



INCLUSIVE  
SECURITY

# BEYOND REVOLUTION: HOW WOMEN INFLUENCED CONSTITUTION MAKING IN TUNISIA

Case Study

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# EXECUTIVE SUMMARY

Participatory approaches have come to the forefront of constitution making in recent years. Their potential for fostering legitimacy, national ownership, and the inclusion of diverse groups is particularly relevant in deeply divided societies. Yet a large demographic—women—remains significantly under-represented in constitution-reform processes, averaging just 19 percent of seats in constituent assemblies in countries experiencing conflict, unrest, or political transition. The Tunisian experience of constitution making in the aftermath of the 2011 revolution offers an informative example of how women get involved in constitution reform and the impact they can have on the process and its outcomes.

Tunisian women secured 31 percent of seats in the country's constitution-making body through a combination of civic organizing, timely advocacy, and support from male allies. Mobilizing quickly after the revolution, civil society organizations built coalitions to support women's participation and encourage women to vote in elections for the constituent assembly. Male champions of women's rights helped ensure women were among those appointed to the "Higher Authority," the body responsible for creating the roadmap for the constitution-drafting process. These women, in turn, advocated for gender parity in political parties' candidate lists for the constituent assembly elections. Women in the Higher Authority convinced the influential Islamist political party, Ennahda, and other smaller parties to support electoral lists that alternated between men and women. Simultaneously, civil society organizations applied pressure from the public square in favor of this vertical gender parity. The resulting decree helped women earn one in three seats in the assembly that would draft the constitution.

Within the constituent assembly, women represented every shade of the political spectrum and frequently found themselves in opposing camps. Nonetheless, through formal and informal leadership, many women built consensus and drove the process forward amid deep discord between the majority Ennahda party and the predominantly left-leaning opposition parties. Focused on finding common ground, they worked across partisan lines to advance shared interests. Female assembly members were engaged and active,

voting more frequently than their male counterparts. Outside the assembly, women's organizations fostered civic engagement by creating dialogues between assembly members and civil society representatives and hosting workshops in which citizens could develop recommendations for the assembly. Women in civil society were also at the forefront of keeping the process accountable to the people through demonstrations and protests, as well as initiatives that increased the assembly's transparency for citizens.

Women exerted significant influence on the text of the constitution itself. Leveraging a wide range of experiences, they brought diverse substantive issues into the constitutional debate that may not otherwise have surfaced. Women's impact was most visible with regard to gender equality: They secured significant provisions for advancing women's representation in elected bodies, eradicating violence against women, and guaranteeing equality of opportunities between women and men in all domains. They succeeded in changing language that initially suggested women were "complementary" to men. Nonetheless, some issues, such as the right to equal inheritance, proved too contentious to tackle in the constitution. Many women thus worked to layer constitutional provisions so that different articles could, if taken together, provide a legal foundation for future legislation.

**In January 2014, Tunisia ratified what is arguably the most progressive constitution in the Arab world, marking a major milestone in its peaceful transition from dictatorship to democracy.**

Despite these achievements, women faced gendered challenges to their participation in Tunisia's constitution-drafting process. In the historically male-dominated sphere of politics, women were forced to prove their legitimacy at every turn. For some, the vertical parity requirement in electoral lists led to a perception of tokenism, which made it harder

to establish credibility. Media outlets compounded this challenge by predominantly interviewing male assembly members, even when they had not been present during the sessions in question. Outside the assembly, women in provincial areas appeared to have internalized the social norm that politics is a male affair, and reported being less likely to participate in constitution-related activities. When women did engage, they were often threatened and harassed.

The Tunisian case offers insights for other countries undergoing constitution reform:

- 1 Early mobilization lays an important foundation for women's participation** in constitution making, as the rules for selecting members of the constitution-making body will likely be established in the opening stages of a peace or transition process.
- 2 Identifying and acting on shared interests builds power.** Despite deep, and often bitter, divisions between women in different political camps, those who coalesced around common goals achieved significant gains in constitutional provisions on gender equality and more.
- 3 Meaningful participation happens outside and inside the constituent assembly.** Those drafting the constitution can be significantly constrained by public opinion and mass action. When women outside and inside the assembly worked toward the same goal, their combined strength helped overcome deadlock and transform constitutional outcomes in their favor.

In January 2014, Tunisia ratified what is arguably the most progressive constitution in the Arab world, marking a major milestone in its peaceful transition from dictatorship to democracy. However, the text's constructive ambiguity, which allowed constituent assembly members to reach consensus, leaves much open to interpretation—by judges who have not yet been appointed to the constitutional court. Despite some setbacks, and even as acute political discord persists, women and their male allies have continued to collaborate across divides to bring the constitution to life. They have legislated for parity in municipal and regional elections, passed a groundbreaking Elimination of Violence Against Women bill, and initiated a review of Tunisia's unequal inheritance laws. In fact, Tunisia's constitutional provisions on women's rights and gender equality will likely have impacts far beyond gendered concerns, since gender equality—particularly in family law—is a predictor of peace and security. The road ahead is long, but Tunisia's relatively inclusive constitutional process created significant momentum toward a just and equal democracy.



Mohamed Kritt / Rex Features via AP Images

*Tunisians celebrate the new constitution, Tunis, March 1, 2014.*

# INTRODUCTION: TUNISIA IN THE GLOBAL CONTEXT

At the dawn of 2011, a revolution burst into the streets of Tunisia. Women and men came together across the country to call for an end to President Zine El Abidine Ben Ali's 20-year reign. The ouster of Ben Ali in January 2011 marked the beginning of the country's transition to multi-party democracy, which would evolve over the following three years, culminating in the ratification of a new constitution in January 2014. Tunisia's transitional process has been lauded as the most successful among the "Arab Spring" countries. Perhaps less well known is that Tunisia's constitution-drafting process during this time is a notable case for women's participation, given the roles women played in shaping and driving the evolution of constitutional discourse.

## Women's Roles in Constitution Reform: The Global Picture

In times of significant societal upheaval, such as political transitions from autocracy to democracy, constitution-reform processes represent an opportunity for citizens and the state to renegotiate the social contract that binds them and define their common vision for a more just society. To avoid reproducing asymmetric power structures or rights violations that contributed to the given moment of crisis, constitutional reforms need to reflect the citizenry's priorities, paying particular attention to those marginalized under the previous regime.

Though by no means a monolithic bloc, globally women have been the single largest underrepresented group in constitutional negotiations; they continue to face barriers to full political participation in democratic and

autocratic regimes alike.<sup>1</sup> Between 1990 and 2015, women comprised just 19 percent of participants across 20 constitution-reform processes in countries experiencing conflict, unrest, or political transition.<sup>2</sup> In the high-stakes negotiations that produce constitution reform or entirely new constitutions, decision making is typically dominated by political elites, who are predominantly male and not always representative of society at large.

There have been efforts to challenge this status quo and make these processes more inclusive of a broader swathe of citizens.<sup>3</sup> In fact, over the past 20 years, participatory constitution making has become a best practice (though not necessarily common practice), advocated by domestic constituents and endorsed by constitutional experts and the international community. Broad inclusion is believed to help achieve greater legitimacy, foster a strong sense of public ownership, and support the development of an inclusive national identity, which can be critical in divided societies.<sup>4</sup> This shift toward more inclusive processes further reflects the notion that constitutions represent a social contract or a process by which legal, social, and cultural norms are defined and continue to evolve over time.

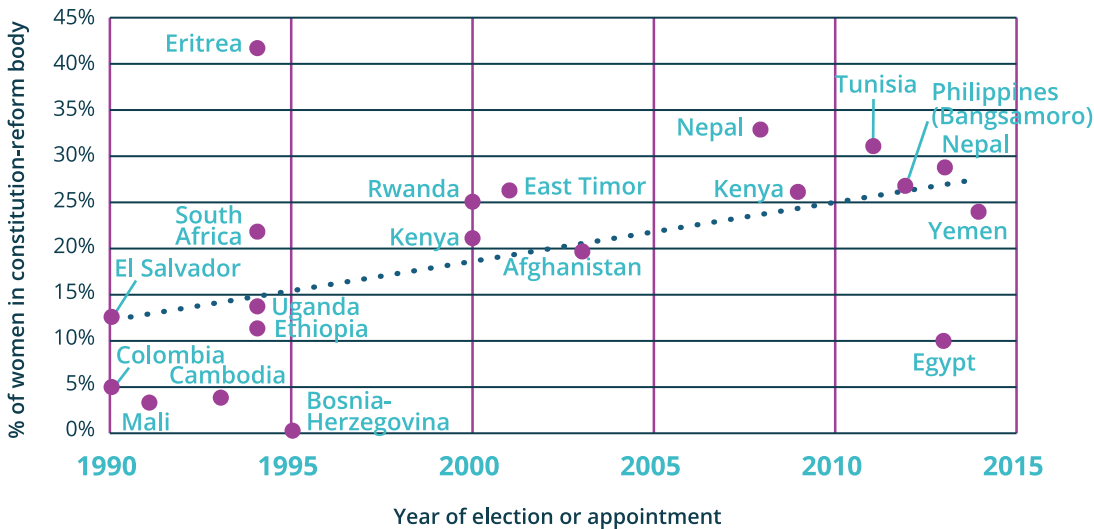
This emphasis on participatory processes has also included a push for greater women's inclusion. Women's participation in constitution-reform bodies during peace and transition processes has been increasing since 1990.<sup>5</sup> Women have also contributed to these processes as members of civil society and engaged citizens. But equal representation has yet to be achieved. Even where women succeed in getting a seat at the table, other barriers persist: for example, entrenched male-dominated power structures and discriminatory attitudes concerning

women's roles in politics often undermine women's influence. Some women elected or appointed to serve on a constitution-drafting committee are viewed as "token" women with little political credibility.<sup>6</sup> Despite gains in Tunisia and elsewhere, there are still barriers to achieving both descriptive women's inclusion (i.e., the number of women involved in a constitutional process) and substantive women's inclusion (i.e., the influence, legitimacy, and authority women wield while involved in a constitutional process).

This report is part of a growing body of research that seeks to document and analyze the roles women play in constitution-making processes, including their contributions and the obstacles to their full participation. While the presence and inclusion of women remains a priority for many, few studies have sought to unpack *how* women get involved and what *impact* they have on the process and outcome. Researchers have put increasing emphasis on the value of inclusive and participatory constitutional processes in general but have not yet sufficiently disaggregated women's influence in particular.

