarchal structures.”³⁷⁰

³⁶⁷ See (n.362).

³⁶⁸ Tunisian Constitution 2014 in English access by <https://www.constituteproject.org>

³⁶⁹ Silva de Alvis, Mnasri & Ward (n. 269). Mekki (n. 275).

³⁷⁰ Ibid.

Civil society groups are campaigning for the changes in ‘marry-your-rapist law’ under Article 227 of the Criminal Code of Tunisia,³⁷¹ which like in other Arab states, is a law that encourages the rapist to marry the victim (s) in order to have the charges dropped.³⁷² The Secretary of State for Women’s Affairs is collaborating with NGOs to harmonise the existing legal framework with constitutional provisions, but such efforts require the support of all ministries and cross-sector in order to be efficient.³⁷³ Tunisia has signed CEDAW (1980), ICCPR (1969) and ICESCR (1969). It officially removed reservation not in conflict with provision in Chapter I of the Tunisian Constitution.³⁷⁴ Article 20 of Tunisian Constitution gives primacy to international agreement approved and ratified by the Chamber of the People’s Deputies over national laws but will remain inferior to the Constitution.³⁷⁵ Legal protections have been progressing, but it is necessary to have a policy that implements this legislation.

3.7 Human Rights Law in the 2014 Constitution

The 2014 Constitution is progressive in comparison to other constitutions in the MENA, and compatible with international human rights principles and standards. The Constitution established the strong foundation for protection of the rule of law and human rights, recognising the rule of law and supremacy of law for all citizens (Article 2), equality before the law (Article 21) freedom of religion and belief (Article 6), freedom of expression and opinion and freedom of press (Article 31) right to fair trial (Article 27), human dignity (Article 30).

To promote democracy and human rights, the Constitution created an independent constitutional body. According to Article 125 “The independent constitutional body acts in

³⁷¹ See Rothna Begum, Human Rights Watch, ‘Middle East on a roll to Repeal ‘Marry the Rapist’ Laws,’ 24 August 2017. Available at: <https://www.hrw.org/news/2017/08/24/middle-east-roll-repeal-marry-rapist-laws>
Amnesty International, ‘Tunisia’s Victim-blaming laws are punishing survivors of sexual abuse,’ 18 May 2020 .Available at: <https://www.amnesty.org.uk/Tunisia-women-violence-sexual-abuse-laws>

³⁷² Ibid.

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ Ibid.

support of democracy and all institutions of the state must facilitate their work. These bodies shall enjoy a legal personality and financial and administrative independence. They are elected by the Assembly of the Representatives of the people by a qualified majority. They are responsible before the Assembly and shall submit an annual report to it. The report of each independent constitutional body is discussed in a special plenary session of the Assembly. The law establishes the composition of these bodies, representation within them, the methods by which they are elected, and the process for oversight of their functioning, and the procedures for ensuring their accountability.”

The Constitution introduced five commissions for protecting democracy and human rights:

1. The Electoral Commission: According to the Article 126 is responsible for organising and monitoring elections and referenda. The Commission should act independently in processing election and announcing election results. The nine members integrating this body are elected for a single period of six years, with one third of the members replaced every two years.
2. The Audio-Visual Communication Commission’s responsibility is to develop the audio-visual communication sector to protect freedom of expression and information and establish a pluralist media sector that functions with integrity and acts independently (Article 127).
3. Human Rights Commission: the Tunisian Constitution was written to advance human rights by indicating and providing commission and administrative institution to protect human rights law. According to Article 128 “The Human Rights Commission oversees respect for, and promotion of, human freedoms and rights, and makes proposals to develop the human rights system. It must be consulted on draft laws that fall within the domain of its mandate. The Commission conducts investigation into violations of human rights with a view to resolving them or referring them to the competent

authorities. The Commission shall be composed of independent and impartial members with competence and integrity. They undertake their functions for a single six-year term.”

4. Commission for Sustainable Development and the Rights of Future Generations: The Constitution acknowledge the rights of future generations to a healthy environment (Article 45) and economic, social issues and development plans (Article 130). To guarantee and protect their rights, legislative authority should consult the Commission of Sustainable Development and the Rights of Future Generations in drafting laws in related subjects.
5. The Good Governance and Anti-Corruption Commission: Article 140 establishes the new Commission for fighting against corruption and promoting good governance. The Commission promotes accountability, transparency, and integrity.³⁷⁶

3.8 Human Rights Protected in 2014 Constitution

The 2014 Constitution provides significant legal protection for all citizen without discrimination. In addition, it prioritises the rights of children, women, and people with disabilities by devoting a specific section to their rights. Women’s rights have always been at the centre of political debate in Tunisia, significantly after the empowerment of the Islamic party Ennahda. Ghannouchi, co-founder and leader of Ennahda party has reaffirmed the importance of equality between the sexes: “Equality between women and men is a principle embraced by our party since its establishment... the complementarity controversy...received

³⁷⁶ Tunisian Constitution 2014 in English access by <https://www.constituteproject.org>.

disproportionate coverage tainted by misunderstanding, misinformation, and polarisation. It must be noted that no article ever described women as complementary to men, but rather described men and women as complementing one another in the context of the family; the equality of spouses was emphasised in the very same draft”. However, there have been doubts about Ennahda leaders among the female members of parliament from political party opponents. Therefore, the need to recognise women’s rights in the Constitution became crucial. Article 46 indicates the state’s responsibilities to protect gender equality and women’s rights: “The state commits to protect women’s accrued rights and works to strengthen develop those rights the state guarantees the right to free public education at all levels and ensures provisions of the necessary resources to achieve a high quality of education, teaching, and training. It shall also work to consolidate the Arab-Muslim identity and national belonging in the young generations, and to strengthen, promote and generalise the use of the Arabic language and openness to foreign languages, human civilisations, and diffusion of the culture of human rights.”

Article 47 promised to protect the rights of children to dignity, health, care and education from their parents and state. The children should be protected without discrimination and accordance with their best interest. Article 48 indicates the importance of protecting the rights of persons with disabilities: “The state shall protect persons with disabilities from all forms of discrimination. Every disabled citizen shall have the right to benefit, according to the nature of the disability, from all measures that will ensure their full integration into society, and the state shall take all necessary measures to achieve this.”³⁷⁷

3.9 Implementation of Human Rights after the Arab Spring in National Legal Documents

³⁷⁷ Tunisian Constitution 2014 in English access by <https://www.constituteproject.org>

Despite the progress codified in the Constitution in 2014, critics have highlighted some of the existing gaps such as the restricted and not democratised access to judicial review of legislation.³⁷⁸ Judges remain the main interpreters of the law, especially in deciding the interpretation of human rights treaties by international and regional courts and commissions. The critics argue that Article 120 allows only the President, the Prime Minister and fewer than thirty members of parliament to request the review of the Constitution. Citizens cannot directly petition the Constitutional Court.³⁷⁹ Instead, citizens can make an argument about constitutionality of legislation in a specific litigation and the Court can refer to the Constitutional Court.³⁸⁰ Tunisian politicians and scholars complained in 2017, that many articles and principles of the constitution remained unimplemented and, in some cases, violated (Officials and businessmen accused of administrative corruption were granted amnesty).³⁸¹ Despite the advanced protection and recognition of human rights, the cases of torture, ill-treatment and in some cases death in custody continued after the collapse of the Ben Ali regime.³⁸² Article 49 clarifies under which circumstances and by which legislation and authorities, the rights of the citizen shall be limited. “The limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defence, public health, or public morals, and provided there is proportionality between these restrictions and the objective

³⁷⁸ Constitution Report, ‘The Constitution-Making Process in Tunisia Final Report (2011-2014)’ The Carter Center 1-201. Available at: https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/tunisia-constitution-making-process.pdf.

