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Impact of Human Rights Movement in Tunisia Between legislation and practice 2010-2016

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Abstract

This paper addresses the role of the human rights movement in Tunisia in influencing state legislations and practices. It also attempts to tackle a shift from largely monitoring and denouncing rights violations prior to the January 2011 revolution to participating in drafting bills and lobbying for policy reforms that could reduce these violations. The human rights movement was not isolated from what Tunisia experienced in the years following the 2011 revolution, which resulted in massive realignments of social and political structures and practices with a heightened awareness of the importance of human rights and the need to continue the struggle to demand and enjoy them. This new climate witnessed a change not only in terms of the scope of the demands put forth by the human rights movement but also regarding the means and mechanisms it used to achieve these demands, which at times succeeded but ended in failure some other times.

Introduction

This paper addresses the roles and impact of the human rights movement in Tunisia on issues it has advocated for to change relevant legislations and/or practices. Despite the celebration of Tunisia's 2011 revolution as a unique and almost successful transition to democracy among the Arab countries that underwent the “Arab Spring”, several years later, [72% of Tunisians](#) were not satisfied, according to opinion polls.¹

The Tunisian League for the Defense of Human Rights (LTDH) documented 173 physical and non-physical attacks, 41 cases of rights violations on 9 April 2012 (the day when violent clashes broke out between security forces and demonstrators who wanted to commemorate martyrs of the revolution), 97 cases of state violence, torture and persecution by security agencies in 2012 compared to 28 cases in 2013. Security agents came on top of the list of perpetrators of these violations, followed by alleged Salafis, while unidentified individuals were responsible for the remainder of the cases (violent theft or criminal cases). The [various forms of violence](#) included violation of academic freedoms, freedom of dress, trade union rights, political activities, etc.²

In its monthly report of December 2016, the Tunisian Organization Against Torture (OCTT) confirmed the increased number of violations during November 2016 compared to the two previous months. OCTT had received reports on 12 cases of torture and ill-treatment inside prisons and security centers.³ It attributed the rise in violations to entrenched impunity and lack of accountability.

Despite these reports, a new political and legal reality had become evident in law and in practice in Tunisia, during the six years following the 2011 revolution, which could be considered a break from the country's history since its independence in the mid-1950s. Awareness of the importance of human rights has increased, as well as the need to continue the struggle for them, despite the bullets and tear gas protesters had to face especially in the early days of the revolution. However, this new reality has also been unstable with the human rights movement succeeding in certain fields and failing in others, achieving limited reforms in response to some demands or fully realizing what they advocated for.

In view of this new reality, the human rights movement developed tactics and strategies to add to the conventional and limited repertoire of documentation, naming and shaming. It has become an important actor which mobilizes public action, lobbies policy and decision makers, and drafts and advocates for important legislations. For example, human rights defenders took part in working on the law for funding political parties and civil society organizations and the bill on the quota system in the elections of the National Constituent Assembly in 2011, whereby women were allocated 50% of the slots for candidate. The quota system was a main demand by the High Council for the Achievement of the Objectives of the Revolution, Political Reform and Democratic Transition, but this very organization had several representatives of human rights and women rights associations,

¹ Tunisian Statistics, *National Survey on Perceptions of Security, Liberties, and Local Governance 2014*, March 2016. Available in Arabic at beta.ins.tn/sites/default/files/pdf_actualites/gouvernance%20%287%29.pdf

² LTDH Freedoms Observatory, *The Situation of Freedoms in Tunisia, Two Years after the Elections* (2012-2013), pp. 64-87. Available in Arabic at festunis.org/media/2014/pdf/Rapport%20LTDH_final.pdf

³ Babnet, “OCTT: Increased Incidence of Torture in November”, 10 December 2016, available in Arabic at www.babnet.net/cadredetail-135285.asp

such as the LTDH, Tunisian Association of Democratic Women (ATFD), the Association of Tunisian Women for Research and Development (AFTURD) and others.

This paper seeks to examine the impact of the human rights movement in creating public pressure through campaigns on women's rights and gender issues, combatting torture, economic and social rights, freedom of religious practice and belief, etc. The paper then attempts to explain how the rights movement articulated this discourse in dealing with various parts of the community on the one hand and then in recasting the popular pressure into demands on the legal and legislative establishments either directly or through mass media platforms.

In this context, the paper examines the media not merely as a conveyor channel, but also as a medium that influences the formulation of what is being presented to the public, and how the human rights discourse, in itself, gets formulated through its very dissemination. This is not limited to the choice of words and language but also includes the timing and the packaging. Both mass media and human rights actors influence each other in this manner.

It is easier to assess the success of the human rights movement in Tunisia in pushing for the adoption of a rights-based approach in policies and legislations, but it is more difficult to assess its impact on actual state and social practices, both of which change as a result of many factors. Measuring that change needs extensive research over a reasonable time span, which this paper could not undertake due to time and financial constraints.

I. Demands of the rights movement

This paper addresses four distinct demands of the human rights movement: women's rights, ending torture, ensuring standard rights guarantees for defendants, and abolishing the death penalty. It looks at how successful the movement had been in influencing change in these four causes.