Research on the impact of women's inclusion on constitutional processes also remains nascent compared to what we know about women's impact on peace processes. Studies have shown that women's participation in peace processes can positively influence both the process and the outcomes. When women are included, parties are more likely to reach an agreement and the resulting peace is more likely to endure.<sup>8</sup> In fact, a peace agreement is 35 percent more likely to last at least 15 years if women participate in its creation.<sup>9</sup>

**FIGURE 1: WOMEN'S REPRESENTATION IN CONSTITUTION-REFORM PROCESSES<sup>7</sup>**





Although constitution reform often constitutes some component of a broader peace process, studies have yet to focus on the impact of women's constitutional participation in the same way.

## The Significance of the Tunisian Case

The Tunisian experience serves as an informative example for countries undergoing radical political change, whether as the result of conflict or political transition. The 2011 revolution gave voice to decades of discontent harbored by many across Tunisian society. Tunisians blamed the Ben Ali regime for poor economic development in the interior governorates and high rates of poverty and unemployment among the working class. People felt marginalized and forgotten, their suffering exacerbated by the growing wealth and privilege of the ruling class. Further, Tunisians suffered decades of corruption, political repression, and violence perpetrated by security forces. All of these factors contributed to an overwhelming demand for change in 2011. From conservative Islamists to radical secularists, Tunisians called for a more open political climate, beginning with the formation of a representative and responsive government.

Tunisian women, in particular, demanded greater inclusion and diversity in elected bodies. At the time of the revolution, women held relatively progressive rights under the 1956 Personal Status Code and the 1959

constitution, which enshrined gender equality. But, in practice, the state's brand of feminism constrained women's freedoms and liberties.<sup>10</sup> While women held 29 percent of seats in parliament due to a quota implemented under Ben Ali, the women who came to power were primarily those who conformed to the parameters of state-defined feminism. Women who disagreed with the government's priorities—or those considered too radical, too Islamic, or too critical of the government—were excluded.<sup>11</sup> For many Tunisian women, the revolution represented an opportunity to celebrate and acknowledge the diversity of womanhood and to demand autonomy and rights for women across all sectors of society.

Following a three-year constitution-making process, many Tunisians have celebrated their country's progress, even as they recognize that consolidating these gains will be a long-term project and express frustration at the slow pace of economic recovery. And many international observers have recognized the Tunisian case as a successful transition to constitutional democracy at a time when other Arab Spring countries have descended into conflict and democracy is backsliding around the globe.<sup>12</sup> Perhaps most notably, four Tunisian organizations received the 2015 Nobel Peace Prize for their role in mediating the political crisis in 2013. Against this backdrop, many have sought to chronicle the Tunisian process and its lessons.<sup>13</sup>

Yet, despite this attention on Tunisia and its successes, few studies to date have offered a gendered analysis of the process and its outcomes.<sup>14</sup> Women held 31 percent

### TIMELINE OF THE TUNISIAN CONSTITUTIONAL PROCESS



of seats in the national constituent assembly—more than the global average for constitutional negotiations in peace and transition processes. But this number alone cannot tell us Tunisian women's stories: the challenges they faced, the strategies they employed, their successes and failures. It also fails to capture the important contributions made by women outside of the formal process, such as the women in civil society who mobilized protests and advised both male and female assembly members on constitutional challenges.

This report seeks to address this gap by exploring five central questions:

- 1 How did women carve out roles in the constitution-drafting process?
- 2 What influence did they have on the constitution-drafting process?
- 3 What influence did they have on the content of the new constitution?
- 4 What gendered challenges did they face as they sought to participate in constitution reform?
- 5 What are the prospects for realizing the constitutional gains that women secured?

The concluding chapter discusses what lessons can be learned from this case and how the experiences of Tunisian women can inform more inclusive approaches to constitution reform elsewhere.

**The findings of this report** are drawn from literature review and interviews conducted over three months, from August to October 2016, which included more than a dozen interviews with Tunisian constituent assembly members, civil society representatives, and academics. The views and stories shared in this collection do not encompass all women's perspectives across Tunisian society. Indeed, as Tunisian women themselves continue to document and share their perspectives, they will shed greater light on the diversity and nuance of women's experiences throughout this critical period in Tunisia's transition.



## NOTES

- 1 The authors acknowledge the non-binary nature of gender, as well as the need for fully inclusive constitution-reform processes. The scope of this report, however, is limited to the experiences of individuals who identify as women. Further research and exploration into constitutional processes that are inclusive of all genders is encouraged.
- 2 Nanako Tamaru and Marie O'Reilly, *How Women Influence Constitution Making after Conflict and Unrest* (Washington, DC: Inclusive Security, January 2018).
- 3 For example, read more about the South African case in Hassen Ebrahim and Laurel E. Miller, "Creating the Birth Certificate of a New South Africa: Constitution Making after Apartheid," in *Framing the State in Times of Transition: Case Studies in Constitution Making*, ed. Laurel E. Miller (Washington, DC: United States Institute of Peace, 2010) and the Kenyan case in Media Development Association, *History of Constitution Making in Kenya* (Media Development Association and Konrad Adenauer Foundation, 2012).
- 4 For example, see Vivien Hart, *Democratic Constitution Making*, United States Institute of Peace Special Report no. 107, July 2003; Jamal Benomar, *Constitution-Making and Peace Building: Lessons Learned From the Constitution-Making Processes of Post-Conflict Countries* (New York, NY: United Nations Development Programme, 2003); Michele Brandt, Jill Cottrell, Yash Ghai, and Anthony Regan, *Constitution-making and Reform: Options for the Process* (Geneva: Interpeace, 2011); Jason Gluck and Michele Brandt, *Participatory and inclusive constitution making: Giving voice to the demands of citizens in the wake of the Arab Spring* (Washington: USIP, 2015). Laurel E. Miller, "Designing Constitution-Making Processes: Lessons from the Past, Questions for the Future," in *Framing the State in Times of Transition: Case Studies in Constitution Making*, ed. Laurel E. Miller (Washington, DC: United States Institute of Peace, 2010), 628.
- 5 Tamaru and O'Reilly, *How Women Influence Constitution Making*.
- 6 Ibid.
- 7 Ibid.
- 8 Marie O'Reilly, Andrea Ó Súilleabháin, and Thania Paffenholz, *Reimagining Peacemaking: Women's Roles in Peace Processes*, (New York, NY: International Peace Institute, June 2015).
- 9 Research by Laurel Stone cited in O'Reilly, Ó Súilleabháin, and Paffenholz, *Reimagining Peacemaking*.
- 10 Article 6 of the 1959 constitution states "All citizens shall have the same rights and duties. They shall be equal before the law." "Tunisia: Landmark Action on Women's Rights," *Human Rights Watch*, April 30, 2014, [www.hrw.org/news/2014/04/30/tunisia-landmark-action-womens-rights](http://www.hrw.org/news/2014/04/30/tunisia-landmark-action-womens-rights).
- 11 Victoria Chambers with Clare Cummings, *Building Momentum: Women's empowerment in Tunisia*, (London: Overseas Development Institute, 2015), 27; Amor Boubakri, "Chapter 5: Inclusiveness Policies in the Transitional Elections in Tunisia," in *Improving Electoral Practices: Case Studies and Practical Approaches* (Stockholm: International IDEA, 2015), 147.
- 12 Elen Aghekyan, Jennifer Dunham, Shannon O'Toole, Sarah Repucci, and Vanessa Tucker, *Freedom in the World 2017*, (Washington, DC: Freedom House, 2017).
- 13 For example, see United Nations Development Programme, ed., *The Constitution of Tunisia, September 2016*; The Carter Center, *The Constitution-Making Process in Tunisia: Final Report* (Atlanta: The Carter Center, 2014).
- 14 Existing research on women's participation in the constitutional process includes Global Women's Leadership Initiative, *Women's Participation: The Making of the Tunisian Constitution*, (Washington, DC: Woodrow Wilson International Center for Scholars, 2013); Nedra Cherif, *Tunisian women in politics: From constitution makers to electoral contenders*, Policy Brief No. 189, (FRIDE and HIVOS, November 2015). Since this report was first drafted, valuable new studies have been published, including Rangita de Silva de Alwis, Anware Mnasri, and Estee Ward, "Women and The Making of the Tunisian Constitution," *Berkeley Journal of International Law* 35 (2017): 90–149; and José S. Vericat, *Women's Struggle for Citizenship: Civil Society and Constitution Making After the Arab Uprisings*, (New York, NY: International Peace Institute, October 2017). Women's participation in transitional justice in Tunisia has been documented in Roslyn Warren et al, *Inclusive Justice: How Women Shape Transitional Justice in Tunisia and Colombia*, (Washington, DC: The Georgetown Institute for Women, Peace and Security, 2017).

# 1 HOW WOMEN CARVED OUT ROLES IN THE CONSTITUTION-MAKING PROCESS

Following the ouster of President Zine El Abidine Ben Ali, the Tunisian transition began in earnest. From January to October 2011, political leaders scrambled to establish a working government while protests in the streets of Tunis and elsewhere in the country continued to shape the direction of the transition. The Higher Authority for Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition was established in early 2011 to help maintain the popular legitimacy of the transition and shepherd the law-making process.

Thus, political bargaining and civil society mobilization around the constitutional process began well before the inauguration of the constituent assembly in October 2011. Political parties jockeyed for popular favor, many knowing that the outcome of the election would dictate who controlled the constitutional process. Tunisian women's organizations, activists, and legal experts understood the importance of this moment, and sought to shape the constitutional discourse ahead of the formal process by focusing on who would ultimately draft the constitution and what issues they would prioritize.