³⁷⁹ Ibid.

³⁸⁰ Ibid.

³⁸¹ “Anger as Tunisia grants amnesty to officials accused of corruption”, The Guardian, 15 September 2017. Available at: <https://www.theguardian.co>.

³⁸² Amnesty Report on Tunisia: ‘Evidence of torture and deaths in custody suggest gains of the uprising sliding into reverse gear,’ (14 January 2016) Available at: <https://www.amnesty.org/en>

sought. Judicial authorities ensure that rights and freedoms are protected from all violations. No amendment may undermine the human rights and freedoms guaranteed in this Constitution.”³⁸³

The situation in 2020-2021 in Tunisia threatened the prospect and future of the democratic establishment. The pandemic, unemployment and economic crisis needed addressing by the government to stabilise the situation and reduce the likelihood of protests and discontent. Addressing the protests through army involvement, as encouraged by Ennahda, and the Prime Ministers Hicham Mechichi, only raised the critics voices further, many of whom felt it was affirmation that this act was dangerous for a democratic regime, some considering the President as an outlaw, in trying to manage the situation in this manner. However, the President (Kais Saied) in response to nationwide violent mass protests sacked the Prime Minister and suspended parliament. He planned to introduce a new prime minister and return the country to a normal situation but there is a constant and ongoing political battle between political parties which threatens the efforts to de-escalate the situation and maintain a democratic government.

3.10 Conclusion

Tunisia experienced legal and political independence from colonial powers in the 1950s. The previous Constitution of Tunisia (1959) reflects mainly how Tunisia achieved its independence. As discussed in this chapter, the 1959 Constitution, in force, under the Bourguiba and Ben Ali governments was progressive in many aspects, such as protecting women’s rights, and freedom of religion. However, the lack of the rule of law and separation of powers undermined all these progressive achievements.

³⁸³ Article 49, The Constitution of Tunisia (2014).

The current Constitution, in force since 2014 is the documentation of legal progression after the uprising. It shows how the country achieved its aim to implement a normative framework in line with democracy, separation of power, and the rule of law. Tunisia was successful to include and recognise the rights of people who were being marginalised under previous regimes for several years. In addition, the Constitution provides the platform for practicing the rule of law and separation of power which was ignored by former governments prior to 2011.

The main aim of the current Constitution was to protect the rights of all Tunisians and clarify what they can expect from their new legal and political system. The language of the Constitution was clear to explain the rights and duty of citizens of Tunisia. The clash between political Islam and secular politics and their respective approach towards law influenced the drafting process and codification of rights. Contrary to other MENA countries, it seems Tunisia managed to resolve this conflict and included both political approaches in the Constitution. Still there are a few concerns in relation to human rights such as the vague language regarding the acceptance of LGBTIQs minorities. The new social and political crisis (Uprisings against the President 2021) along with the global COVID-19 pandemic, economic crisis, increase in unemployment and terrorism threaten the future of democracy and human rights. The Tunisian parliament welcomed foreign advice on progressing its legal system and guaranteeing the recognition of human rights. Significantly, the parliament welcomed advice from other members of the UN which were delivered to them through the international mechanism of the UPR. As explored in the next chapter, the enactment of the Constitution in its current form provides best lenses to demonstrate the influence of the UPR recommendations on domestic legal documents.

4 Universal Periodic Review and Tunisia

4.1 Introduction

The peer-review mechanism known as Universal Periodic Review (UPR) was created with the reform of the UN human rights machinery that led to the creation of the Human Rights Council in 2006 by the UN General Assembly resolution 60/251. The Human Rights Council that replaced the Commission, is comprised of 47 states representatives, elected following the principle of equitable geographical representation.³⁸⁴

UPR is an advanced mechanism for reviewing the human rights situations of all UN state members by all UN state members.³⁸⁵ The UPR has proven to be an effective mechanism influencing states to accept the importance of human rights agendas and in assisting them in having a better understanding of the situation of human rights worldwide. The role of this mechanism is becoming vital specifically to those states that have experienced tyranny and mass violations of human rights and are in a transitional process towards democratic forms of government. These transitional situations tend to be characterised by a high appetite to follow international human rights law and norms.³⁸⁶

The UPR is a process in three main stages. First, the State under review (SUR) presents its track record on the situation of human rights in its country based on the standards outlined above. Other States members and observers of the Human Rights Council can then ask questions, make suggestions and recommendations to the SUR. The country under

³⁸⁴ Human Rights Council, United Nations Available at: <https://www.ohchr.org/en/hrbodies/hrc/pages/aboutcouncil.aspx>

³⁸⁵ Human Rights Council, Universal Periodic Review, See. <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

³⁸⁶ Human Rights Council, Universal Periodic Review, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>. International Commission of Jurists Background Note, 'Overview of the Universal Periodic Review Mechanism,' [2014] available at: <https://www.icj.org> Fact Sheet: Human Rights Council-Universal Periodic Review Available at: <https://www.ohchr.org> pdf.

review can accept or ‘take note’ of the recommended actions but commits itself to implement those accepted and to report back to the HRC for the next relevant cycle of review. Therefore, subsequent cycles focus on the implementation of former recommendations.

Prior to the Arab Spring, Tunisia held her first cycle of the review in 2008 under Ben Ali regime. Since the collapse of the Ben Ali regime Tunisia has experienced two more cycles of reviews in 2012, 2017, with the third cycle in 2017, asking for further implementation of recommendations which has been responded to positively by Tunisia.³⁸⁷ The fourth session is due for review in May 2022 and so is not the focus of this research.

Whilst the UPR sessions can evaluate Tunisia’s status on commitment and compliance with human rights law, the analysis of these cycles during this chapter, reveals how the Tunisian legal system has been influenced by member state recommendations and suggestions deriving from the UPR mechanism.

4.2 Human Rights Council (HRC) and Universal Periodic Review

The United Nations is an organisation that rests on three pillars: human rights, peace, security and development.³⁸⁸ In 2005, at the World Summit, the Secretary-General Kofi-Annan resolved to create a Human Rights Council (HRC) to replace the much-criticised Commission on Human Rights.³⁸⁹ The demise of the Commission on Human Rights resulted from enormous criticism from all members of the UN as they focused mainly on its weaknesses rather than its positive outcomes during its six decades of existence.