Those causes were not all first engaged in the post-revolution period. Most have had a long history within the human rights movement. However, efforts increased with what appeared to be Tunisia's political class more supportive position of freedoms, especially on issues of expression and protest in public spaces. The official discourse had also relatively abandoned the usual rhetoric of playing up progressive legal gains that had been in place for decades and were first introduced by former president Bourguiba. The new Tunisian reality also brought new political leaders in successive cabinets and various ruling coalitions.⁴

⁴ The first-post revolutionary cabinet was formed by Mohamed Ghannouchi (15 January 2011) to be replaced by a national unity government led by Beji Caid Essebsi (February-December 2011). Upon the election of the Constituent Assembly, a troika government was formed by Hamadi Jebali (December 2011-March 2013). It resigned to be replaced by a new government headed by Ali Laarayedh (March 2013-January 2014) after the assassination of leftist politician Choukri Belaid on 6 February 2013. On 25 July 2013, the assassination of MP Mohamed Brahmi coupled with a major sit in protest in Bardo, produced a cabinet of technocrats led by Mehdi Jomaa (January 2014-February 2015) until presidential elections in November 2014, which changed the make-up of the ruling coalition leading to the cabinets of Habib Essid (February 2015-August 2016), followed by Youssef Chahed (August 2016-present), both belonging to the same political party.

1. Women's rights

The preservation of women's rights that had been accepted and codified in Tunisia and the pursuit for more have been at the heart of the political, economic and social transition in Tunisia, a country that has long been ranked among the most advanced Arab countries with respect to women's rights.⁵ This progress had been attributed primarily to the socially progressive legislative legacy of Bourguiba, embodied in Personal Status Code, which, for example, abolished polygamy, deeming it a crime punishable by prison and/or a fine. The same law had also set a minimum age for marriage, established the woman's right to directly and freely agree to a marriage and abolished informal marriage. This legacy was consolidated by the establishment of a women's ministry and the center for studies, research, media and documentation on women (CREDIF),⁶ as a research center affiliated to the ministry.

This progress is also attributed to efforts by human rights actors and the presence of a number of Tunisian associations that advocated for women's rights, foremost the Tunisian Association of Democratic Women (ATFD), which has sought to enshrine women's rights in the constitution since 2012. This demand was fulfilled in the 2014 constitution after a long struggle by civil society organizations and associations as well as political parties. Finally, the constitution clearly stipulated full equality and equal opportunities between men and women, especially in articles 34 and 46. It allowed women later to participate in presidential elections, where two Tunisian women entered the presidential race, Amna Al-Qarawi, who was recommended by 15,252 voters, and Kalthoum Kennu, who was endorsed by 15,000 voters.⁸

The battle to retain, and even enhance women's right to equality, began when the Legislative Committee of the Constituent Assembly approved Chapter 28 of the draft Constitution, stating that "women were complementary to men". In response to what was considered a setback in women's equal status, advocates called for full and effective equality between men and women, condemning what they described as a possible wave of setbacks for women's rights. Considering women to be "complementary" denies them their independence and subordinates them to men after having been considered legally equal to them in many aspects in Tunisia for decades. In August 2012, thousands of Tunisian women and civil society activists participated in peaceful demonstrations throughout the country against what was considered to be an attempt to back down from a significant gain cherished by Tunisian women, which is their equality with men as regards rights and duties. This attempt to undermine women's rights failed.

This was followed by another success, which is Tunisia's [official lifting of its reservations](#) to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 23 April

⁵ Saneya Ben Lamari and Hanan Chakroun, "Tunisian Women and the Revolutionary Path", CREDIF in cooperation with the United Nations Population Fund, 2013, available in Arabic at www.unfpa-tunisie.org/images/stories/2014/pdfs/16-24_1.pdf

⁶ CREDIF is the French acronym for the Centre de Recherches, d'Etudes, de Documentation et d'Information sur la Femme.

⁷ According to Chapter 34 of the Constitution, "[t]he right to vote and to stand for elections is guaranteed in accordance with the law, and the State shall ensure the representation of women in elected councils." Chapter 46 provides that the State shall undertake to protect and promote the acquired rights of women, guarantee equal opportunity for men and women to assume various responsibilities and in all spheres and endeavours to achieve equality between them in elected councils and take measures to eliminate violence against women.

⁸ "Presidential Elections: Seven Nominations Yesterday, Tomorrow the Last Day", Alchourouk, 21 September 2014, available at www.alchourouk.com/70469/151/1/

2014.⁹ In return, the Government stated, in clear contradiction, that such a lifting should not lead to the adoption of laws and legislation that could violate the constitution, which obscures the relevance of lifting reservations and the exact nature of constitutional articles that prevent elimination of all forms of discrimination against women. In that context we can claim that, other than allowing a woman to issue passports for her children and let them travel without prior permission from the father, no additional rights, after lifting of reservations, were guaranteed.¹⁰ A member of parliament proposed a draft law for equal inheritance rights, fueling a major controversy in the political and human rights arenas in Tunisia. Only 27 deputies endorsed the bill.¹¹