## Women in civil society mobilize early

As the revolution began to take shape in 2011, Tunisian civil society breathed new life. Under the regimes of presidents Habib Bourguiba (1957-1987) and Ben Ali (1987-2011), many civil society organizations were co-opted or repressed by the state. As the revolution was realized, civil society finally shed the yoke of government control.<sup>1</sup> For the Tunisian Association of Democratic Women (ATFD), this meant a renewed opportunity to promote what they believed were the rights and liberties Tunisian women deserved. Formed

in 1989, ATFD is one of Tunisia's largest and oldest feminist organizations, with a broad support base of dedicated members organized around a mission to promote and protect women's rights.<sup>2</sup> As the Arab uprisings gained momentum around the region, representatives from ATFD worked with women from Syria, Libya, Yemen, and other Arab countries to develop a petition and recommendations on women's rights in preparation for the transitions that would shape the Arab world. Members of ATFD saw the changing political landscape in the region as an opportunity to push their agenda, believing that "there can be no democracy without equality."<sup>3</sup>

In the aftermath of the revolution, ATFD also formed a coalition of 16 like-minded organizations to establish a strong support base for women's rights. The coalition included the Association for Tunisian Women for Research and Development, Parity and Equality, the League of Tunisian Women Voters, and Aswat Nissa (Voices of Women), among others. The group drafted a five-point declaration prior to the election of the constituent assembly that provided commentary on issues concerning women (e.g., the elimination of reservations on the Convention on the Elimination of all Forms of Discrimination Against Women; gender parity in politics; and the rights of women regarding education, work, and health). The purpose of the declaration was to inform what they anticipated would be the major battleground issues for women's rights in the upcoming constitutional debate.<sup>4</sup>

Women's civil society groups also organized awareness-raising campaigns ahead of the constituent assembly elections to encourage women to take part in the elections. The elections provided Tunisians, men and women alike, a unique opportunity to voice their demands and elect parties and individuals to represent their interests in the constitutional process. Aswat Nissa worked with women in the suburbs of Tunis

and in rural areas, where women were less likely to participate. As noted by Ikram Ben Said, the founder of Aswat Nissa, “we mainly worked on raising awareness and encouraging women to vote...going to various communities, explaining the electoral process to women, [and] holding election simulations. We were trying to show them the link between the private and the political, the importance of participation in this process.”<sup>5</sup> Almraa al-Horra, a women’s civil society organization in Sfax, launched a campaign encouraging all members of the public to participate in the constituent assembly elections. From 2013 to 2015, the organization also worked with the United Nations Development Programme to support female candidates in Sfax for local and national elections.<sup>6</sup> The League of Tunisian Women Voters (LET) created a training-of-trainers program in rural areas outside Tunis that supported women to hold electoral education workshops in their communities, with the goal of increasing female voter turnout. LET was also the first organization to receive accreditation by the Independent Higher Authority for Elections, the government entity overseeing the 2011 elections, to serve as election observers.<sup>7</sup>

Organizations like Aswat Nissa and the League of Tunisian Women Voters understood the high stakes of the 2011 constituent assembly elections. The future of the country hung in the balance, and the elections represented a first step toward cementing women’s rights and entrenching women as political actors in a new, democratic Tunisia.

## Women in the Higher Authority advocate for electoral parity

The body responsible for proposing reforms and designing the roadmap for the constitution-drafting process was the Higher Authority for the Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition (“Higher Authority”). It emerged from negotiations between then-Prime Minister Mohamed Ghannouchi and a grouping of political parties, civil society organizations, and unions. In March 2011, Ghannouchi’s successor as prime minister, Beji Caid Essebsi, formally appointed the Higher Authority’s members at the recommendation of its leaders, including the Higher Authority president, prominent legal scholar Yadh Ben Achour. After some initial contestation that the body’s 72 members were not sufficiently representative, the leaders sought to account for geographical diversity and the inclusion of youth and women in an expanded membership of 155 individuals.<sup>8</sup>

The Higher Authority maintained a distinction between its two groups of members, commonly referred to as the “committee of experts” and the “political council.” Around 20 legal experts comprised the committee of experts under the continued leadership of Yadh Ben Achour, while the political council included representatives of political parties and civil society.



*A voter shows off her inked finger during Constituent Assembly elections in Tunis, Tunisia, on October 23, 2011.*

AP Images / Rex Features

**COMPOSITION AND LEGISLATIVE PROCESS OF THE HIGHER AUTHORITY  
FOR THE REALIZATION OF THE OBJECTIVES OF THE REVOLUTION,  
POLITICAL REFORM, AND DEMOCRATIC TRANSITION**



The committee of experts drafted legislation necessary for the transition to proceed (e.g., laws governing elections, political parties, and freedom of press) and the political council debated and voted on the draft laws. Draft legislation approved by the council was then submitted to the government, which had the power to issue laws by decree.<sup>9</sup>

Women served as members of both bodies. The relatively high proportion of women (30 percent) on the committee of experts was not happenstance. Ben Achour—who was a strong proponent of women’s participation—hand-picked members of the committee, and female members advocated for the inclusion of other women. For example, Yosra Fraoues, the youngest member of the committee, attributed her appointment to the recommendation of committee member Hafidha Chekir: “She recommended me to Yadh Ben Achour because...there were more academics than practitioners and more men than women. We had a meeting, and I convinced him.”<sup>10</sup>

The Higher Authority served as a quasi-legislative body, creating laws to govern the country in the absence of an elected parliament. As part of this mandate, the Higher Authority drafted the rules for the October 2011 elections of the National Constituent Assembly, the body responsible for drafting the constitution. The law, Decree Law 2011-35, introduced the principle of vertical parity or a “vertical zipper,” which requires the names on every party list to alternate between men and women candidates. This was the first time gender parity appeared in Tunisian law.<sup>11</sup> The Tunisian electoral system follows the principles of proportional representation, meaning that political parties register lists of candidates and voters place their votes for

parties, not individual candidates. Each party is generally awarded a number of seats proportional to the percentage of votes won and the representatives are selected from the registered party lists from top to bottom.<sup>12</sup> Requiring vertical parity meant that parties could not stack the top of their lists with male candidates and relegate women to low positions on the list, unlikely to ever hold office; the first or second position on every list had to be occupied by a woman.<sup>13</sup>

This provision paved the way for women’s inclusion in the constitutional process; it was also one of the toughest battles for women’s rights advocates in the Higher Authority. Women in the committee of experts, like Hafida Chekir and Yosra Fraoues, championed the vertical parity provision along with several male allies, such as former president of the Tunisian League for Human Rights, Mukhtar Trifi, who raised the provision every time the electoral law was discussed. They were determined to incorporate gender into key policies.<sup>14</sup>

Their strategy was to “ask for more rights and to put the ceiling high—not give an opportunity to people for regression or going backwards.”<sup>15</sup> Yet they also understood the risks of pushing for too much too quickly. So they focused on securing vertical parity, forgoing an additional layer of horizontal parity (i.e., a requirement to alternate between men and women at the heads of party lists), which they felt “was too much at the time,” according to Fraoues.<sup>16</sup>

After the committee of experts agreed on the draft electoral law and passed the draft to the political council for deliberation, Chekir, Fraoues, and others prepared a strategy to lobby political council members on the importance of the parity provision. According to procedural rules, the committee of experts could



## DECREE LAW 2011-35 ON GENDER PARITY

**“Candidates shall file their candidacy applications on the basis of parity between men and women. Lists shall be established in such a way to alternate between men and women. Lists that do not follow this principle shall only be admitted when the number of seats, in the relevant constituency, is odd.”**

ARTICLE 16

not intervene or participate when the political council debated draft laws. But on the margins of the official forum they discussed ways in which the exact wording of the text could help to generate consensus and support for the provision.<sup>17</sup>

As part of their strategy to cultivate support for the parity provision in the political council, advocates recognized the need to bring on board the influential Islamist political party, Ennahdha. They “[seized] the opportunity that Ennahdha was always accused of being against women’s rights, telling [them] that ‘This is an opportunity for you to prove that all they say is wrong, that you’ve changed.’”<sup>18</sup> According to one Ennahdha leader, the party was split in its support for parity. But amid pressure from advocates, “No one could say no. Imagine that at a time [when] all of us were ambitious to build a new Tunisia, a democratic Tunisia, one political party would say ‘No, I don’t want parity’—it would be really catastrophic for them.”<sup>19</sup>

Once Ennahdha members agreed to accept the provision, it became easier to sway some of the progressive parties. Many of those parties did not want to appear more conservative than Ennahdha and agreed to support the provision. To the advocates’ surprise, several progressive parties resisted quite fiercely. New and small parties, in particular, worried they would not have enough women in their ranks to fill their electoral lists.<sup>20</sup> According to one Ennahdha official, this same resistance from smaller parties reemerged during the debate in the constituent assembly over horizontal electoral parity. “It’s not only between the conservative position and the progressive position,” she explained, “[It’s] a fight for power; politics is power.”<sup>21</sup>

## Gender parity comes to partial fruition

Women’s advocacy for electoral parity came at a critical time in the revolution; political parties were under immense pressure to support it. Parties sought to shore up popular support ahead of the approaching constituent assembly elections. Public opinion seemed to support gender equality, and influential figures and organizations in civil society—such as the Tunisian General Trade Union, one of the longest-running, most influential nongovernmental entities in Tunisia—backed the parity provision.<sup>22</sup> On May 11, 2011, the president signed Decree Law 2011-35, which called on parties to “file their candidacy applications on the basis of parity between men and women” and for electoral lists “to be established in such a way to alternate between men and women.”<sup>23</sup>

In the October 2011 election for the National Constituent Assembly, 19 parties and eight independents received enough votes to gain seats in the assembly. Ennahdha won 37 percent of the votes (89 of 217 seats)—more votes than the next eight parties combined.<sup>24</sup> This was a notable victory, given the decades of repression and persecution that Ennahdha members and other Islamists faced under the Bourguiba and Ben Ali regimes.<sup>25</sup>

Women earned 59 out of 217 seats, or 27 percent. By virtue of the parity requirements, additional women joined as male members resigned during the assembly’s tenure. In the end, the constituent assembly included 67 female members, or 31 percent.<sup>26</sup> While this rate of women’s participation is relatively high compared to other constitutional processes, proponents of the parity provision had hoped for even greater women’s representation, closer to 50 percent. The law, however, did not explicitly require that parties include women at the head of the electoral lists (horizontal parity). As a result, only eight percent of the roughly 1,500 lists were headed by women.<sup>27</sup> This, combined with the fragmentation of the vote, resulted in only the male heads of lists being elected, in many cases.<sup>28</sup> As such, the level of women’s representation achieved was not only influenced by the parity decree. The significant number of seats won by a single party also played a role: 42 of the 59 seats held by women belonged to Ennahdha.

## NOTES

- 1 Laurie A. Brand, "Women, the State, and the Political Liberalization: Middle Eastern and North African Experiences" (New York, NY: Columbia University Press, 1998), 177; Monica Marks, "Women's Rights before and after the Revolution," in *The Making of the Tunisian Revolution: Contexts, Architects, Prospects*, ed. Nouri Gana (Edinburgh: Edinburgh University Press, 2013), 232.
- 2 Interview with Leila Hamrouni in Tunis, Tunisia, October 2, 2016; "Présentation," ATFD, [femmesdemocrates.org.tn/presentation-atfd-2/](http://femmesdemocrates.org.tn/presentation-atfd-2/).
- 3 Interview with Bochra Bel Haj Hmida in La Marsa, Tunisia, October 3, 2016.
- 4 Interview with Sana Ben Achour in Tunis, Tunisia, October 3, 2016.
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## 2 WOMEN'S INFLUENCE ON THE CONSTITUTIONAL PROCESS

On October 23, 2011, Tunisians elected 158 men and 59 women to serve their country as members of the National Constituent Assembly, tasked with the responsibility of drafting a new, post-revolution constitution. However, the constituent assembly did not operate in a political vacuum; its decisions, and ultimately the constitution itself, were shaped by input and feedback from the Tunisian people, with civil society acting as an interlocutor.