³⁸⁷ Universal Periodic Review-Tunisia, United Nations Human Rights Council, Available at: <https://www.ohchr.org/en/hrbodies/upr/pages/tnindex.aspx>

³⁸⁸ Three Pillars of the United Nations, The United Nations Available at: <https://www.un.org/un70/en/content/videos/three-pillars/index.html>

³⁸⁹ Ibid.

The Human Rights Council (HRC) is the main intergovernmental body of the United Nations addressing human rights, with the support of the specialised section of the UN Secretariat for human rights issues: the Office of the High Commissioner for Human Rights.³⁹⁰ Both the Council and the Office of the High Commissioner have their quarters in Geneva.

The assessment of the situation of human rights in each country under review by the UPR is based on the UN charter, Universal Declaration of Human Rights, human rights instruments to which the state is a party, voluntary state commitments, and international humanitarian law.³⁹¹ The UPR is designed “to ensure equal treatment for every country when their human rights situations are assessed.”³⁹² When conducting the review, the main aim of the Council is to address the violation of human rights wherever they occurred and improve the human rights situation in all countries.³⁹³ The UPR requires the cooperation among all member states to use objective and reliable information and treat each other equally during the process of per-review.³⁹⁴ The UPR occurs over a four and a half year cycle following a schedule that is drafted in accordance with the principle of equal treatment and geographical representation states are considered in alphabetical order from the different geographical groups.³⁹⁵ Three main reports should be provided as the main documents to be presented to a working group consisting of all members except the country being reviewed and chaired by the President of the Council.³⁹⁶ These three reports are: a national report that should be written in up to twenty pages and should follow the Council’s guidelines; a ten-page report produced by

³⁹⁰ See Elvira Dominguez Redondo, *In defence of Politicization of Human Rights: The UN Special Procedures* (OUP, 2020). Juliana VenGoechea-Barrios, ‘The Universal Periodic Review: A New Hope for International Human Rights Law or A Reformulation of Errors of the Past?’ [2008] 12 *International Law Review* 101-116.

³⁹¹ The United Nations Human Rights, ‘Maximizing the Use of the Universal Periodic Review at Country level Practical Guidance’ Available at:

https://www.ohchr.org/Documents/HRBodies/UPR/UPR_Practical_Guidance.pdf

³⁹² Ibid.

³⁹³ Ibid.

³⁹⁴ Ibid.

³⁹⁵ Ibid.

³⁹⁶ Ibid.

the OHCHR compiling all relevant information from treaty bodies, special procedures and other UN bodies; finally, a ten-page OHCHR summary of information received from stakeholders.³⁹⁷

The UPR is a state driven process, under the guidance and protection of Human Rights Council, which provides an opportunity for each state to proclaim what action they have taken to improve the human rights situation in their countries in order to meet human rights standards and norms.³⁹⁸ The UN Commissioner of Human Rights noted that The UPR mechanism can strengthen the dialogue and cooperation on human rights at all levels and with all countries.

In relation to the UPR the UN General Assembly resolution 60/251 point 5(e) states that the HRC should:

“Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session”³⁹⁹

³⁹⁷ Ibid.

³⁹⁸ The United Nations Human Rights, ‘Maximizing the Use of the Universal Periodic Review at Country level Practical Guidance’ Available at:

https://www.ohchr.org/Documents/HRBodies/UPR/UPR_Practical_Guidance.pdf

³⁹⁹ GA Res 60/251 15 March 2006.

HRC Resolution 5/1 of 2007 states the principles of UPR should:

- (a) Promote the universality, interdependence, indivisibility, and interrelatedness of all human rights
- (b) Be a cooperative mechanism based on objective and reliable information and on interactive dialogue.
- (c) Ensure universal coverage and equal treatment of all States.
- (d) Be an intergovernmental process, United Nations Member-driven and action-oriented.
- (e) Fully involve the country under review.
- (f) Complement and not duplicate other human rights mechanisms, thus representing an added value.
- (g) Be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner.
- (h) Not be overly burdensome to the concerned State or to the agenda of the Council.
- (i) Not be overly long; it should be realistic and not absorb a disproportionate amount of time, human and financial resources.
- (j) Not diminish the Council's capacity to respond to urgent human rights situations.
- (k) Fully integrate a gender perspective.
- (l) Without prejudice to the obligations contained in the elements provided for in the basis of review, take into account the level of development and specificities of countries.
- (m) Ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social

Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard.”⁴⁰⁰

The UPR mechanism objectives according to HRC resolution 5/1 of 2007 are:

- To address human rights violations worldwide
- To improve human rights situation globally
- To encourage state to participate to enrich human rights obligations and commitments
- To review positively the developments and challenges faced by states
- To assure that state’s use all their capacity to provide equal opportunity for all citizens to enjoy human rights
- To provide technical aids to states when requested
- To share best practices between states and stakeholders. ⁴⁰¹

The UPR principles are the universality, interdependence, individuality, and interrelatedness of all human rights. In order to follow these principles, states should be cooperative, objective and use reliable sources and treat each other equally during UPR process. ⁴⁰²It is intended to be member driven, action-oriented, and fully involve the country under review. The UPR is designed to complement other mechanisms and not duplicate other human rights mechanisms. The UPR should be constructive, transparent, and objective. It should not be selective, confrontational, or politicised. In addition, it should not be time consuming that affects the council’s capacity to respond to urgent human rights situation. It must “fully integrate a gender perspective, take into account the stage of development of the

⁴⁰⁰ UN Human Rights Council, Institution-building of the United Nations Human Rights Council, 18 June 2007, A/HRC/RES/5/1.

⁴⁰¹ Ibid

⁴⁰² Ibid

concerned country, and take into account the views of all relevant stakeholders”.⁴⁰³

One of the most positive aspects of the UPR implementation to date has been the one hundred percent engagement of all the states of the world being complimentary to the work of treaty bodies. It provides a unique opportunity to create feedback for every state on how to self evaluate its actions to meet the standard of the UPR recommendations. A successful UPR process can create more positive and productive relation between States and the UN system, and it can provide a forum for the state under review (SUR) to pledge respect and improve human rights law. States are more likely to be interested in working towards a high acceptance rate because they find the recommendation helpful and because they are concerned about the perception of not accepting many recommendations.⁴⁰⁴

However, there is some criticism around the UPR mechanism and approach. The UPR cannot be forced on the country and requires the state under review (SUR) to accept recommendations. Usually, the SUR accepts the easy recommendation and avoids the major and important ones. Critics have argued that the UPR, especially in the first cycle, can address human rights issues in a very broad and ambiguous manner and this has made it hard for SURs to implement them. Many states avoid the acceptance of any specific measures for implementing the recommendations. Most states do not provide the voluntary mid-term report to HRC which would facilitate an effective follow up of the implementation of recommendations. States that participated in the second cycle had not adequately followed up on recommendations made to them in the first cycle and topics regarding human rights and

⁴⁰³ Ibid

⁴⁰⁴ See Edward R Mc Mahon, ‘The Universal Periodic Review: A Work in Progress’ [2012] FES 1-28. UN Office of the High Commissioner for Human Rights, ‘Thematic Paper, The Universal Periodic Review and Sustainable Peace’ [2020] Review of the Peacebuilding Architecture available at: https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/5._ohchr_thematic_paper_on_universal_periodic_review.pdf. Miloon Kothari, ‘Study on Emerging Good Practices from the Universal Periodic Review (UPR) [2021] 1-25 Available at: https://www.ohchr.org/Documents/HRBodies/UPR/Emerging_UPR_GoodPractices.pdf

business had never been discussed in the first and second cycle.⁴⁰⁵

Through reviewing the cycles, and recommendations from review sessions, we can analyse how the recommendations have been implemented, successes and barriers to this and ultimately better understand the influence UPR has had on implementing human rights in the MENA, and specifically, in Tunisia. The following section addresses the regional response to the UPR recommendations based on the evaluations of the first, second and third cycle of the UPR. After addressing the regional reactions towards the UPR recommendations, the chapter focuses on Tunisia, enabling us to analyse why Tunisia has led an alternative path to other countries in the MENA.