The Government established a national advisory council, the National Council of Peers for Equality and Equal Opportunity between Women and Men” to integrate the gender approach¹² into planning, programming, evaluation and budgeting in order to eliminate all forms of discrimination and achieve equality in accordance with the provisions of chapter 21 of the 2014 Constitution.¹³ CSOs continued to defend the rights of women in various ways. Various campaigns and advocacy efforts persisted. For example, the annual 16-day campaigns to combat violence against women continued. In 2016, this was organized by the National Union of Tunisian Women organized starting on 25 November, the International Day to Eliminate Violence against Women until 10 December, the International Day for Human Rights. The campaign began with a sensitizing and awareness-raising on radio and TV stations as well as on social media platforms focusing on sexual harassment under the slogan “We will not be Silent Any More”, *Ma’adsh Noskot*.¹⁴

Despite all those efforts, gender-based violence remains a feature of Tunisian society and a fundamental concern of human rights and feminist activists against physical, sexual, psychological, emotional, economic and social forms of violence against women. About 53.3% of Tunisian women experienced violence in the public space in Tunisia between 2011 and 2015.¹⁵ This is an alarming setback, in light of the fact that the first national survey on violence against women, carried out by several organizations led by the National Bureau for Family and Human Development (a governmental organization) showed that 47% of women between 18 and 64 years

⁹ Reservation means the declaration by the State of the exclusion or modification of the legal effect of certain provisions of an international convention within its territorial jurisdiction. In other words, the state thus requests to be excepted from the application of a particular article or articles of the said convention. Tunisia expressed its reservation on articles 9, 15, 16 and 29, which focused on women’s rights to give her family name or nationality to her children, choose her place of residence, have equal rights in marriage including with respect to children (guardianship, custody, etc.).

¹⁰ Law 46/2015 on 23 November 2015 amending law 40/1975 on 14 May 1975 concerning passports and travel documents.

¹¹ Sharaf El Din, “Almahdi Ben Ghariba, Equality in Inheritance Compliant with Islamic Jurisprudence”, ElTuniseya, 10 May 2016, available in Arabic at www.tuess.com/attounissia/171501

¹² A gender-based approach pays attention to how women and men are differently affected and need to be addressed when it comes to all social policies. Thus, the gender aspect becomes an essential element in the conception, implementation, monitoring and evaluation of policies and programs in all areas of development by all relevant stakeholders.

¹³ Government Order No. 626 of 2016 dated 25 May 2016 concerning the creation of a peer council for equity and equality of opportunities between women and men. Available in Arabic at bit.ly/2xCxLLf. According to Article 21 of the 2014 Constitution, “[m]ale and female Citizens are equal in rights and duties and before the law without discrimination. The State guarantees male and female citizens individual and public rights and freedoms and provides them with a decent livelihood.”

¹⁴ “16 days of activism against violence against women, 25 November – 10 December 2016”, Tunisian radio portal, 23 November 2016, available in Arabic at bit.ly/2i8wRFz

¹⁵ Salim al-Qallal, Mariam Salami, Imad Zayyid, Khawla Al-Matari, “Gender-Based Violence in Public Space in Tunisia”, CREDIF, 2016, available in Arabic at bit.ly/2gB5G2F

of age experienced at least one type of violence throughout their lives, with little difference between rural and urban centers. It may be necessary here to recall that “violence against women increases during times of crisis” and [Tunisia may not have been an exception](#) to that observation. The annual report of the [Global Gender Gap Index 2015](#), ranked Tunisia as the 127th country, behind United Arab Emirates (119) and Bahrain (123). Tunisia [fell down](#) 20 positions, since it had ranked 107th in 2010 behind United Arab Emirates (103th) and before Bahrain (110). This index classifies countries in terms of equality using through several indicators to measure participation in the fields of economy, politics, education and health.¹⁶

Thus, despite the enshrined and re-emphasized legal rights for Tunisian women before and after the revolution, and despite the progress achieved in this field compared with other Arab countries, including the quota and rotation principle in elections,¹⁷ discriminatory practices still exist regarding wages; and violent attacks in public and family settings. For this reason, the Ministry of Women, Family and Childhood has submitted a draft bill on the elimination of violence against women.¹⁸ The proposal was circulated to the Council of Ministers on 13 July 2016 and was referred to Parliament 13 days later.

For almost a year, government officials and parliamentarians debated various versions for this bill until a law was passed in August 2017 after this paper was written. Tunisian feminists do not see the end result as an ideal outcome but still a major progress in the legal arena and a successful conclusion for advocacy efforts demanding more accurate and updated definitions of violent acts and harsher penalties for perpetrators. The new law was promulgated in February 2018.¹⁹ This concluded a rather contentious political struggle that started with the ministry bill against a comprehensive draft legislation proposed by a state minister for women and the family using a participatory approach involving CSOs especially ATFD. This draft also included amendments to the penal code regarding sexual violence felonies.²⁰

According to Hafidha Chekir, a researcher and human rights activist working with the ATFD, the general human rights scene has witnessed “an approach that has crystallized since the early 1990s, and that considered violence to be a form of discrimination against women, especially after recommendation no. 19 of the CEDAW Committee ... regarding gender violence. This new approach, at the time, was supported by the International Declaration against Violence in December 1993, which emphasized the similarity between violence and discrimination, and considered that violence constitutes an infringement on the moral, physical and sexual integrity of women.”²¹

¹⁶ In 2015, the index classified 145 countries, while in 2010 it classified only 134.

¹⁷ Article 16 of decree no. 35/2011 on 10 May 2011 concerning the organization of constitutional assembly elections.