Women participated in the constitution-drafting process as elected representatives of the Tunisian people and as active, engaged citizens outside the assembly—activists, legal experts, educators, advocates, and more. They capitalized on the momentum of women's participation in the revolution and its aftermath, taking critical steps to influence the constitutional negotiations and shape the future of their country, despite numerous obstacles. Their stories chronicle a pivotal moment in Tunisia's history from a perspective seldom told.

### Building consensus in the National Constituent Assembly

Although women ultimately earned 31 percent of the seats in the constituent assembly, this did not guarantee them a proportional number of the assembly's formal leadership roles. Women served on all the constitutional committees and in the executive bureau, but male members largely dominated the committee leadership positions, which were filled proportionately by the political parties. Only one woman served as a committee president: Farida Labidi of Ennahdha presided over the Committee on Rights and Liberties.<sup>1</sup> Labidi believes she was selected to lead this important committee because of her experience as a human rights lawyer and a

political prisoner during the Ben Ali era. Ennahdha also wanted to signal its support for its female assembly members.<sup>2</sup> Three other women held vice presidencies in the drafting committees (see diagram).<sup>3</sup> Ennahdha's Mehrezia Labidi (no relation to Farida Labidi) served as the first vice president of the constituent assembly under Mustapha Ben Jaafar, where she mediated plenary debates in Ben Jaafar's absence.

Nonetheless, throughout the drafting process, women demonstrated informal leadership as engaged and active assembly members. Records indicate that, on average, women voted more frequently than their male counterparts.<sup>4</sup> Habib Khedher, who served as General Rapporteur of the Constitution, also noted that "[women] were more present and disciplined than

#### CONSTITUTION DRAFTING COMMITTEES



men in the committees. If the work of the [drafting] committees took a long time, the women were present from beginning to end.”<sup>5</sup> Female assembly members were seen as demonstrating particular commitment to working in the governorates and connecting to their constituencies.<sup>6</sup>



*Tunisian MP and General Rapporteur of the constitution Khedher Habib chats with colleagues in the Constituent Assembly.*

Many Tunisians attribute the success of the transition to the level and degree of consensus achieved within the constituent assembly. As the assembly members with the highest rates of attendance and participation, women saw themselves as leaders in driving others toward compromise, pushing for consensus more regularly than their male counterparts in drafting committees and the plenary.<sup>7</sup>

Women comprised more than a third of the crucial 23-member Consensus Committee, which assembly president Mustapha Ben Jaafar created in 2013 to resolve controversial issues emerging from the drafting committees.<sup>8</sup> Unlike the other committees, whose memberships were determined proportionately to

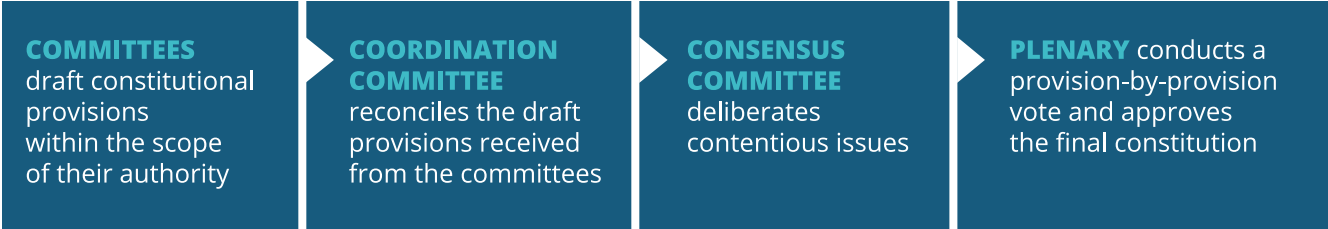
the number of seats each party held in the assembly, political parties were represented more evenly in the Consensus Committee, giving the opposition a greater voice.<sup>9</sup> Parties used the committee as a forum for negotiating divisive issues and reaching settlements.

Women like Rym Majoub invoked Article 93 of the rules of procedure on multiple occasions, which allowed articles to be reopened for debate should “new relevant elements appear.”<sup>10</sup> This enabled her and other women to re-table issues of importance to them in the Consensus Committee. Among other contentious issues, the committee requested closer scrutiny of Article 46, which deals with women’s rights.<sup>11</sup> Majoub and others prepared rigorously for the committee’s debate on the article, discussing strategies and role-playing before the meetings to practice their arguments. On this and other divisive articles—those related to women’s rights and those not—the Consensus Committee proved critical to reaching agreement. So influential was the forum that it has been credited with “creating the constitution in the form we now recognize.”<sup>12</sup>

As the first vice president of the constituent assembly, Mehrezia Labidi also played a particularly public role in forging consensus as she presided over plenary debates. She was very conscious of the immense pressure and responsibility to foster agreement when she served as plenary chair and employed creative tactics to understand not only the main points of contention, but also the assembly members themselves. As Labidi recalled,

*I spent a lot of time observing my colleagues both inside and outside of the plenary sessions: I attended the committee debates and the meetings...of the Consensus Committee. I listened to my colleagues to see what their arguments were and to gauge their capacity to negotiate, to hold firm, and to reach out to others. That helped me to run the plenary sessions, particularly during the general debates about the Constitution.*<sup>13</sup>

**DRAFTING PROCESS WITHIN THE NATIONAL CONSTITUENT ASSEMBLY**



By closely observing the individuals as well as the debate, Labidi felt she could better drive the plenary toward consensus. She sought to “show them the common ground between them...[and] make them all feel that they were contributing to the article that would be put to the vote.”<sup>14</sup>

## Working across partisan divides to achieve common interests

The constitution-drafting process was not without contention. It was seen as an opportunity to institutionalize the principles of freedom, dignity, plurality, justice, and equality that gave rise to the

revolution, but Tunisians disagreed on what those principles meant in practice and how the legal text should represent those values. While there were a number of fault lines, perhaps the most volatile was the political divide between the Islamist Ennahdha party and more left-leaning opposition parties. Both sides feared that the other would shape the constitution in a way that would constrain the identities and ways of life of their supporters.

Growing hostility between political camps, in addition to two political assassinations, nearly derailed the entire transition in the summer of 2013. But thanks in part to the mediation of the National Dialogue Quartet and the perseverance and dedication of the constituent assembly members, the process resumed its course (see Box 1).

### BOX 1: THE QUARTET AND A TRANSITION ON THIN ICE

On July 25, 2013, constituent assembly member Mohammad Brahmi became the second opposition leader to be assassinated in a five-month period following the death of prominent human rights activist Chokri Belaid. The event sent shockwaves through the country. Brahmi had been a vocal critic of the Ennahdha party. A general strike was called and hundreds of protestors spilled into the streets, demanding the government’s resignation and calling into question the transition process.<sup>15</sup>

The constituent assembly was also in tumult. Some members boycotted proceedings and joined protests outside the parliament building calling for the dissolution of the constituent assembly. Mustapha Ben Jaafar, president of the constituent assembly, called for a suspension of activities on August 6 until formal negotiations could begin.<sup>16</sup> These events occurred only weeks after Egypt’s president, Mohamed Morsi, and the ruling Muslim Brotherhood were deposed by the army backed by two million protestors.<sup>17</sup> Many in Tunisia worried that their transitional process was also on the brink of collapse.

As discord escalated, leaders of four long-standing and influential organizations—the General Labor Union; the Confederation of Industry, Trade and Handicrafts; the Human Rights League; and the Order of Lawyers—joined together to call for a national dialogue to navigate the country out of chaos. They

became known as the Quartet. The Quartet leadership included one woman, Ouided Bouchamaoui—the first woman in history to lead the Confederation of Industry, Trade and Handicrafts.<sup>18</sup> The Quartet presented a roadmap that laid out the next and final steps of the transition across three tracks—electoral, constitutional, and governmental—which included completion of the constitution, a new electoral law, a nonpartisan interim government, and a timetable for parliamentary and presidential elections.<sup>19</sup>

At first, Ennahdha party leadership refused to acknowledge the legitimacy of the Quartet. Ennahdha and its political allies had, after all, won in popular elections; the Quartet was a group of self-appointed civil society leaders. But, as protests grew to the thousands outside government buildings, the ouster of Egypt’s Morsi and the Muslim Brotherhood cast a long shadow over Ennahdha. Subsequently, Ennahdha and other party leaders agreed to negotiate with the Quartet to get the transition back on track.<sup>20</sup> The constituent assembly resumed work on September 12 and the Quartet negotiations extended into January 2014. Eventually, the three tracks outlined by the negotiated roadmap were completed as planned, although on an extended timeline.<sup>21</sup> All four organizations in the Quartet were recognized for their contributions to the transition with a Nobel Peace Prize, awarded in 2015.<sup>22</sup>

The contours of this discord were complex and nuanced, and they greatly affected the climate of the transition both before and after the National Dialogue, influencing gendered questions in the text of the constitution as well as the positions that women took in the constituent assembly. The political chasm between Ennahdha and left-wing parties posed a challenge for cooperation among women inside (and outside) the constituent assembly. Distrust, and even animosity, were present on both sides. Women on the left feared that Ennahdha and its supporters were determined to enforce a conservative interpretation of Sharia law, dialing back or limiting their relatively advanced rights under the Personal Status Code and overriding their demands for constitutionalized gender equality.<sup>23</sup> Meanwhile, women who supported Ennahdha felt that leftist women were unwilling to recognize a range of feminist thought and the validity of their own feminist claims. Some believed the liberal camp pushed a radical feminist agenda that was not appropriate for the Tunisian context or rooted in the Tunisian tradition.<sup>24</sup>

Given these circumstances, cooperation and collaboration across partisan divides represented a significant challenge. Even as they held different and sometimes competing views, some women across the political spectrum found that they agreed on principles like gender equality and parity in elected assemblies. To maximize their influence, a number of women in the constituent assembly worked together across party lines on what they could identify as shared interests. A civil society observer of the constitutional process saw that “there were many women across partisan lines who had...a common awareness [of their] tremendous responsibility towards all other women in society.”<sup>25</sup> These women wanted to create a space where they could exchange views and opinions and develop solutions independent from political party agendas.<sup>26</sup>

While there is no definitive account of how women across the political spectrum began to work together, anecdotal evidence suggests a softening of positions among women within the constituent assembly over time. Rym Majoub, a member of the Democratic bloc, remembered “the mutual distrust that separated [women] at the beginning of the [constituent assembly’s] mandate. That changed a lot over time. Accepting others is an integral part of any democracy. It is very important. I was able to get to know the people underneath the hard outer shells that some Assembly members presented. The conflicts and the

ensuing reconciliations brought us closer together.”<sup>27</sup> Another female assembly member observed that “women deputies thought about their country and future generations instead of political gains.”<sup>28</sup> Observers of the constituent assembly also noted that “they all faced the same challenges as women...because it was a masculine environment and I think that made them realize that they had common interests.”<sup>29</sup>

**“There were many women across partisan lines who had... a common awareness [of their] tremendous responsibility towards all other women in society.”**

A CIVIL SOCIETY OBSERVER OF THE  
CONSTITUTIONAL PROCESS IN TUNISIA

The rules of procedure precluded women from forming a formal caucus.<sup>30</sup> Although the rules were later amended to abolish those restrictions, some viewed a women’s caucus as contradicting the principle of proportional representation, making it difficult to rally sufficient support from other members.<sup>31</sup> Political parties were also reluctant to see their members acting outside their control.<sup>32</sup> As such, women members who sought to work together regardless of party affiliation began collaborating informally on issues of mutual interest, such as the principle of gender equality.