4.3 Universal Periodic Review in the Middle East and North Africa (MENA)

While the MENA region has been experiencing development gradually as well as the rest of the world, the region is realising that for development, it is essential to improve human rights first.⁴⁰⁶

Human rights have been the core of people protests, social movements and demands during the various ongoing events since 2011 in the region. While state responsibility towards citizens has been improving, it seems social accountability is certainly becoming a central issue

⁴⁰⁵ See Sameer Rana, 'Review or Rhetoric? An Analysis of the United Nations Human Rights Council's Universal Periodic Review [2015] Independent Study Project (ISP) collection 2239. Available at: https://digitalcollections.sit.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3262&context=isp_collecti on. The United Nations Human Rights, 'Maximizing the Use of the Universal Periodic Review at Country level Practical Guidance' Available at: https://www.ohchr.org/Documents/HRBodies/UPR/UPR_Practical_Guidance.pdf. Pilar Elizalde, 'A horizontal pathway to impact? An assessment of the Universal Periodic Review,' in *Contesting Human Rights: Norms, Institutions and Practice*, edited by Alison Brysk and Michael Stohl, published, Edward Elgar Publishing Ltd, 2019.

⁴⁰⁶ Ibid

of these positive changes. A strong national legal system requires the participation of the people in national and international legal institutions.⁴⁰⁷ There are a variety of mechanisms that provide the platform for this participation, from providing legal empowerment through civil society or increased access to justice through empowerment of the rule of law, but this study is looking specifically on the cooperation between national and international agents through the mechanism of the UPR. States can benefit from this platform and have a dialogue with civil society actors and use their grassroot experience.⁴⁰⁸

The UPR also can help to improve States security by strengthening important organisations such as military, police and possibly national human rights institution.⁴⁰⁹ The UPR also can help NGOs to have a more thorough communication between themselves and with states and strengthen their national human rights monitoring mechanism and their own human rights analysis. Completing successful report demands the more efficient collaboration between all advocacy institutions governmental and non-governmental.⁴¹⁰ While NGOs provide an independent report, National Human Rights Institutions (NHRIs) may be independent but are inserted in the state organigram and tend to fulfil an advisory role. They analyse human rights issues by highlighting key areas of concern and advising the state to respond expediently and pragmatically to those issues.⁴¹¹

The Arab States have finished the third cycle and are entering the fourth cycle of the UPR process. The UPR extends the opportunities for comprehensive coalition between civil society and government and indeed for promoting accountability of public authorities.⁴¹² The process is seen as a well-functioning and well-established tool to encourage meaningful

⁴⁰⁷ Ibid

⁴⁰⁸ Ibid

⁴⁰⁹ Ibid

⁴¹⁰ Ibid

⁴¹¹ Ibid

⁴¹² Ibid

dialogue between all interested actors, at national, regional and international level.⁴¹³ It appears in the UPR sessions, that Arab states and civil society organisations have prioritised different human rights issues. This disagreement on prioritisation of human rights issues challenges the national collaboration between States and civil society for implementation of UPR recommendation.⁴¹⁴ Civil society organisations in Arab states often insist on implementation of political and civil rights in their reports and recommendations while Arab and non-Arab states insist on economic, social and cultural rights issues in their recommendations. Some common ground can be found, notably on economic, social, and cultural rights, women's rights, and legal and institutional reform for increased protection of human rights.⁴¹⁵

During the first cycle of the UPR, Arab States rarely addressed the political and civil rights, avoiding issues such as freedom of expression, opinion and conscience, freedom of association and assembly which was brought to the attention of the Council by national NGOs. Arab States chose to be silent on the issue of citizen security, excessive use of force, torture, elections and democratic participation.⁴¹⁶ This unwillingness to address those issues raised by NGOs caused the lack of cooperation between civil society and states in these areas. However, the Arab uprising changed the attitude of the Arab States. Significantly, post-Arab uprising regimes have shown willingness to discuss recommendations on civil and political rights. Simultaneously, NGOs are also expanding their interventions to broader areas of rights.⁴¹⁷ In the first cycle, Arab States accepted the general recommendations and avoided acting on those which require specific actions.⁴¹⁸ The second cycle yielded more positive results in terms of

⁴¹³ Ibid

⁴¹⁴ See UNDP, Universal Periodic Review in the Arab States- United Nations, Social Accountability in Changing Region-Actors and Mechanism. [2012].

⁴¹⁵ Ibid

⁴¹⁶ Ibid

⁴¹⁷ Ibid

⁴¹⁸ Ibid

increasing collaboration between civil society, media, and states.⁴¹⁹

The Arab uprising's protesters made demands for better social justice and accountability of state institution. The post-Arab uprising's states have a tendency towards social justice and government accountability. However, the lack of trust and legitimacy remains the most controversial issues among states in the Arab world. In this hostile environment, building trust and cooperation between civil society and government is necessary.⁴²⁰ UPR is certainly the mechanism that can provide the best opportunities to encourage states and civil society organisations to build the trust and work jointly.⁴²¹ It should be noted that some Arab governments already show a massive interest in empowering the role of NGOs and build better relations between different stakeholders. Many civil society organisations use UPR mechanism as a point of entry to find new opportunities to engage with governments.⁴²²

As part of the preparations for the UPR process, governments are strongly encouraged to hold national consultation involving civil society in order to include their views in the final report to be presented to the Human Rights Council. The role of the media also became vital for encouraging UPR as a tool for social accountability and encouraging more participation from civil society organisations. Establishing a permanent coordination mechanism that can monitor and help to write a national report and bring the NGOs, NHRIs and government to collaborate is recommended by several interventions. NGOs have been encouraged to be specific and provide cohesive information that can help for better recommendations from other states members.⁴²³

The UPR notes and reports as well as recommendation should be inclusive and should

⁴¹⁹ Ibid

⁴²⁰ See UNDP, Universal Periodic Review in the Arab States- United Nations, Social Accountability in Changing Region-Actors and Mechanism. [2012].