¹⁸ Draft law for the elimination of violence against women. see bit.ly/2yk2Et1

¹⁹ Sabah News, “Into Effect: A Law to End Violence Against Women Faces Reality”, 16 February 2018, available in Arabic at bit.ly/2sKRHwy

²⁰ TAP, “An ATFD Member: Amendments to the Comprehensive Law to Combat Violence against Women Affect the Penal Code”, 5 December 2014, available in Arabic at ar.webmanagercenter.com/2014/12/05/61020/

²¹ Hafidha Chekir, “Violence is Discriminatory Against Women and a Violation of Rights”, in *Violence Against Women in Public Space*, CREDIF, op. cit., pp. 15-16.

2. Ending Torture

Tunisia needed a revolution to ratify the Optional Protocol against Torture in July 2011.²² The Protocol obliges ratifying states to establish a national independent mechanism for the prevention of torture. On 21 October 2013, Tunisia established the National Commission for the Prevention of Torture.²³ The election of the 16 members of the Commission by the People's Assembly was delayed until 30 March 2016 to ensure a quorum.²⁴ Many MPs practically boycotted the meetings to elect the commissioners and there was a “wish among some absent MPs not to establish the commission ... [since] it was sufficient to have the human rights commission ... there was no need for another commission for the prevention of torture.”²⁵ The term of membership of the Commission was set at six years, not renewable. To ensure the independence of the Commission of any political pressures, it was decided that members should neither be parliamentarians nor have political responsibilities. The task of the commission was to monitor various detention centers, to conduct unannounced visits, and receive complaints. The Commission had to publicly report its activities on regular basis.

Tunisia was one of the states that ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations High Commissioner for Human Rights on 10 December 1984. Tunisia's delay in ratifying the Optional Protocol against Torture (OPT) was due to the decision by the Ben Ali regime not to report to the Committee against Torture every four years in compliance with the Convention. In 1998, the Committee had concluded in its second report that torture was systematic in Tunisia. After having signed the OPT, the government submitted regular reports. A third report was presented in April 2016 to the Committee against Torture at the Human Rights Council in Geneva²⁶

Despite these positive developments, the political will of the evolving regime to put an end to torture has not turned into a sustained reality backed by the right legal framework yet. In a memorandum to the UN Committee against Torture in 2016, Amnesty International confirmed that torture still exists in Tunisia.²⁷ Torture practices are likely to continue by security agencies which have not undergone a serious restructuring process nor had its employees benefitted from any meaningful rehabilitation. However, it is clear that torture is no longer a systematic state policy.²⁸

Human rights organizations continue to document violations including cases of torture and lobby policy makers and raise public awareness about such incidents. Reporting and publicizing these cases contribute to prevention efforts. Organizations also have been helping victims to take their

²² Law no. 5/2011 on 19 February 2011, Tunisia agrees to join optional protocol of CAT.

²³ Law no. 43/2013 on 21 October 2013 concerning the national commission for the prevention of torture.

²⁴ This body includes six members from human rights organizations (Massoud Ramadani, Lotfi Ezz El Din, Marwa El Radadi, Afaf Shaaban, Zia El Din Moro and Hamida El Deridi), two university professors (Radhia El Halawani & Fathi El Gari), an expert in child protection (Alsayeda Mubarak) and retired judges (Al-Tohamy Hafei and Nabiha Al-Kafi), two lawyers (Al-Taher Kadashi and Nora Al-Koki) and three physicians (Mohammad Yasin Binos, Salim Annabi and Lamia Fathallah).

²⁵ “Due to the absence of members of the electoral committee, the election of members of the National Committee for the Prevention of Torture was not completed”, Al-Sahafa, 23 March 2017, available in Arabic at bit.ly/2ycAalH

²⁶ “Anti-torture: Tunisia discusses its third periodic report in Geneva”, Anbaa Tunis at Kapitalis, 26 April 2016, available in Arabic at bit.ly/2Jv34O6

²⁷ Amnesty International, “Tunisia: Submission to the UN Committee Against Torture: 57th Session, 18 April - 13 May 2016”, available at bit.ly/2JEZcQ2

²⁸ “Marzouki: Torture is no Longer a State Policy, but Individual Abuses Must be Addressed by the authorities and civil society”, the Tunisian journalists' website in Sfax, January 28, 2014, available in Arabic at bit.ly/2wQxW7p

cases to court. Tunisian human rights defenders maintain the continued use of torture and other forms of ill-treatment in detention centers as well as the continuation of gender-based violence by both state actors and non-state actors. For example, in June 2016, OCTT reported six cases of violence, ill-treatment and medical negligence in detention centers, during arrests and in incarceration. In the same report, the organization noted a decline in the number of complaints received that month and suggested that this decrease may be attributed to the enforcement of “the new law related to the obligatory presence of a lawyer at the beginning of interrogations”. It also considered this to be an encouraging start and a confirmation of the position of human rights organizations, which had predicted that the rate of violations should decline with the enforcement of the new law.²⁹

3. Rights-based treatment of defendants

With the enforcement of Act No. 05 of 2016 on the revision and finalization of certain provisions of the Code of Criminal Procedure, Tunisia began a new era of accountability. The law enshrined the right of a suspect to have a lawyer since the very first encounter with the police.³⁰ One of the most important changes brought about by the law was that a lawyer had the right to be present with suspect or a defendant in any crime whether or not that latter person was in custody, and has the right to visit his or her client privately and for no longer than 30 minutes during every stage of detention. The lawyer has the right to demand inclusion of his comments in the police report, and if denied this right, may do that by himself while signing the report. The lawyer can also request medical examination of his client for evidence of torture in court.