Nonetheless, this informal cross-party cooperation provided a way to build consensus before the debate was brought to political parties in the committees and plenary. The women negotiated among themselves, saying to one another, “if you insist on passing this part, my party [will] not accept this part, so let us all agree on our common interests, so that our parties will have to accept this.”<sup>33</sup> They prepared the ground for specific constitutional proposals by crafting language their parties could agree on. According to one observer, this strategy “enabled the different progressive articles to be advanced and enshrined within the constitution,” particularly those related to gender equality and gender parity in elected assemblies.<sup>34</sup>



However, not all women in the constituent assembly supported this informal collaboration. While there was general agreement among female members that women's rights should be maintained and advanced, notions of what constituted those rights and the role of women in society diverged greatly.<sup>35</sup> When it came to the details, women—like men—held a diversity of opinions. In the constituent assembly, this meant that while some women members actively worked together to identify common principles across the ideological divide, others remained staunch in their opposition and contested the creation of a women's bloc, whether formal or informal.<sup>36</sup>

To reduce these divides to “Islamist” versus “secular” paints an overly simplistic picture that obscures the overlapping identities that many Tunisians, including women, hold. Some Tunisians, for example, are religiously observant and would like to see a role for Islam in Tunisian politics, but still espouse liberal views on women's rights and equality. In addition, terms like “liberal” and “conservative” do not always conform to party lines: a plurality of views existed among women and men within Ennahdha and within progressive parties like the Congress for the Republic, Democratic Group, and Ettakatol. Thus, when the constituent assembly committed the state to attain gender parity between men and women in elected assemblies, one observer described the variety of reactions within each political camp as follows:

*Amid tears of joy from [Ennahdha's] Jaouhra Tis and Yamina Zoghalmi, a denunciation of the vote by [Ennahdha's] Monia Brahim, and the absence of joy of any kind from a few members of the parliament from the Democratic Group and Ettakatol, some observers were disoriented by the new dividing lines that emerged from the vote.*<sup>37</sup>

Even after the passage of the constitution, female assembly members remained divided over how particular goals, like women's equal representation in politics, should be achieved in practice. As such, identifying shared interests and achieving agreement on constitutional language took tough negotiation and compromise.

## Keeping the process accountable to the people

While the constituent assembly remained the nucleus of constitution drafting, the grassroots nature of the revolution created an environment where individual Tunisians could access and contribute to the constitutional process through civil society activities and other outlets outside the halls of the constituent assembly. This was, in part, supported by the efforts of organizations like Al Bawsala, which played a critical role in promoting transparency and accountability by ensuring that the proceedings of the constituent assembly were accessible and available to the public (see Box 2). But perhaps the most notable and widely recognized contribution of Tunisian civil society was in making their voices heard through demonstrations and protests throughout the constitution-drafting process.

Civil society used protests to hold the government, political parties, and assembly members accountable and to communicate dissatisfaction with the process and/or its outcomes when the transition appeared to stray from what they perceived as the founding principles of the revolution. One observer noted that “the [amount] of mobilization was truly impressive: the associations organized demonstrations with thousands of people, civil society created national and international pressure; it managed to keep up substantial media pressure throughout the constitution-making process.”<sup>38</sup>

Tunisian women participated in and led many of these demonstrations. In particular, women's organizations were at the forefront of protests following the August 2012 release of the first draft of the constitution, which included a controversial “complementarity” clause stating that “the state shall guarantee the protection of the rights of women and shall support the gains thereof as true partners to men in the building of the nation and as *having a role complementary thereto within the family*”<sup>39</sup> (emphasis added). While supporters of the clause insisted that the Arabic draft had been mistranslated into French and English, taken out of context, and inaccurately reported by the media, many Tunisians interpreted it to mean that women were unequal to men.<sup>40</sup> Civil society mobilized en masse, with thousands of women taking to the streets to denounce what they believed was the constituent assembly's attempt to relegate women to second class status.<sup>41</sup> (For more on the complementarity debate, see Chapter 3.)

## BOX 2: WOMEN IN CIVIL SOCIETY PROMOTING TRANSPARENCY

Amira Yahyaoui co-founded Al Bawsala, a civil society organization, to push for a human rights agenda in the constitutional process. Although Al Bawsala was, first and foremost, a human rights organization, it quickly morphed into a monitoring and transparency organization inside the constituent assembly. Yahyaoui “very quickly realized that no one knew what was going on in the assembly, that no one knew its operating rules and no one was taking part in it apart from the 217 elected assembly members, and even they weren’t largely present at the time.”<sup>42</sup> Although the plenary sessions were broadcast live on television, little was known about the inner workings of the drafting committees, where most of the debates took place.

Recognizing this gap, Yahyaoui and her colleagues began recording assembly proceedings (including attendance, voting patterns, and reports on substantive debates) and publishing the information

online and via social media.<sup>43</sup> Assembly members initially tried to prevent them from gaining access, but Yahyaoui and her colleagues remained adamant. “The vast majority of members supported us until we published something that might backfire on them. When what we published was in their interests, they considered us as allies, but each time what we published was to their detriment, we once again became an enemy to be defeated.”<sup>44</sup>

Yahyaoui advocated directly to the assembly president Mustapha Ben Jaafar on why transparency was vital to the constitutional process and joined together with other NGOs to lodge a complaint against him when they weren’t satisfied by his response. “We were uncompromising, and we negotiated nothing. That was our way of showing the Assembly members that we, the people, the citizens, now held the power, and that they represented the people, that community of citizens.”<sup>45</sup>

## Fostering civic engagement and information exchange

In addition to protests and demonstrations, women in civil society also directly advocated to assembly members on specific constitutional issues. The Tunisian Association of Democratic Women (ATFD), for example, focused their advocacy efforts on assembly members whom they could easily bring on board to their agenda; their allies “became like a bridge between civil society and the assembly in some parties.”<sup>46</sup> By employing this strategy, women advocates capitalized on disagreements within the political parties. They realized that many constitutional issues were first debated at the party level before progressing to the committees and plenary, so by establishing relationships with multiple members within each party they could advance their cause at the ground level.

ATFD also held a virtual constituent assembly, where they invited assembly members and civil society representatives to participate in a mock drafting process. Civil society representatives included the Tunisian League of Human Rights, Association for

Tunisian Women for Research and Development, women’s unions, and the Tunisian Judges Association. They welcomed perspectives from across the political spectrum and even invited Ennahdha member Mehrezia Labidi, who was seen to have opposing views, to speak at the convening.<sup>47</sup> The virtual assembly helped to encourage dialogue between civil society and female assembly members and cultivate agreement on important constitutional issues.



*President of the Tunisian Association of Democratic Women Sanaa Ben Achour speaks next to other association members during a meeting on women’s rights in the constitution on March 13, 2011, in Tunis.*

Fethi Belaid / AFP / Getty Images



Organizations like Aswat Nissa provided support and training to women in the constituent assembly on the basics of politics and governing. They saw training and capacity building as key to promoting issues like gender equality and changing perceptions of women as political actors.<sup>48</sup> Some women lawyers and constitutional experts leveraged the assembly's need for technical assistance to advocate for specific provisions. As one female law professor recalled, "some deputies would call us for legal advice, so we would use that opportunity to present our recommendations. For example, the article on freedom of conscience—[assembly members] were okay with freedom of religion, but not freedom of conscience, and we persuaded them to adopt it."<sup>49</sup> They sent chapter-by-chapter comments to assembly members as the drafts were released. Women lawyers also focused on how to draft language that would leave little room for interpretation by judges, particularly on provisions related to rights and liberties.<sup>50</sup>

Women's civil society groups also supported the constitutional process by localizing the debate and elevating women's voices from outside of the capital city. One women's organization in Sfax, Almraa Al-Horra, hosted dialogues between leaders of labor unions (including the Tunisian General Trade Union, the Tunisian Union of Trade, Industry, and Handicrafts, and the Tunisian Union of Agriculture and Fisheries) and local government officials responsible for employment policies. The project aimed to foster an exchange of ideas and develop recommendations for increasing the presence of women in these industries and for policies related to the right to strike, health, and security at work.<sup>51</sup> As researcher Maryam Ben Salem noted, women outside of Tunis, especially in the poorer, more undeveloped interior regions of the country, tend to be "more focused on the economy than on politics, and there [was] not enough structure to link their protests in the interior to politics [in the capital]."<sup>52</sup> Organizations like Almraa Al-Horra adapted the discussions being held at the national level to local needs and fed the results back into the national debate by presenting their recommendations to members of the constituent assembly.<sup>53</sup> The Jasmine Foundation played a similar role in the more marginalized perimeter neighborhoods of Tunis, holding conferences and roundtables and producing reports that translated what was happening within the constituent assembly into laymen's terms in order to "bring the constitution closer to people who would have difficulty accessing [it]."<sup>54</sup>

The constituent assembly also created mechanisms to gather input directly from civil society and individuals. These programs for civic engagement included two Open Days in the assembly's chambers at Bardo Palace, where each drafting committee held a full-day public meeting to solicit input on substantive issues. The meetings hosted by the Committee on Rights and Liberties and the Committee on the Preamble, Fundamental Principles, and Constitutional Amendments had the largest attendance rates, around 100 individuals each.

With UNDP's support, the assembly also hosted a series of 24 national dialogues across the governorates and 18 dialogues for members of the Tunisian diaspora in France and Italy (where the largest proportion of Tunisians abroad live) to encourage broad participation.<sup>55</sup> Women from across Tunisia, as individuals and as members of civil society, participated in the Open Days and national dialogue sessions.