⁴²¹ Ibid

⁴²² Ibid

⁴²³ Ibid

remain inclusive at the stage of implementation of the recommendations.⁴²⁴ Possible entry points for cooperation with civil society on the implementation of recommendations of Arab States would be economic, social, and cultural rights, women's rights, legislative and institutional protection of human rights, refugees and trafficking of persons and rights of migrant workers. These issues are common ground and common priorities of States, NGOs, donors, and the UN. Collaboration on these issues can open the door for addressing civil and political rights which are closely linked to the exercise of economic, social, cultural and other rights.⁴²⁵ There are many challenges and recommendations raised in the UPR which are common among most Arab states. In terms of freedom of expression and association, most of the Arab states legal system suffer from insufficient protection for these rights despite their constitutional recognition. National security considerations influence heavily in the implementation of these rights which results on more suppression and censorship.⁴²⁶ This is compounded by the absence of NGOs who are actively promoting and encouraging state to respect these rights in some Arab states. The lack of National Human Rights Institutions or the obstruction of their functions when they exist, is another feature shared by some Arab states.⁴²⁷

Among the recommendations issued by the members of the UN, to the states in the MENA region, the establishment of appropriate legislative mechanisms feature prominently to implement human rights (including freedom of expression). Other recommendations have focused on the separation of powers and independence of the judiciary, the creation of a regional mechanism for the promotion and protection of human rights opened to individual complaints, establishing an independent platform for the media, and raising awareness on the

⁴²⁴ Ibid

⁴²⁵ See UNDP, Universal Periodic Review in the Arab States- United Nations, Social Accountability in Changing Region-Actors and Mechanism. [2012]. Amna Nazir, 'The Universal Periodic Review and Muslim States' Engagement'[2019] Available at: http://www.open-access.bcu.ac.uk/8484/1/Nazir_UPR_Muslim_State_Engagement.pdf.

⁴²⁶ Ibid

⁴²⁷ The Universal Periodic Review in the Arab States- United Nations, Social Accountability in Changing Region-Actors and Mechanism addressed few Arab States, Morocco, Egypt, Tunisia, Bahrain. See n.224.

right to freedom of association and expression. States participating in the UPR have also encouraged NGOs to have an active role on promoting these rights.

The Arab states are faced with economic, social, and cultural rights (ESCR) challenges. Violations of economic, social, and cultural rights as a result of corruption and mismanagement of finance and wealth in the Arab region have caused the change in regimes and the uprisings in the Arab region. Inequality to access wealth, job, and resources. Distorted information and statistics make it difficult for experts to establish the plan and baseline for future development. Stakeholders lack capacity to measure ESCR and there is limited understanding of what the principle of progressive realisation, embedded in international obligations regarding economic and social rights".⁴²⁸ This entails UPR recommendations are clearly addressing the above issues for instance by requesting Arab states to consider improving their constitution and national legislation in order to recognise the rights to work, health, and housing.

In attempting to implement these recommendations the government and stakeholders should improve their capacity to work with each other. Diverse mechanism have been introduced to bring NGOs and governmental efforts together depending on the context in the countries. For example, the best place to address workers right in Bahrain is labour union. In Egypt, the main role in making decision and implement the legislation is the executive which needs to be controlled by parliament.

The most challenging issue among Arab states is women's rights. There is a rise in equality between men and women expressly codified in national legislation due to the influence of religion and interpretation of some religious principles.⁴²⁹ Gender discrimination is adopted particularly as a norm in culture. In the context of the UPR, recommendations regarding

⁴²⁸ Ibid

⁴²⁹ See UNDP, Universal Periodic Review in the Arab States- United Nations, Social Accountability in Changing Region-Actors and Mechanism. [2012].

women's rights for the countries of the region under review, share common features. Other States have recommended that Arab States and NGOs should co-operate to address the gender inequality and change the cultural practice by focusing on gender equality policy-making programmes. It has been emphasised that States should provide safe environment for women to enter to politics and decision-making positions. Civil society can raise an awareness and encourage people to participate more firmly on changing law and policy.⁴³⁰ The cooperation between states, civil society and UN is necessary on the issue of problematic traditionalist interpretation of Sharia law that may not be based on Koran and undermine and threat women's rights and well-being.⁴³¹ This includes hot topics such as female genital mutilation, early marriage, women's right to inheritance and to own property. Other common themes that have been raised in the context of the UPR are the need to provide adequate resources and solutions to address violence against women, through legal means both for framing a protective set of norms and to remove legislation that might undermine women's rights. States need to implement the CEDAW convention, without reservation.⁴³²

In order to benefit from the opportunities that the UPR has to offer Civil Society Organisations must actively engage in the promotion of cultural changes and dialogue with Arab states. On their part States should facilitate the participation of NGOs in preparing the national report to implement the recommendation emanating from the UPR process. NGOs should write their plan of action and follow the strategy that can be effective to promote human rights. They should form a national coalition on the UPR and its follow up and work on public awareness to spread knowledge of the UPR system among people. They should try to find echo in outlets to enhance the impact of their work. In addition, NGOs can advise government

⁴³⁰ Ibid

⁴³¹ Ibid

⁴³² See UNDP, Universal Periodic Review in the Arab States- United Nations, Social Accountability in Changing Region-Actors and Mechanism. [2012].

officials in the creation of a coordinating committee with representation of the governmental and non-governmental stakeholders to implement the UPR recommendations. As strategy, it could be useful to engage the better predisposition towards economic, social, and cultural rights, as an entry point to promote women rights and other rights that are considered more problematic. NGOs can help to address the violence against women, breaking any taboos around surrounding it, work closely with government the UN prepare CEDAW committee report.

In conclusion, civil society organisations, can have a fundamental role in influencing the UPR process and outcome by adopting a concerted and effective strategy. This should include public awareness, that includes explanation of the recommendations to make them accessible and facilitating their follow up from grass-root level organisations. Effective use of the media in this context, will facilitate the task and will provide a platform to make visible the views of different stakeholders. The use of public surveys and consultation before, during and after the UPR process should also contribute to the purpose of benefitting from the opportunities offered by the UPR.⁴³³ Furthermore, Civil society can provide capacitation and training courses to the media on the importance of the UPR mechanism and human rights. This will also ensure better accessibility to UPR information to the media. Finally, the benefits of engaging with the UPR can be enhanced through capacity building activities focused on economic, social, and cultural rights as well as budget monitoring.⁴³⁴

The social, cultural, political changes and even destabilisation processes that have characterised the Arab region can serve as an opportunity for the governments to hear the people's voices and act on changing their policy and implementing the recommendations from

⁴³³ UNDP, Universal Periodic Review in the Arab States- United Nations, Social Accountability in Changing Region-Actors and Mechanism. [2012].