Although the human rights movement has not yet succeeded in its efforts to fully reform the security sector and to consolidate and establish new practices, the security sector underwent several changes since the 2011 revolution, including the establishment of a code of conduct for internal security forces, whereby security became premised on rule of law and respect for human rights and individual and public freedoms in line with provisions of the Constitution, international treaties and laws governing the work of the internal security forces. This code includes a set of rules of conduct and principles that apply to all internal security forces, irrespective of individual ranks or command positions.³¹

The OCTT stressed the need to amend legislations governing the mechanisms of complaints against public officials, accused of rights violations, including how to ensure better witness protection and suspend police officers who have been administratively found culpable in cases of torture, pending a judicial decision.³² A number of human rights activists put together various proposals and plans including a roadmap to reform of the security institution. The Tunisian

²⁹ Tunisian Organization Against Torture, “Decline in Torture Cases in June 2016, but Violations Continue”, Al-Safir, bit.ly/2hF1Mlq

³⁰ The Tunisian police undertakes preliminary research before an investigating judge takes over the case. The police ascertain whether a crime indeed took place, collects evidence, and identify suspects. In the preliminary investigation phase, which immediately precedes judicial investigation, the judicial police inspect the crimes, collect evidence and re-identify suspect offenders. The judicial police arrest offenders and refer them to respective investigating judge. Judicial police functions are supervised by the public prosecutor and his assistants, and also by magistrates in jurisdictions where there is no prosecutor.

³¹ “A Code of Conduct for Security Agents Interacting with the Public”, Mosaic FM, 18 February 2016. Available at bit.ly/2gAYrb9

³² OCTT, “OCTT Monthly Report - February 2015”, available in Arabic at bit.ly/2yHg4Rf

Institutional Reform organization provided training courses on law enforcement, human rights and conflict resolution for the security agencies staff members.³³ The Regional Academy for Security submitted a proposal with the aim of training exemplary security personnel, eager to enforce the law while respecting rights.³⁴ In the same context, a ministerial policy for community policing was drawn up as a new approach to security work, to be implemented in a number of model centers in order to strengthen the relationship between security agencies and the citizens at large.³⁵ Also, a unified legal manual was compiled for cases of detention to be implemented in all security centers, in addition to a booklet on best practices of police officers at places of detention.

Terrorist threats and operations in Tunisia provided a justification for security agencies to engage in practices that could violate human rights. Human rights defenders invariably maintain that violations are not excusable regardless of the nature of the nature of allegations against a suspect. Politicians have a different view on the matter. Former Prime Minister Habib Al-Seid claimed that “there was a difficulty in striking the right balance between counterterrorism and respect for human rights, not only in Tunis, but in all countries of the world, such as France and Italy, which have changed a number of laws to in response to the exceptional situation in countries threatened by terrorism.”³⁶ The claim by Al-Seid was repeated in many countries, but it becomes especially alarming in countries, like Tunisia, where security agencies had routinely violated the basic rights of suspects and defendants using various means of torture and coercion.

Human rights defender argued that such violations are not only anathema to human rights and the laws of the land but that there was no evidence that they were helpful counterterrorism tools. Also, resorting to such measures automatically means the need to suspend accountability measures and obstruct any serious reform of the security sector under the pretext that security agencies needed to act freely and promptly against terrorist suspects. During deliberations of the Tunisian anti-terrorism law, eight international human rights organizations, issued a statement to express concern regarding what they described as a loose definition of terrorism which could lead to the suppression of peaceful demonstrations or any act of protest.³⁷ Mokhtar Yahyaoui (former head of the National Commission for the Protection of Personal Data and a former judge), argued in a seminar organized by the Rights and Freedoms Monitor in Tunisia (“Counterterrorism: A Security Approach or Respecting Rights”) in April 2015, that the ambiguity of terrorism law makes it a double-edged sword that can be directed against citizens it is meant to protect.³⁸

³³ The Tunisian Institutional Reform organization works mainly on reforming the Ministry of Interior, its staff members and working methods. Check the TIR website at reform.tn/ar/about/

³⁴ Participation of TIR in the proceedings of the regional seminar on security in North Africa on 4 June 2013.

³⁵ “Tunisian Government Response to Question from the Committee Against Torture”, 10 February 2016, available in Arabic at bit.ly/2yH8oOW

³⁶ “Al-Habib Al-Seid Stresses the Difficulty of Balancing Counterterrorism and Human Rights”, Al-Masdar, 14 December 2015, available in Arabic at bit.ly/2xBBeuV

³⁷ These include Amnesty International, Human Rights Watch, International Federation for Human Rights, World Organization against Torture and the Carter Center. See Human Rights Watch, “Tunisia: Counter Terror Law endangers Rights”, 31 July 2015, available at www.hrw.org/news/2015/07/31/tunisia-counterterror-law-endangers-rights

³⁸ Observatory of Rights and Freedoms in Tunisia, “Combating Terrorism between Security Treatment and Respect for Rights and Freedoms”, April 2015, available in Arabic at bit.ly/2xBBwli

4- Abolition of the Death Penalty

Although not a single person on death row has been executed in Tunisia since 1991, capital punishment is still on the books.³⁹ Though, Tunisia signed the UN General Assembly moratorium on the death penalty in 2012, courts continue to impose the death sentence in accordance with existing laws as a punishment for certain felonies. Since the head of state no longer endorsed such rulings, the sentenced convicts remained on an unmovable death row in prisons, as confirmed by the Minister of Justice and Human Rights in the Ben Ali regime in 2008.⁴⁰ Until the 2011 revolution such convicts had no visitation rights nor were they allowed to receive food packages once a month from relatives as is the case with other inmates.