Women's organizations like ATFD held focus groups and workshops to develop their recommendations and presented them directly to constituent assembly members. Recommendations made by women's civil society included guidance on equal rights between women and men, vertical and horizontal parity for women in the electoral law, women's representation in elected and appointed bodies, equal opportunities for men and women, and economic-related provisions like equal employment.<sup>56</sup> While women made up more than 60 percent of university students, they only made up 25 percent of the Tunisian labor force.<sup>57</sup>

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- 43 Ibid., 3. Such as introducing vote traceability to find out how assembly members were voting; putting the assembly's diary online, when the assembly itself published nothing on its website; publishing the biographies of assembly members; publishing member absences; and live-tweeting the plenary sessions in French to enable dual nationals who did not have a sufficient knowledge of Arabic to follow the debates; translating and posting online several documents on the functioning of the assembly, as well as the working drafts of the constitution.
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- 51 Emna Bouaziz, focus group with members of Almraa al-Horra in Sfax, Tunisia, October 1, 2016.
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# 3 WOMEN'S INFLUENCE ON THE CONSTITUTION'S CONTENT

**B**eyond influencing the constitution-drafting *process*, women also significantly influenced its primary *outcome*—the text of the constitution itself. Just as women leveraged a range of experiences to cooperate amid political divides and connect the drafting process to the citizenry, they also brought diverse substantive issues into the constitutional debate. The principal issues that women prioritized for the constitutional text varied significantly along political, ideological, religious, geographic, and socioeconomic lines. Within the National Constituent Assembly, women sat on all the constitution-drafting committees and crafted language on everything from the judiciary to regional and local governance. Women fought fiercely for a range of issues outside the assembly as well. For example, many women, especially those persecuted by Ben Ali for opposition activities, prioritized human rights, transparency, freedom of conscience, and transitional justice.

Women's activism was most visible and distinct regarding gender equality provisions. Tunisian women understood from decades of experience under former presidents Bourguiba and Ben Ali that without specific, constitutionalized guarantees of their fundamental freedoms and participation, their voices would not be heard in future debates.<sup>1</sup> Advocates therefore prioritized what they viewed as the most fundamental and achievable freedoms, such as foundational gender equality before the law and equal political participation. They strategically postponed more divisive, hard-to-win battles, such as the right to equal inheritance. Since overwhelming qualitative and quantitative evidence suggests that gender equality is associated with peace and stability, this work also has ramifications for the long-term success of Tunisia's transition to democracy.<sup>2</sup>

The principle of **GENDER EQUALITY** continues to enjoy widespread popular support in Tunisia, hovering around

**75%** in public opinion polls both before and after the revolution.

**But the meaning of gender equality and the means of achieving it remain the subject of much debate.**

## The evolution of feminism in Tunisia

To understand how women chose to prioritize certain provisions and why robust debate emerged, it is necessary to grasp the historical context in which these issues evolved in Tunisia. In 1956, President Habib Bourguiba enacted a historic Personal Status Code, the first in the Arab-Islamic world to outlaw polygamy. It significantly increased women's autonomy within the family by granting women the right to file for divorce and increasing their custody and guardianship rights.<sup>3</sup> The rights and freedoms granted in the code were bold and forward-looking for the time, and it remains one of the most progressive in the Arab world today.<sup>4</sup>

In 1959, Tunisia's constitution enshrined gender equality for the first time.<sup>5</sup> The principle of gender equality continues to enjoy widespread popular support in Tunisia, hovering around 75 percent in public opinion polls both before and after the revolution.<sup>6</sup> But the meaning of gender equality and the means of achieving it remain the subject of much debate, with more liberal Tunisian women demanding universal equal rights and duties (as in the tradition of France and other European states) and conservative feminists seeking a greater role for Tunisia's Muslim-Arab identity and traditions.

To understand these divergent interpretations, one must look, in particular, at Tunisia's long history of state feminism that first emerged under President Bourguiba and continued during President Ben Ali's regime. This state-defined feminism supported many progressive and liberal rights for women, but did not facilitate their leadership and enforced strict parameters on what was deemed acceptable. For example, only secular women's associations were permitted to operate under Ben Ali, given the regime's fear and persecution of Islamists. Women were prohibited from wearing any Islamic veil in public spaces and punished for participation in, or even ties to, Islamist activism.<sup>7</sup> More broadly, many women felt they "were not asked about what they wanted for themselves,"<sup>8</sup> that President Ben Ali alone determined what rights and liberties were granted and when.<sup>9</sup> Many suggest that he championed women's rights to serve his own interests, drawing "a façade that he was a defender of women's rights in order to look good to the West."<sup>10</sup>

After the revolution, a proliferation of women's groups presented a wide variety of perspectives on feminism. "For the first time, women could actually have a voice of their own and advance the rights of other women the way they wanted those rights to be enforced and advanced."<sup>11</sup> This new space for alternative interpretations of what women's roles should be in Tunisian society allowed for the emergence of Islamic feminism in the public sphere. It meant left-leaning organizations like the Tunisian Association of Democratic Women (ATFD) and the Association of Tunisian Women for Research on Development (AFTURD), both of which had previously operated in tension with the Ben Ali regime, could more freely rally around liberal feminist causes.<sup>12</sup> More multifaceted interpretations of feminism also began to take shape and gather momentum.



AP Photo / Hassene Dridi

*Members of parliament attend Tunisia's newly-elected assembly during its inaugural meeting in Tunis on November 22, 2011.*

However, with this proliferation of activity, divisions sometimes became acute. As secular feminists feared that the separation of religion and state could be rolled back, some of their conservative counterparts began to view the liberal left as something foreign-born, ill-suited to the Tunisian context.<sup>13</sup> Others associated secular women's organizations that had existed in the Ben Ali era with a renewed state feminism.

## From women's complementarity to gender equality

Women across the political spectrum had a vested interest in establishing what they believed should be the expression of women's status in Tunisian society, but these definitions did not always align. Disagreements over gender equality came most famously to the fore with the release of the first draft of the constitution in August 2012, which included a provision stating that "the state shall guarantee the protection of the rights of women and shall support the gains thereof as true partners to men in the building of the nation and as *having a role complementary thereto within the family*"<sup>14</sup> (emphasis added).

For many liberal women, the complementarity clause cemented their fears that Ennahdha, for all its protestations otherwise, sought to roll back women's hard-fought gains and "dominate the Tunisian people."<sup>15</sup> Sanaa Balhoubsh of the Association of Women's Rights in Tunisia told *The Washington Post* that "even if the constitutional [committee's] intention was good, and God only knows if it is, we still can't accept the text. The fact is, this text demeans women and makes them unequal or incomplete without men."<sup>16</sup> Basing the equality of the sexes on the socially-prescribed roles of men and women within the family is "dangerous," another liberal activist explained, because "[It means] we can say that raising children is a women's task," which could have further limiting implications.<sup>17</sup> Opponents of complementarity also argued that the article only recognized married women.<sup>18</sup>

Many international observers of the constitution-making process, such as Human Rights Watch, The Carter Center, and special rapporteurs and working groups from the UN Human Rights Council, also came out in opposition to the article. They argued



that complementarity is an ambiguous notion, based on women's relationship to men rather than their universal human rights, and thus a lesser standard than full gender equality.<sup>19</sup>

Civil society's response against the complementarity provision was immediate and fierce. Organizations such as ATFD, AFTURD, and the Tunisian League of Human Rights circled petitions and called for demonstrations on August 13, 2012—Tunisia's National Women's Day and the anniversary of the Personal Status Code. An estimated 6,000-7,000 women took to the streets, descending upon Mohamed V Avenue in downtown Tunis with banners bearing messages like "Rise up, women, for your rights."<sup>20</sup> Liberal feminist activists such as Leila Hamrouni and Yosra Fraoues took to the airwaves to explain why the clause was problematic, because as Fraoues noted, "even if the people didn't understand what complementarity meant, it was [an innate reaction] to refuse this concept."<sup>21</sup> Others, like prominent legal expert Sana Ben Achour, provided testimony to the National Constituent Assembly to advocate for the provision's amendment.<sup>22</sup>

Supporters of the complementarity clause insisted that the Arabic draft had been mistranslated into French and English, taken out of context, and inaccurately reported by the media.<sup>23</sup> Another translation was offered: "The state guarantees the protection of women and supports their achievements, considering them as men's true partners in building the nation, and *their [men's and women's] roles fulfill one another within the family*" (emphasis added).<sup>24</sup> As noted by Rached Ghannouchi, co-founder and intellectual leader of the Ennahdha party:

*"Equality between women and men is a principle embraced by our Party since its establishment... The complementarity controversy...received disproportionate coverage tainted by misunderstanding, misinformation, and polarization. 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 emphasized in the very same draft."*<sup>25</sup>

In her analysis, scholar and journalist Monica Marks found that this language reflected Ennahdha's and many Islamist movements' preference "to see persons as interconnected within an ummah, or faithful community, comprised of different but equal components...Ennahdha generally believe[s] that while the two sexes were created equal under God,

they nevertheless remain distinctive in terms of their biological roles and familial obligations."<sup>26</sup> Though no one on the Rights and Liberties Committee, which drafted the clause, publicly laid claim to its authorship, committee president and Ennahdha member Farida Labidi defended this view, arguing that "One cannot speak of equality between man and woman in the absolute."<sup>27</sup> Moreover, Labidi pointed out that protestors had taken the clause out of context by overlooking Article 22 (later to become Article 21), which already guaranteed citizens' equality without discrimination.<sup>28</sup> Another Ennahdha representative lamented, "we should have thought to release an English or French translation along with the Arabic draft. We didn't expect that the mistranslations of the text would be that bad—I don't think most Western journalists even read it...What we tried to say between Article 22 and Article 28 was that men and women are equal and complementary."<sup>29</sup>

#### EXCERPT OF TUNISIAN CONSTITUTION

**"All citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination."**

ARTICLE 21

Some Tunisians dismissed Ennahdha's allegations of mistranslation outright, while others acknowledged the Islamist philosophical roots of complementarity.<sup>30</sup> But in the end, the massive pushback from civil society and street protests tipped the scale. The vehement public outcry contributed to Ennahdha's emerging realization that, despite its governing majority, it would have to pursue political consensus or risk dragging Tunisia into conflict. As Rached Ghannouchi described,

*"our adoption of the methodology of consensual rule was based on conviction that transitional phases cannot and should not be governed by a 51 percent majority, which cannot provide stability in the political system... Thus, we wanted a constitution that does not represent Ennahdha alone or an electoral majority, but rather the vast majority of the Tunisian people... The principle of consensus succeeded in saving Tunisia and its revolution from the major crises it faced."*<sup>31</sup>

The second draft of the constitution abandoned the concept of gender partnership and complementarity. The following diagram illustrates the evolution of the final text.