⁴³⁴ Ibid

other states. There should be better relations between media, civil society, focusing on this purpose. The UN remains a vital platform as it provides the platform for all states to engage with their own citizen and encourage dialogue among all political parties and civil society for better changes. The interaction between UN human rights bodies, civil society and states can help to achieve better result in terms of development and human rights.⁴³⁵

4.4 Universal Periodic Review and Tunisia in Pre and Post Arab Spring Era

Tunisia had its first experience of conducting UPR in 2008 under the Ben Ali regime. Since 2008 both the Tunisian state and the mechanism of the UPR have developed and advanced. In 2008 the Tunisian government agreed to receive special rapporteur from HRC and African Commission of Human Rights.⁴³⁶ The Tunisian government was praised for its commitment to providing a high-quality national report by 65 state representatives. 12 recommendations received the support of the Tunisian government. Syrian Arab Republic recommended Tunisia continue its programme on protecting and promoting all human rights including the field of education, health and the promotion of the status of women. Cuba welcomed the Tunisian decision to embrace empowerment of women.⁴³⁷ Qatar and UK encouraged Tunisia to work closely with international human rights bodies particularly in respect to the follow-up of the UPR recommendations. The Republic of Korea, Mexico and Brazil recognised the progress Tunisia made in terms of protecting women's rights but encouraged Tunisia to withdraw the reservation to CEDAW. Saudi Arabia recommended the mandate of the Higher Committee on Human Rights and Fundamental Freedom be in line with the Paris Principles. Meanwhile, Chad and Madagascar encouraged Tunisia to act on promoting international solidarity to eliminate

⁴³⁵ Ibid

⁴³⁶ GA/ HRC/UN Doc/ Report of the Working Group on the UPR Tunisia A/HR/8/21, May 2008

⁴³⁷ Ibid

poverty. Furthermore, Tunisia was recommended by South Africa and Cuba, to progress its efforts on protecting economic, social, and cultural rights and continue its effort to diminish national poverty and inequality. USA, Sweden, and Belgium recommended Tunisia to encourage freedom of expression through the revision of Article 51 of the press code.⁴³⁸ The Netherlands welcomed the announcement of a moratorium on the application of death penalty, whilst the UK and Canada recommended Tunisia consider ratification of optional protocol of Community Against Torture (CAR) as soon as possible. Tunisia was recommended by Jordan and the Holy See to continue to play a role in enhancing dialogue between civilisations, cultures and religions from Jordan and the Vatican. Lastly, Tunisia was recommended to consider cooperating closely with Special Rapporteur on the issue of Torture and protection and the promotion of human rights whilst fighting against terrorism.⁴³⁹

Ben Ali's government promised to implement the recommendations summarised above and provide a better environment for media and civil societies to exercise their rights to freedom of expression and assembly.⁴⁴⁰ However, the Tunisian government was not committed to its own promises and continued to violate human rights. As a result, Tunisia experienced a series of revolts and uprisings which led to the change of the regime in 2011. Since 2011, Tunisia has progressed its legislation and accepted more international treaties to implement human rights law in the country. During the constitution making process Tunisia experienced the second cycle of the UPR. The transitional government of Tunisia stated that

“the democratic transition was characterised by the recognition of individual and collective rights, political pluralism and peaceful democratic dialogue based on free and fair elections and the sovereignty of the people. Tunisia had put an end to practices of the past and

⁴³⁸ Ibid

⁴³⁹ GA/ HRC/UN Doc/ Report of the Working Group on the UPR Tunisia A/HR/8/21, May 2008

⁴⁴⁰ Ibid

was determined to continue its path and create atmosphere of trust, so that it could occupy the position it deserves among nations, as a country proud of its civilisation, with an Arab Islamic identity, open to modern trends and attached to the values of peace, democracy and human rights.”⁴⁴¹

The Tunisian government presented the report that outlined and provided proof of cooperation between civil society organisations, ministers who were responsible for human rights issues as well as the High Council of Human Rights and Fundamental Freedom. This report is written based on new values of democracy and human rights which stand against tyranny and dictatorship in the past.⁴⁴² The new Tunisia promotes human rights, including by following up on the recommendations of the UPR and other human rights mechanisms as well as the evaluation mission of the OHCHR to Tunisia right after Revolution. Tunisia is strongly willing to cooperate with international human rights mechanisms. During the interactive dialogue, 76 representatives of the states made a statement. Some states welcomed Tunisia’s action to promote human rights and recognised Tunisia’s efforts to implement human rights.⁴⁴³ However, they were concerned about the protection of women’s rights, gender equality and the commitment of the ruling party Ennahda to the CEDAW. Most states praised the efforts of the transitional government to establish the legal protection for implementing human rights. Uganda acknowledged Tunisia’s new amnesty law and release of political prisoners. In addition, Uganda sent its recommendations on persecution of abusers of human rights and creation of Ministry of Human Rights.⁴⁴⁴

The United Kingdom welcomed the action of the Tunisian government to progress human rights but also recognised the challenges that Tunisia faced to implement the new laws.

⁴⁴¹ GA/ HRC/UN Doc/ Report of the Working Group on the UPR Tunisia A/HR/21/5, July 2012

⁴⁴² Ibid

⁴⁴³ GA/ HRC/UN Doc/ Report of the Working Group on the UPR Tunisia A/HR/21/5, July 2012

⁴⁴⁴ Ibid

It made recommendations on security sector reform, judicial reform and the need to repeal or amend remaining repressive laws.⁴⁴⁵

In response to these recommendations, the Tunisian government stated that they were seriously committed to eliminating torture and any physical or psychological abuse, pledging to not follow in the steps of previous regime. Tunisia emphasised on actively bringing a new legal framework based on international standards, focusing on the main recommendation of eliminating any form of discrimination against women in law and society and ensuring equality between women and men is and remains written in the new constitution.⁴⁴⁶ (The constitution of 2014 includes gender equality and women's rights as discussed in the previous chapter). The second important recommendation requested further reforms in legal documents on freedom of expression, religion and assembly. The USA and Germany requested that the new constitution included these rights and provided adequate support for freedom of press.⁴⁴⁷

In 2017, the third cycle of the UPR took a place. Tunisia received further recommendations and was appraised for its progress in terms of the implementation of the former recommendations and its legal progress. The United Nations Country team invited Tunisia to consider ratifying a range of optional protocols including:

- Optional Protocol to the International Convention of Political Rights aiming to abolish the death penalty,
- the International Convention on the Protection of the Rights of All migrants and Their Families,
- The Optional Protocol to the International Convention on Economic, Social and Cultural Rights

⁴⁴⁵ Ibid

⁴⁴⁶ Ibid

⁴⁴⁷ GA/ HRC/UN Doc/ Report of the Working Group on the UPR Tunisia A/HR/21/5, July 2012

- The Optional Protocol to the Convention on the Rights of the Child on a communication procedure.

Tunisia ratified the optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. OHCHR noted the progress in Constitution in January 2014 and other national human rights legislation. However, it is necessary for more work to be done to protect the legislative framework and keep within the constitutional and international standard. OHCHR recommended that Tunisia recognise racism as a crime in line with international commitments. Tunisia's working group reported that Article 230 Criminal code which recognised that same sex relationship as a crime should be revoked from criminal code as otherwise this implied that the LGBTIQ community were under threat and attack from the public. In addition, the committee of ESCR recommended further protection for the Amazigh minority. In 2015 Special Rapporteur on Torture stated that the country needed to have a fair trial for terrorist suspects and convicts and avoid any ill-treatment and torture.

The 2014 constitution protected and guaranteed several key human rights laws such as the right to non-discrimination, freedom of expression, association, assembly and movement; rights to life and privacy, liberty and fair trial; and independence of judiciary. It prohibited torture and ill-treatment. However, the constitution did not abolish the death penalty. The establishment of the court was delayed; therefore, the implementation of these rights were undermined and not protected.