Tunisian human rights defenders argued that the death penalty became unconstitutional after the 2014 constitution came into force replacing the 1959 constitution. The new constitution protects the right to life, but 21 different crimes are still punishable by death in various Tunisian laws.⁴¹

Human rights defenders and organizations including the LTDH, the Tunisian chapter of Amnesty International, and the Arab Institute for Human Rights worked together but still failed to bring about a legal change to abolish the penalty despite their constitutionally strong position. Tunisia's National Coalition for the Abolition of the Death Penalty has been established in June 2007 with the support of seven independent organizations, including the LTDH, AFTURD, ATFD, the Tunisian branch of Amnesty International, the Arab Institute for Human Rights, the Tunisian Federation of Cinema Clubs, and the Association of Tunisian Journalists, replaced by the National Syndicate for Tunisian Journalists. More than 100 public figures are members of the open coalition, including former ministers, lawyers, filmmakers, media personalities, and writers. The coalition has long worked to change the public opinion on this issue that can put pressure on the state for a legislative change. The coalition efforts led to a bill tabled in parliament to abolish capital punishment.⁴² The draft, prepared by two MPs, Mostafa Yahyaoui and Abdelmalek Obaidi, was submitted to parliament in March 2008. Another 23 deputies from opposition parties endorsed the bill, tabled with the parliamentary secretariat, so that the speaker of the House could decide if it could be presented to a plenary session for review. This was a bold and unprecedented step in Tunisian legislative history since the first parliament was elected in 1956, however the bill was never presented to a plenary session. In 2013, the Coalition and the International Organization Against Torture called for a serious and concerted effort to abolish capital punishment. All these

³⁹ The death penalty is the “killing” or “execution” of a convict in certain crimes. It is a complete and irreversible deprivation of life in implementation of a court ruling issued by a civilian or military judge. The term “killing” was synonymous with the word “execution” in the first paragraph of chapter V of the Tunisian Penal Code before it was revised by Law No. 46 of 2005 of 06/06/2005. The word “killing” was replaced by the word “execution” to standardize terminology in the penal code. There is an effective moratorium on capital punishment in Tunisia. The last execution was carried out against serial killer, Nasser al-Damarji in 1991.

⁴⁰ “Al-Habib Al-Seid Stresses the Difficulty of Balancing Counterterrorism and Human Rights”, Al-Masdar, 14 December 2015, available in Arabic at bit.ly/2xBBeuV

⁴¹ Most of these crimes are related to national security. They include assault on a public official; rape associated with the use of violence; armed violence or threat thereof against a judge during a hearing; acts of treason committed by military personnel; violent seizure of a ship from a captain or officer and its surrender to the enemy by any crew member; and wrecking or causing damage to railways, or placing objects on tracks or carrying out any act that would derail the train causing death. of a person. Death sentences are carried out by hanging or shooting.

⁴² “Bill to Abolish the Death Penalty Signed by 25 MPs from Various Parties in Parliament”, Al-Sabah, 6 March 2008, and “Comment on What Precedes Abolishing Capital Punishment”, Al-Sabah, 31 March 2008.

efforts did not succeed. On the contrary, the death penalty was [included](#) for certain offences in the new counterterrorism law.

II. Expanding Scope and Mechanisms for the Defense of Human rights

After the revolution, a new wave of human rights actors emerged in Tunisia after decades of a familiar, if not stagnant, political/human rights scene. This wave was led by human rights groups and actors in civil society or gatherings and networks that differed from the usual institutional and organizational frameworks such as associations, parties and trade unions.⁴³ Its advocacy strategies and tactics produced a bottom-up pressure and unsettled, if not influenced, the new evolving regime and changing institutions and, at times, obstructed parts of their agendas.

No doubt, the revolution created an opportunity for new mechanisms of action or the advocacy on issues and rights that were low on the totem pole, if not completely outside the rights arena before 2011. The revolution constituted in a way a challenge to the relative social conservatism prevailing in Tunisian public space, especially outside city centers. For example, Femin activists published bare-breasted or naked photos on the internet or organized naked in the street to attract attention and raise awareness about their cause, especially women's sexual and personal rights. A campaign against "anal examination of males accused of homosexuality" was publicly launched in support of the LGBT community, a theretofore largely silent minority in Tunisia.⁴⁴

Other activists focused on single finite issues and organized popular and successful campaigns such as "*Manish Masameh*" (I shall not forgive) campaign, in which young activists lobbied the public against a bill of economic reconciliation which would have pardoned former regime officials and employees and affiliated businessmen involved in major financial corruption cases. The number of those who could have benefited from this law was nearly 7,000.⁴⁵ Supporters of the bill failed to demonstrate its public benefits as well as how much money or assets would be returned to the state treasury in case the law was applied. The campaign sparked widespread controversy on the Tunisian political scene,⁴⁶ and soon gained the support of opposition parties and eventually succeeded in halting the endorsement of the bill in parliament until mid-2016.⁴⁷

⁴³ Kerou defines new social or political actors as a group of people who carry out collective acts of a general nature, which are formed outside the old political sphere, and produce great transformations in terms of political motives and ends. See, Mohamed Kerou, "les nouveaux acteurs de la révolution et de la transition politique. La transition démocratique en Tunisie : Les Acteurs". L'Observatoire Tunisien de la Transition Démocratique, 2012, p. 218.