## EVOLUTION OF THE 'COMPLEMENTARITY' CLAUSE OF THE TUNISIAN CONSTITUTION

### FIRST DRAFT | AUGUST 13, 2012

**"The State shall guarantee the protection of the rights of women and shall support the gains thereof as true partners to men in the building of the nation and as having a role complementary within the family.**

**The state shall guarantee the provision of equal opportunities between men and women in bearing various responsibilities.**

**The state shall guarantee the elimination of all forms of violence against women."**

ARTICLE 2.28

### SECOND DRAFT | DECEMBER 14, 2012

**"The state shall guarantee the provision of equal opportunities between men and women in the bearing of various responsibilities.**

**The state shall guarantee the elimination of all forms of violence against women.**

ARTICLE 37

### FINAL DRAFT | JANUARY 27, 2014

**"The state commits to protect women's accrued rights and work to strengthen and develop those rights.**

**The state guarantees the equality of opportunities between women and men to have access to all levels of responsibility in all domains.**

**The state works to attain parity between women and men in elected Assemblies.**

**The state shall take all necessary measures in order to eradicate violence against women."**

ARTICLE 46

## Gender, Islam, and the state

Though "complementarity" became a famous flashpoint for Tunisia's debate over gender equality, similar disputes resurfaced when the constituent assembly sought to define the relationship between the state and Islam. The liberal camp, influenced by the French concept of *laïcité* or state secularism, demanded the creation of a "civil state." Although not clearly defined, a civil state was considered more politically palatable than "secularism," as by some definitions it implies a positive law system—one that legitimizes only the laws promulgated by the state—without prescribing a radical break between the law and religion.<sup>32</sup> Many conservative Islamists demanded a greater role for Islam, with some calling for Sharia to be explicitly made a source of law.<sup>33</sup> As a party, Ennahdha ultimately decided against pushing for Sharia, recognizing that it "would have divided the country into two blocs."<sup>34</sup>

While this debate did not explicitly refer to gender equality, its impacts were far-reaching. Liberal feminists feared that any constitutionalizing of Sharia, explicit or implicit, would make it almost impossible to eliminate the legal inequities tied to it, such as those surrounding women's rights to inheritance.<sup>35</sup> Data from focus groups organized by the National Democratic Institute across Tunisia in February 2012 illustrate the difficulty some Tunisians still face in reconciling the country's longstanding support for gender equality with religion and conservative social traditions. Asked if they would support gender equality, men and women participants initially responded "yes," but then pointed to women's unequal inheritance, which is the only part of the Personal Status Code directly tied to Sharia law, as evidence that true gender equality would never be "possible or acceptable." Participants widely agreed upon constitutionalizing women's rights, but continued to express traditional views of gender roles, wherein women would play a mostly private, domestic role tending to children and cooking, and only participate in public roles insofar as the latter doesn't interfere with the former.<sup>36</sup>

Successive drafts of the constitution included several variations on the state's relationship with Islam, most notably in the preamble, Article 1, Article 2, and Article 6.<sup>37</sup> Following intense negotiation, the final language in Article 1 proclaimed Islam as Tunisia's dominant

religion, but does not declare it the state religion, and Article 2 proclaimed Tunisia a “civil state.”<sup>38</sup> Both articles were made unamendable, lending them a kind of “super- or supra-constitutional” authority.<sup>39</sup> (See figure below.)

#### CONSTITUTIONAL PROVISIONS RELATED TO ISLAM AND THE STATE

##### EXCERPTS FROM THE FINAL DRAFT OF THE TUNISIAN CONSTITUTION JANUARY 27, 2014

**“Expressing our people’s commitment to the teachings of Islam and its aims characterized by openness and moderation, and to the human values and the highest principles of universal human rights, and inspired by the heritage of our civilization...”**

PREAMBLE, PARAGRAPH 3

**“Tunisia is a free, independent and sovereign state. Its religion is Islam, its language is Arabic and its type of government is the Republic.**

**This article may not be amended.”**

ARTICLE 1

**“Tunisia is a civil state based on citizenship, the will of the people, and the supremacy of the law.**

**This article may not be amended.”**

ARTICLE 2

**“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...”**

ARTICLE 6

While these provisions are still subject to interpretation by the courts, one liberal activist suggested that “since Islam is not the religion of the State...religion is not valued higher than the civil State, nor the rights and freedoms granted by the Constitution... Religion [therefore] cannot be invoked, either to limit equality in civil and family rights.”<sup>40</sup> Nonetheless, many Tunisians personally uphold values that are shaped by conservative religious and social norms, which may have implications for the implementation of gender equality provisions in the long term. On the other hand, it is the ambiguity of the final text which arguably helped assembly members with diverse values and identities reach agreement.

## Parity in the electoral law and in elected assemblies

As mentioned earlier, in March 2011, the interim government established the Higher Authority for Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition (“Higher Authority”) to draft and propose reforms shaping the democratic transition and set parameters for the constitution-making process.<sup>41</sup> As part of its mandate, the Higher Authority drafted the rules for the October 2011 elections of the National Constituent Assembly and included a requirement for vertical parity (i.e., the alternation between male and female candidates in parties’ electoral lists). (See Chapter 2 for more information on the Higher Authority and parity in the 2011 electoral law.) This initial success for proponents of parity helped set the stage for future debates within the constituent assembly.

In the constituent assembly’s final days in 2014, Lobna Jeribi, a representative from the Ettakatol party, submitted an eleventh-hour amendment to Article 46, which included language on women’s rights, equal opportunity, and protection from violence. Jeribi presented the proposal on behalf of the Consensus Committee; the amendment committed the state to “seek parity between men and women in elected assemblies.”<sup>42</sup>

Several fault lines quickly appeared in this debate. One set of concerns arose around whether a parity rule was necessary or appropriate, while another centered on whether a parity provision would be best placed in the constitution or electoral law. As described by Ennahdha

member Mehrezia Labidi, “a conservative opinion said, ‘Ok, you got it. Parity – it’s [already] a fact. So why must we mention it in the constitution? Just mention it in the next electoral law.’ But another opinion of a group of women and a small group of men within the constituent assembly...[and] especially in civil society... the UN, and Europeans, said, ‘Beware, if you don’t mention it in the constitution, you are going to lose it.’”<sup>43</sup>

On the constitutionalization of parity, opinions coalesced around two main points of view not uncommon to quota debates across the world. The first argued that unless the law reserved parliamentary seats for women, deeply-rooted conservative traditions would prevent even the most competent female candidates from winning office.<sup>44</sup> This view was not unfounded; in a 2013 public opinion poll conducted by UNDP, only 18 percent of Tunisians declared that they would vote for a woman if presented with male and female candidates with the same competencies and experience. Fifty percent said they would vote for the man and 11 percent said they would not vote at all.<sup>45</sup> These poll results highlight an inherent gender bias against women as political actors, despite 66 percent favorability towards women’s political participation overall. In fact, the higher the leadership post specified, the lower Tunisians’ support dropped for women candidates. Only 31 percent supported the idea of a woman president, compared to 69 percent support for women ministers and 66 percent support for a woman mayor.<sup>46</sup>

Some women from Ennahdha, the Progressive Democratic Party, Afek Tounes, and others, pointed to the vertical zipper in the 2011 electoral law as proof that, even with quotas, fewer women had been elected to the assembly than men.<sup>47</sup> Farida Labidi, an Ennahdha representative, explained that “women deputies [were] more present than men, yet when given a choice between women and men to represent them in parliament, people choose men—this is a mentality we have to change.”<sup>48</sup>

A second point of view held that reserving seats for women would subvert their authority; women would be better off if their seats were won on the basis of merit alone.<sup>49</sup> In an impassioned speech to the plenary on the day of the amendment’s debate, Ennahdha representative Monia Ibrahim fiercely denounced parity, contending that it undermined the principle of equality for which women had fought.<sup>50</sup> So heated was the debate that several assembly members threatened to vote against the adoption of the entire constitution if the amendment were included.<sup>51</sup>

The controversy over parity was also reflected in broader public opinion. Though conducted long after the vertical zipper was enshrined in the 2011 electoral law, UNDP’s 2013 public opinion survey revealed that Tunisians were still divided on gender parity in electoral lists with 49 percent of respondents supportive of the principle and 41 percent against it.<sup>52</sup>

**TUNISIAN PUBLIC OPINION ON WOMEN’S POLITICAL PARTICIPATION AND PARITY (2013)**

GOVERNORATE	SUPPORT FOR WOMEN’S POLITICAL PARTICIPATION	SUPPORT FOR PARITY IN ELECTORAL LISTS
Monastir	77%	54%
Ariana	76%	55%
Béja	75%	57%
Ben Arous	73%	52%
Nabeul	72%	69%
Tunis	71%	61%

To win support for the amendment, politically savvy women replicated the approach used by women in the Higher Authority to win parity in the electoral law back in 2011, framing the issue as “if you were against parity, you were against women.” Consequently, “no party would dare go against it, because they don’t want to appear against women and don’t want to lose the woman vote,” explained one parliamentarian.<sup>53</sup> Women advocates also publicly equated issues like parity and gender equality with popular revolutionary ideals, such as progressiveness, democracy, and modernism. They employed phrases like: “there is no democracy without equality” and “modernity and democracy go hand in hand.”<sup>54</sup> The success of this approach can be seen in the degree to which actors across the political spectrum began coopting their language. As described by one ATFD activist, “In the beginning, when Ennahdha came, they tried to justify their positions by saying ‘We are Muslims,’ but now after long work with the party, they say ‘we are progressives.’ To which [jokingly] we say, what do you leave us? You’re Islamists, democrats, progressives—all the rest of us have lost our identities!”<sup>55</sup>

Article 46 and its amendment were ultimately passed with 116 votes in favor, 40 against, and 32 abstentions.<sup>56</sup> Several months later, the constituent assembly would go on to pass a new electoral law that, despite falling short of activists’ hopes for horizontal parity, reaffirmed vertical parity.<sup>57</sup> In June 2016, however, Tunisia’s parliament (the Assembly of the Representatives of the People) adopted an electoral law

for municipal and regional elections that included both horizontal and vertical parity. The law passed with 127 of 134 representatives in favor.<sup>58</sup> One female member of parliament noted that “[women] advanced on the ground, like in a battle. When you win a kilometer, you are not going back.”<sup>59</sup>

#### EXCERPT FROM TUNISIAN CONSTITUTION OF 2014

**“The state guarantees the equality of opportunities between women and men to have access to all levels of responsibility in all domains.**