There have been considerable changes since 2011, however the events of 2015 terrorist attack impacted on the implementation of human rights and in some cases the human rights of convicted criminals or suspects were violated through interrogations whilst in prison. Amnesty International notified Tunisia and recommended some changes on national legislation. They

recommended that national law, including penal code and the code of criminal procedures should be updated and comply with the Constitution of Tunisia and international human rights obligations. They also recommended further protection for the victims of sexual and gender-based violence and that the law should be more cohesive and include LGBTIQ community. Articles 227 and 239, which allow the marriage between a rapist and the victims should be banned and condemned. Articles 236 and 230 of the Penal Code should end discrimination against LGBTIQ community and end criminalising same-sex relations. In addition, the virginity test should be banned and anyone who is detained for their sexual orientation or gender identity should be released. While 2012 recommendations advanced the legal protection of human rights, the implementations of those rights became the core of the recommendation in the third cycle 2017.

In 2017, the comment on Tunisian treatment of prisoners came to the attention of member states in the UN. The Tunisian government granted access to prisoners for independent NGOs observers including local and international human rights groups, local media and the International Committee of the Red Cross, the Office of the UN High Commissioner for Human Rights and the OCTT. The new Directorate General of Human Rights within the Ministry of Interior coordinated with international government and NGOs working on human rights. UN Special Rapporteur Emmerson was concerned about the prolonged periods and condition of detentions. In response to those concerns, The Ministry of Social Affairs and the Danish Institute Against Torture provided a new rehabilitation centre. To reduce the potential violence and mistreatment of detainees by prison staff, DGPR, in 2017, established an Emergency Response Unit composed of 200 law enforcement officers. In terms of access to asylum the country does not have a law for granting asylum or refugee status to asylum seekers. However, UNHCR is the only institution that provides legal advice and help to refugees to access to

education, health, and protection.⁴⁴⁸

One of the challenges that Tunisia faces culturally and legally is the acceptance of LGBTIQ community and recognition of their rights. The law criminalises sodomy and the punishment is a three-year prison sentence.⁴⁴⁹ According to NGOs, authorities occasionally use the law against members of LGBTIQ communities and arrest them more based on their appearance. Some of the individual cases which were presented by NGOs in their reports show evidence of increased discrimination, violence, death, and rape threat against the LGBTIQ community. In March 2017, Achraf Bouasker and Sabri Chehdi were sentenced to eight months in prison for homosexuality after being arrested in December 2016 at a train station in Sousse. The police officer claimed he arrested them in the middle of a sexual act, but these two men denied the allegation and claimed that they were targeted because of their appearance. To prove that they were not guilty, they voluntarily submitted to a rectal examination.⁴⁵⁰ In September 2016, Euromed reported that the victims of violent attacks were not keen to report any threat or illegal act against them because of the fear of prosecution and societal stigma and so Tunisia needed to eliminate any discrimination based on sexual orientation and gender.⁴⁵¹

Tunisia has accepted several UPR recommendations in 2017 and as such has a responsibility to implement all recommendations that have been accepted by the state. The Tunisian government has an opportunity to provide a report of the implementation of these recommendations by May 2022 for the next cycle of the UPR.⁴⁵²

Tunisia ratified several conventions without reservation. Those conventions are:

⁴⁴⁸ See Tunisia 2020 Human Rights Report, Department of Justice, Available at: <https://www.justice.gov/eoir/page/file/1385131/download>

⁴⁴⁹ Amnesty International Report submitted for the UPR (Third Cycle), 'Tunisia Reform or Repressive Laws and Practice Lagging, May 2017 Available at: <https://www.amnesty.org> accessed on 2021/05. Also, a

⁴⁵⁰ Ibid

⁴⁵¹ Ibid more information can be found at Euromed Rights Available at: <https://euomedrights.org>.

⁴⁵² GA/ HRC/UN Doc/ Report of the Working Group on the UPR Tunisia, Compilation on Tunisia, A/HRC/WG.6/27/tun/2. 20 February 2017.

- Convention Against Torture and Other Cruel Inhuman or Degrading Treatment and Punishment (CAT),
- Convention for the Protection of All Persons from Enforced Disappearance (CED),
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD),
- International Covenant on Economic, Social and Cultural Rights (CESCR),
- Convention on the Rights of Persons with Disabilities (CRPD).

The following Conventions were ratified with declarations:

- International Covenant on Civil and Political Rights (CCPR),
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),
- Convention on the rights of the Child (CRC).

Tunisia has not acted on the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming for the abolition of the death penalty (CCPR-OP2-DP), nor the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their families (CMW).⁴⁵³ The recommendations that Tunisia has received and agreed to act on include:

- Implementing a health reform based on the principle of universal access to care.
- Continuing to promote social and economic development, improving educational and medical facilities for the public to benefit and equally enjoy.
- Ensuring that gender equality is protected in the Constitution and applying it in practice

⁴⁵³ Ibid

through policy making.

- Continuing cooperation with NGOs to reduce violence against women.⁴⁵⁴
- Providing the equal opportunity for both genders to participate in decision-making.
- Investing on medium and long-term development projects and focus more on underdeveloped region in order to provide better employment and promote more equality and diversity.⁴⁵⁵
- Applying human rights for all citizens of Tunisia in the constitution and other national legal documents without discriminating against any groups or individuals and implementing human rights treaties and recommendations that Tunisia accepted and ratified.

Tunisia needs to:

- improve its security sector, to ensure that the rights of detainees are protected and Tunisia follows international human rights standards regarding the prisoners and convicts.
- Continue advancing freedom of media, expression and freedom of thought and belief and promoting democracy and political pluralism.
- Continue to promote separation of power and empower the judicial system to ensure that they are independent in order to protect the rights and freedom of individuals.⁴⁵⁶

The Transitional Justice mechanism should continue to deal with human rights violations that were committed in the past and should consult the public and Tunisia should provide a

⁴⁵⁴ Ibid

⁴⁵⁵ GA/ HRC/UN Doc/ Report of the Working Group on the UPR Tunisia, Compilation on Tunisia, A/HRC/WG.6/27/tun/2. 20 February 2017.

⁴⁵⁶ Ibid.

better mechanism to prevent torture in all detention centres.⁴⁵⁷

4.5. Conclusion

Tunisia was experiencing two cycles of the UPR since the Arab Spring Uprising, while NGOs and government and political parties were strengthening their establishment and providing the platform for cooperation and coalition. The Tunisian economy suffered from the previous regime's corruption and crisis, faced with more national security crisis after the assassination of a secular political party member and terrorist attack in 2015. Since the beginning of the Pandemic in 2020, Tunisia has been under pressure in terms of providing access to health care for all people. Its economy has suffered from the lack of tourism. However, despite all these challenges, Tunisia has remained democratic in contrast with other Arab states in the region. The future of Tunisia can be bright if the progress for development, democracy and human rights continues. This chapter has evaluated the commitment of Tunisia towards international human rights law and the UPR recommendations. Since 2011, Tunisia has advanced and progressed the structure and the contents of its law and guaranteed several human rights laws within the Constitution and other national laws. However, the law needs cohesive policy to be implemented. The elected government and parliaments have shown willingness to apply and implement the international law and standards guaranteeing certain rights to be protected and advanced. The UPR mechanism has enabled the State to review areas for further improvement, investment and development in line with international standards.