⁴⁴ "Tunisian Women's Rights and Concerns about the Future", Deutsche Welle, 27 June 2013, available in Arabic at bit.ly/2y8i9WP and Ben Romdhan Ben Romdhan, "Reflections on the Tunisian Revolution, Tunisia and the Democratic Transition, Challenges and Horizons", in Abdel Ilah Belqreez (ed.). *The Arab Spring, Where to? A New Horizon for Democratic Change*. Center for Arab Unity Studies. 2012, p. 42.

⁴⁵ "Draft Law No. 49/2015 concerning procedures for reconciliation on economic and financial matters", Majles Observatory, 16 July 2015, available at bit.ly/2xAPJ77. Majles Observatory is a website associated with "Bosla", a Tunisian CSO focusing on legislative actions by the parliament.

⁴⁶ BBC Arabic, "Debate over Tunisia's Economic Reconciliation Bill", 8 September 2015, available at goo.gl/OzUVBw

⁴⁷ According to the Speaker of Parliament Mohamed El-Nasser, who belongs to Nidaa Tounes party, "reconciliation aims to encourage investors and to advance the Tunisian economy", see the proceedings of the General Legislation Committee held on 29 June 2016 at bit.ly/2yk35DC

Human rights defenders started to defend certain underdeveloped areas that may have suffered from state-sponsored impoverishment. For example, Kasserine residents raised a case in front of the Commission of Truth and Dignity in 2015 as a collective victim of “systematic exclusion and marginalization” as various regimes neglected their region.⁴⁸ The legal formulation and grounding of this case was complex but largely rested on the claim that public policies, especially before the revolution, favored coastal areas at the expense of the interior. A survey conducted by the National Institute of Statistics showed that 37% of Kasserine residents felt they were discriminated against on the basis of income, compared to 5% in coastal areas, including the capital. Similarly, 23% of Kasserine residents felt discriminated against because of where they came from, compared to 8% in the coastal and southwestern regions. The poll indicated high levels of dissatisfaction with health care and social security services. Nearly 70% of the respondents thought that a large number of people who deserve social support from welfare institutions did not receive it.⁴⁹

Meanwhile, human rights organizations showed more interest in producing shadow reports to international organizations. Although the World Conference on Human Rights in 1993 had recognized the important role of NGOs in general in promoting human rights and humanitarian activities at the national and regional levels, NGOs could not freely play this role in Tunisia before the revolution.⁵⁰ The former Tunisian government, due to its very authoritarian nature, could not see a useful role that human rights organizations could play in improving or influencing legislations, policies and state practices.

The United Nations has long encouraged NGOs to present shadow reports which are seen as complementary to state reports, since they are often bold, credible and provide information usually ignored by government agencies. Parallel or shadow human rights reports are usually referred to the UN contractual and non-contractual committees and procedures. The Human Rights Council also receives specific reports especially through its special mechanisms and procedures working on issues such as torture, enforced disappearances, guarantees of fair trials, freedom of expression, discrimination against women, etc., provided submissions are prepared in a professional manner and, in certain cases, submitted on time.⁵¹ The role of several human rights organizations in preparing parallel reports has long been recognized, notably the LTDH.⁵²

The official discourse in Tunisia changed after the revolution with regard to alternative or parallel reports. A minister in charge of relations with constitutional bodies, civil society and human rights, summed up this change when he declared that the National Committee for Coordination, Preparation, Submission and Follow Up of Human Rights Recommendations, assigned to prepare

⁴⁸ Avocats sans Frontiers and Forum Tunisien pour les Droits Economiques Sociaux, “Request to Declare the Region of Kasserineas ‘Victim’”, 2 November 2015, available at bit.ly/2kKuhGE

⁴⁹ Zeineb Marzouk, “Analysts Question Government Intervention as Protests Grow”, Tunisia Live, 21 January 2016, available at bit.ly/2gA2B2T

⁵⁰ OHCHR, “Vienna Declaration and Program of Action”, 25 June 1993. www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx

⁵¹ University of Minnesota Human Rights Library, “Submitting Human Rights Reports”, hrlibrary.umn.edu/arab/HRM-CH-20.pdf

⁵² Emna Jablaoui, “Le rôle de la société civile dans la transition démocratique: Suivi des acteurs des droits de l’homme”, L’Observatoire Tunisien de la Transition Démocratique, 2012, p. 337.