⁴⁵⁷ Ibid.

5 Conclusion

To conclude, this research poses stem from the achievement of the social and political movements and human rights advances Tunisia has made since Arab Spring and the collapse of the Ben Ali regime in 2011. Despite Tunisia's relative success, there are more opportunities for the country's political development as explained and clarified in this thesis. Additionally, it should be noted that Tunisia is still struggling with an international economic crisis, the corona pandemic, terrorism and extremism, immigration, and unemployment.

A new wave of protests started last year in response to economic frustration. Since January 2021, demonstrations have spread across Tunisia: from the capital Tunis to Kasserine, Gafsa, Sousse and Monastir. The protesters are often violent, with group attacking public buildings with stones, throwing Molotov cocktails, looting, vandalising, and clashing with police. The lack of trust between poorly populated areas and law enforcement has increased and led to violent both sides. Authorities fear a repeat of the unrest that led to the removal of strongman President Zine El Abidine Ben Ali ten years ago and have responded robustly, calling the army to quell tensions and protect the country's institutions and arresting hundreds of protesters as a result.⁴⁵⁸

The precise cause of the protests is unclear, but North African countries' economic stance to deal with unemployment might be the reason for disappointment.⁴⁵⁹ According to the National Institute Statistics, one third of Tunisia's youth are unemployed, and one-fifth of the country lives below the poverty line.⁴⁶⁰ Protesters are angry about their stagnant fortunes and

⁴⁵⁸ BBC, 'Tunisia Protest: Hundreds arrested as clashes continue,' 19 January 2021. Available at: [Tunisia protests: Hundreds arrested as clashes continue - BBC News](#).

⁴⁵⁹ Independent News, 'Violent protests in Tunisia over the economy, virus spread,' 25 July 2021. Available at: <https://www.independent.co.uk/news/violent-protests-in-tunisia-over-the-economy-virus-spread-tunisia-tunis-police-sousse-protesters-b1890214.html>

⁴⁶⁰ Aljazeera, 'Tunisia Burgeoning youth-led protests in 700 words,' 20 Jan 2021. Available at: <https://www.aljazeera.com/news/2021/1/20/tunisia-youth-led-protests-explained>

the fact that the country is teetering toward national bankruptcy under the rule of Kais Saied and his government. Some current placards represent protesters demands, such as “employment partly is a right and not a favour”. These demands are similar to the slogan of ten years ago, where placards read “employment, freedom, and dignity,” demonstrating little gain in Tunisia’s fight against unemployment. and unemployment. Young people do not remember Ben Ali’s repression; they are most interested in having more job opportunities. Social media remains their primary platform for communication and representation of their frustration. ⁴⁶¹

The country's disparate lockdown restrictions for controlling the spread of COVID-19 and the worsening economic situation cause by the lack of tourism have further aggravated anxiety across the country among youth population.⁴⁶² Significant numbers of students (estimated to be as high as 10,0000) have lost interest in continuing their education and have left school and 12000 young people have risked their lives taking overcrowded smugglers’ boats to reach Europe illegally. Perhaps of greater concern is the increasing number of young people being recruited by “extremist” organisations.⁴⁶³ Saied has attempted to speak directly to protesters to warn them against the danger of being trapped in extremist and jihadist plans to destroy the domestic establishment. The leader of Tunisia’s influential Ennahda party, Rached Ghannouchi also condemned looting and vandalism.⁴⁶⁴ The authorities are not able to get a response to the international crisis, only by themselves. Amnesty International has requested that Tunisian authorities use non-aggravated and violent reactions to protesters. However, the Tunisian Ministry of Interior has justified the robust police response as a necessary means of protecting citizens' physical integrity and public and private goods. ⁴⁶⁵

⁴⁶¹ Ibid

⁴⁶² Ibid

⁴⁶³ Ibid

⁴⁶⁴ Ibid

⁴⁶⁵ Ibid

Tunisia and the world are suffering from a lack of certainty and stability caused by the COVID-19 pandemic. However, the danger of radicalisation poses an imminent threat to Tunisia's democratic system, which warrants more attention from international society.

Tunisia has been progressing and improving massively in comparison to other Arab states which are struggling with transformation of power and the lack of strong legal establishment, democracy, and human rights since 2011. Tunisia had a long history of civil societies activities even under the previous authoritarian regime and under the French rulers. The activities of civil societies played enormous role on transformation of power and democratic transition. The coalition government brought peace and practice of tolerance among political parties and encourage civil societies to participate actively in progressing the law. The challenge between Islamists and Secularists over codification and recognition of Islamic law brought disagreement during the constitution making process, but the civil societies managed and moderate the attitude of both political parties and encourage them to have a dialogue and find the middle ground for establishing Tunisian legal system and writing the Constitution. The Civil societies influence on progressing human rights in the country with encouraging the political establishment to follow international human rights standards.

Tunisian legal system inherited most of the secular laws from France with touch of Islamic law. The advancement of the law under the influence of France and Ottoman empire gave a structure and formation which continues to develop in post-colonial period. However, the lack of legitimacy and the rule of law had continued during Bourghiba and Ben Ali presidency which resulted to corruption and huge financial gaps between people in Tunisia, unemployment and the lack of equality and human rights. The end of the authoritarian regimes brought hope not just only for Tunisian but for all other Arab nations. Despite the success in changing regime, the economic pressure continues and has been negatively affected on country development and prosperity.

The UPR second session in 2012, complemented the achievement of Tunisia for democratic transition and encourage them to accept and ratify more international treaties and conventions and voluntary protocols while advancing their legal system and writing the constitution.

Tunisia has struggled to apply and implement some of the main human rights laws and standards in society and legal documents. Part of the issue around implementation of human rights remains unsolved which needs more investment in society and culture. The approach towards gender equality, women's rights and sexual orientations which is rooted in Arab and Islamic culture remains controversial. However, this research by examining the role of civil societies and the shift of the attitude of the government after the collapse of Ben Ali regime through social movement argues that Tunisia advanced its national legal system following the recommendations and advice that received through UPR. The positive outcome of Tunisian revolt is advancing the human rights situation and accepting more recommendations from international organisation and other member states of the UN. This research invested on how UPR influenced the national legal system, by focusing on Tunisia, which mainly focuses on what state promises to act based on their national legislation. The outcomes of finding state commitment through evaluating state commitment to international human rights law and standard by studying the national legislation and state response to UPR recommendations. This research can complement the study that invest on positive outcomes of the UPR since 2008 by focusing on case study Tunisia. The research recommend that future study can investigate on negative aspects of the universal periodic review and human rights council and recommend further suggestion for improving their mechanism. It is desirable to study the implementation of the UPR recommendations through policy making which need more empirical research.

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