Tunisia's report to the Human Rights Council wanted to seriously engage with CSOs working on parallel reports to exchange views and information on issues raised in these reports.⁵³

1. Impact of the human rights movement on the political scene: the example of LTDH

The political and social transformations that Tunisia has experienced since January 2011 have opened new horizons for human rights actors. The LTDH, which is known for its four-decade history of struggle since its foundation in 1977 was part of that transformation. Under tremendous pressure by the Ben Ali regime, especially since the mid-1990s, the organization membership had declined from 4,200 in the 1980s to about 3,000 members in 2008. The LTDH had frozen new memberships in 1994 to avoid concerted infiltration attempts by regime agents. The organization, which has several regional offices, held its first congress in many years in September 2011, when it decided to re-open membership focusing on attracting young people and women to rejuvenate the association. Members pay annual contributions of 10 Tunisian dinars, which is a small amount that does not cover the expenses of this organization and its activities. LTDH executive officers are volunteers. Before the revolution, the LTDG was a refuge for political opponents and a pressure group against a repressive regime. After the revolution, the LTDH contributed to the training elections observers to ensure the transparency of the National Constituent Assembly elections, in cooperation with the Arab Institute for Human Rights in the framework of the group of associations that formed the National Observatory for Monitoring Elections. Then, it⁵⁴ participated in the national dialogue together with three other influential CSOs, namely the Tunisian General Union of Labor (UGTT), the Tunisian Union for Industry, Trade and Handicrafts (employers' organization), and the national association of lawyers (Bar Association). This civil society Mediation Quartet was formed in July 2013 after a political crisis upon the assassination of MP Mohamed Brahmi. The Quartet produced a road map by September, calling on all parties to agree to a technocrat government to be led by an independent national figure, on condition that none of its members run in the next elections, and that the government pledges its resignation no later than three weeks from the beginning of national dialogue. The initiative called on political parties to agree on the person who will lead the transitional government within one week, as well as the completion of the constitution and the organization of elections before 31 December 2014.⁵⁵ The LTDH had repeatedly stressed since late August 2013 the need to coordinate with the rest of the Quartet "to take measures and adopt positions that would push the Troika and its allies to seriously address the situation and comply with demands raised by massive demonstrations on 6, 13 and 24 August 2013."⁵⁶ The national dialogue was finally supported by 21 political parties out of 24 and eventually led to the formation of a technocrat government. The initiative succeeded in sparing the country a wave of violence and internal strife, and thus allowed the success of democratic transition.

⁵³ See statement by Mehdi Ben Gharbia, Minister of Relations with Constitutional Bodies, Civil Society and Human Rights, in "The Government is Ready to Interact with Civil Society on Parallel Reports on Human Rights in Tunisia", Al-Masdar, 1 December 2016, available in Arabic at bit.ly/2hFljgg

⁵⁴ Emna Jablaoui, "Le rôle de la société civile", p. 337-8.

⁵⁵ Aljazeera Net, "The Tunisian National Dialogue Quartet... the Peace Prize", 11 October 2015, available in Arabic at bit.ly/2xBSJ3e

⁵⁶ "A Statement by the Tunisian League for the Defense of Human Rights", Sfax Tunisian Journalists, 1 September 2013, available in Arabic at bit.ly/2t3pwsN

For all these efforts, the Quartet was awarded the [Nobel peace prize in 2015](#). This was a firm recognition of the role played by the LTDH and the civil society in general in securing democratic transition under difficult circumstances and sparing the country a dark tunnel of division and political violence. The Nobel prize committee acknowledged the Tunisian civil society role in integrating democratic principles in the Tunisian constitution, including individual and collective rights, gender equality, and freedom of belief and conscience. This recognition was striking, particularly for the LTDH which played a central role in reforming a state that had worked hard for decades to coopt the human rights movement. This success also challenged the narrow concepts of the functions of human rights actors. By playing a central role in the democratic transition, the LTDH helped shape the democratic transition in Tunisia. Afterwards, like several other CSOs, the LTDH monitored the implementation of new legislations in addition to a host of other conventional and new roles. This new role serves to make democracy a continuous process rather than just electoral moments separated by years from one election cycle to another. More importantly, such a role encourages citizen participation and mobilization to prevent a slow slide into authoritarianism or the despotic rule that Tunisia suffered from for decades.

Conclusion

In this paper, we reviewed the role played by the human rights movement in Tunisia to bring about meaningful change, especially its transformation from the role of naming and shaming before the revolution to the role of the active participant in reforming institutions, shaping policies and drafting legislations. These new roles address rights violations at a much deeper level.

The paper acknowledges that it did not present clear causal links for civil society actions and legal or institutional changes. The reasons for that are methodological, foremost the overdetermined nature of social and political change in general. It is impossible to have definite evidence that certain legal or institutional change could be solely attributed to a single actor or certain actions by the human rights movement alone, to the exclusion of other social forces, all of which together drove legislators and bureaucrats into a specific direction. The only way to lessen the methodological challenge in elucidating causal linkages between the efforts of human rights actors and social changes would be to undertake complicated and longitudinal qualitative and quantitative research. Finally, any social phenomenon, such as amending laws, reforming security agencies or changing social behavior cannot usually be attributed to a single reason or actor. Consequently, one can ascertain that human rights actors' interventions were indispensable for a certain change to come about such as lifting reservations on CEDAW or obstructing the financial reconciliation bill, but that was certainly not the only factor.

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ABOUT ARI

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