**The state works to attain parity between women and men in elected Assemblies.”**

ARTICLE 46

## Equal inheritance and the Personal Status Code

The issues analyzed here represent those most commonly discussed by Tunisian respondents and are not indicative of the full range of substantive issues that women raised. For those issues that did not prove politically viable during the constitution-drafting process, like the right to equal inheritance, many women demonstrated strategic foresight by quietly inserting specific language that could establish the legal framework to win those battles in the future. As legal expert and feminist Sana Ben Achour explained, “you have article 21 on ‘equality before the law’ and ‘equal rights’. It’s not by chance that it was written [in this way.]”<sup>60</sup> She and others fought for that language in anticipation of an impending battle over women’s right to equal inheritance, which has indeed become a major point of contention since the ratification of the constitution.<sup>61</sup>

Just as important as what some women fought *for* in the constitution was what others fought to keep *out*, including the 1956 Personal Status Code. Though progressive for its time, its critics often point to remaining discriminatory provisions, particularly in marriage rights and women’s inheritance.<sup>62</sup> As such, many liberal women activists viewed the Personal Status Code as the baseline for women’s rights—the

floor beneath which they would not sink. Conversely, many conservatives saw it as the ceiling—the maximum that they would concede.<sup>63</sup> Because its provisions on women’s inheritance are drawn from Sharia, any attempts to amend those also came up against religious resistance.<sup>64</sup> The status quo—or leaving the code untouched—therefore became the only common ground between the two camps.<sup>65</sup> Many women, both liberal and conservative, wanted to preserve the rights women gained in the Personal Status Code. But liberal women feared that if it were constitutionalized with its remaining inequities, the code would become even more difficult to amend.<sup>66</sup>

To resolve this, liberal advocates pushed through a compromise: Article 46 now commits the state “to protect women’s accrued rights and work to strengthen and develop those rights,” which they argue can serve as a catch-all to protect not only the rights women gained in the Personal Status Code, but also rights and protections gained in other areas of Tunisian law.<sup>67</sup> The Penal Code, for example, has been amended over the years to criminalize domestic violence and rape outside of marriage. The Tunisian Nationality Code grants Tunisian nationality to children born to a Tunisian mother and a foreign father.<sup>68</sup> To balance the concerns of liberals and conservatives on both sides, Article 82 was added, forbidding amendment to the Personal Status Code except by referendum, assuaging conservative fears of constitutional reforms that might violate Sharia.<sup>69</sup>

However, as of 2017, the ground appears to have shifted: President Béji Caïd Essebsi announced a review of the Personal Status Code’s unequal treatment of inheritance rights for women. A commission has been appointed to tackle this contentious issue, and Ennahda has not opposed the initiative.

## NOTES

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# 4 GENDERED CHALLENGES TO WOMEN'S PARTICIPATION

Tunisian women's participation in the constitution-making process proved critical to building a legal bedrock for women's rights and freedoms. The strategy employed by those who supported principles like equal rights, equal opportunities, and parity was remarkably successful. They focused on the steady, systematic accumulation of women's fundamental rights and freedoms, built on their astute understanding of the current political environment and what Tunisian society would accept as a reasonable rate of cultural change. Women also engaged male allies across the political spectrum who helped to secure their leadership roles and advance their constitutional priorities.

Despite these achievements, and regardless of the particular agenda they espoused, women faced a number of gendered challenges to their participation in constitution reform—particularly related to social norms around women's roles in politics, a historically male-dominated space.

## Perceptions of tokenism in the constituent assembly

In the constituent assembly, women were not necessarily viewed as legitimate political actors by their peers, even despite their ample presence and high participation rates. This was even the case at the highest levels of the constituent assembly leadership (see Box 3). Some worried the vertical parity requirement created a perception that women were included on electoral lists merely to satisfy the law, not because of their expertise or capacity as political actors. Women served in the government under Ben Ali, but they were often nominated and seen as junior players that needed to be “tutored, protected, and guided.”<sup>1</sup>

Although women played an active role in the revolution, this perception of women as inexperienced political actors created an environment where they were forced to prove their legitimacy at every turn. Women sought to have a voice within their parliamentary group and “not only be a finger that presses the button [to] vote.”<sup>2</sup> Women wanted to be “a voice in [policymakers'] minds, the [voice] who says what to vote and why,” but this was a challenge across all political parties.<sup>3</sup>

In reality, the vast majority of the constituent assembly, both men and women, had little familiarity with the political and legislative process. “[N]othing prepared them for that role...because it was the first year of democracy and it was the first democratically elected parliament...most of them [both men and women] needed training and that was obvious. And many of them lacked an understanding of policy issues and of policymaking in general,” said one activist.<sup>4</sup> Still, male assembly members had greater perceived credibility, a reality which was reflected in their disproportionate representation in party leadership roles.<sup>5</sup>



*Constituent Assembly Vice-President Mehrezia Labidi speaks during debates on the new constitution on January 17, 2014, in Tunis.*

Fethi Belaid / AFP / Getty Images

### BOX 3: CHALLENGING TOKENISM: WOMEN'S LEADERSHIP IN THE CONSTITUENT ASSEMBLY

Mehrezia Labidi was elected as a member of Ennahdha party and served as the first vice president of the constituent assembly. In this role, she supported the president of the assembly, Mustapha Ben Jaafar, and presided over plenary debates in his absence. According to one observer, she presided over more plenary debates than the assembly president himself, and “her sessions were more difficult than Ben Jaafar’s, had more heated debates, and she helped build consensus.”<sup>6</sup> As one of the most prominent women’s voices in the assembly, she understood what was at stake for the future of women in Tunisian politics:

*“I understood those risks relatively early on and I developed the ability to impose my authority. I was aware that, in doing so, I would be projecting an image of myself as an authoritarian woman, a strong woman, and that the opponents of the [ruling coalition] were going to criticize my iron fist, accusing me of curtailing their freedom. But I nevertheless decided to be firm... and fair. It was a personal challenge, too: proving to the Tunisians, to the Arab-Muslims, and to the whole world, that a woman could reach such a position in an Arab, Muslim country, not because she was appointed, but because she was democratically elected, and that she could have the necessary authority to fulfil her duties and be up to the task.”<sup>7</sup>*

While mediating debates in the plenary, Labidi’s competency and leadership was often tested. She had to enforce her authority and convince other members that she was not just a token woman representative. During one long and heated debate between two prominent figures, including a senior Ennahdha official, Labidi imposed herself in the argument as chair of the plenary and lectured them on the rules of procedure, reproaching them for acting out of order. It was a show of force that set the tone for the remainder of her sessions. Afterward, she noticed a shift in how assembly members acted when she presided over debates. She was no longer viewed as a woman who received her appointment for the sake of parity; she was recognized and respected for her leadership and ability to manage the plenary.<sup>8</sup>

## Discrimination in society at large

Media outlets also perpetuated the notion that men possessed greater capacity than their female counterparts. Journalists regularly interviewed assembly members on the progress and achievements of the drafting committees and plenary, but primarily sought interviews with male assembly members. This was despite women’s overall high rate of participation in the committee and plenary sessions. One female assembly member expressed frustration that “women contributed to every period of the constitution-making process, but there’s little recognition of [our achievements].”<sup>9</sup> In some instances, media outlets selected male assembly members to report on their committee’s work even though they were not actually present during their committee’s working sessions.<sup>10</sup>

Women in civil society faced many of the same challenges in gaining traction with media outlets. “I seized the opportunity to respond to all media requests, because in Tunisia, there aren’t a lot of women in the media,” noted co-founder of Tunisian Association of Democratic Women and current parliamentarian Bochra Bel Haj Hmida. Bel Haj Hmida found that she had to convince the media of her competence to speak on constitutional issues and, further, that she had to push journalists to engage with more women.<sup>11</sup>

Women outside of the constituent assembly also faced misgivings related to their capacity and competencies; these however were driven by the internalization of social and cultural norms related to politics as an exclusively male affair. Civil society activists and researchers noted that many women outside of the capital expressed doubt as to whether they could or should participate in political activities. According to these researchers, women’s self-exclusion remains widespread. For example, in Gafsa, a governorate in the interior of the country, “there were lots of educated women, but they didn’t feel they were competent enough compared to men. The less educated they were, the more they felt that.”<sup>12</sup> And, in Sfax, a coastal governorate south of Tunis, interviewees reported very low levels of women’s participation in the election, whether as candidates or voters, due to a lack of confidence.<sup>13</sup>

## Targeted threats and attacks

In communities where women chose to mobilize and participate in constitution-related activities, some were discouraged and even threatened. They were told that “if you engage in politics, you’ll gain a bad reputation.”<sup>14</sup> As elected officials, female assembly members also faced similar gendered double standards. As women, they were not considered legitimate political actors, but when they fought to be taken seriously and “spoke as firmly and...as harshly as men, [they would say] ‘Oh, they are not good women, because they are behaving like men.’”<sup>15</sup>

Women also faced personal attacks as a result of their participation. Women in the constituent assembly were disproportionately targets of harassment, assault, and insults either directly or through social media, as compared to their male counterparts.<sup>16</sup> Members of ATFD who spoke to the media about women’s rights were called traitors, accused of working with an external agenda from abroad.<sup>17</sup> Some even received death threats.

## Subordination in theory and practice

Women in the assembly also struggled to reconcile their identities as political actors and as mothers. Long hours in the constituent assembly proceedings made it difficult for women to also fulfill their duties at home. Most votes took place after midnight, which made it particularly difficult for women with young children or women who were the sole caregivers in their families.<sup>18</sup> When women called for the creation of a kindergarten in the constituent assembly to help mitigate some of these challenges, it was considered unfeasible; some women reported that their male counterparts responded cynically and the proposal became the subject of jokes among assembly members for some time.<sup>19</sup>

Substantively, so-called “women’s issues” were also viewed as secondary. Women in civil society were told by some of their male counterparts that “this is not the time to talk about women’s rights—we have to talk about freedom of speech, etc. That is more important.”<sup>20</sup> But many believe that if not for women’s mobilization around these issues, women’s rights would not have been protected under the constitution.

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# 5 | REALIZING WOMEN'S CONSTITUTIONAL GAINS

**T**he constitutional provisions that women secured on gender equality set in motion Tunisia's future as an Islamic country operating as a civil state. A country that supports moderation, tolerance, and human rights; encourages women's political participation; serves as an ally for women's inclusion; and protects the equal rights and duties of citizens. These articles molded the constitution into a powerful tool that advocates can use to further extend the boundaries of women's rights.

Yet, as in any democratic transition, challenges remain. Interpretation and implementation are the next stages in the constitutional process and it is possible that executive, legislative, or judicial action—as well as social, cultural, or religious norms—could erode the rights and freedoms that women fought so hard to achieve. The constitution charts a course for developing a new social compact, but as Ben Ali and other authoritarian rulers have demonstrated, constitutions can be ignored or amended. They are only as powerful as the laws and policies that activate them. For this reason, the Tunisian constitution—particularly the transitional provisions in chapter 10—stipulates several timelines for the establishment of certain institutions.

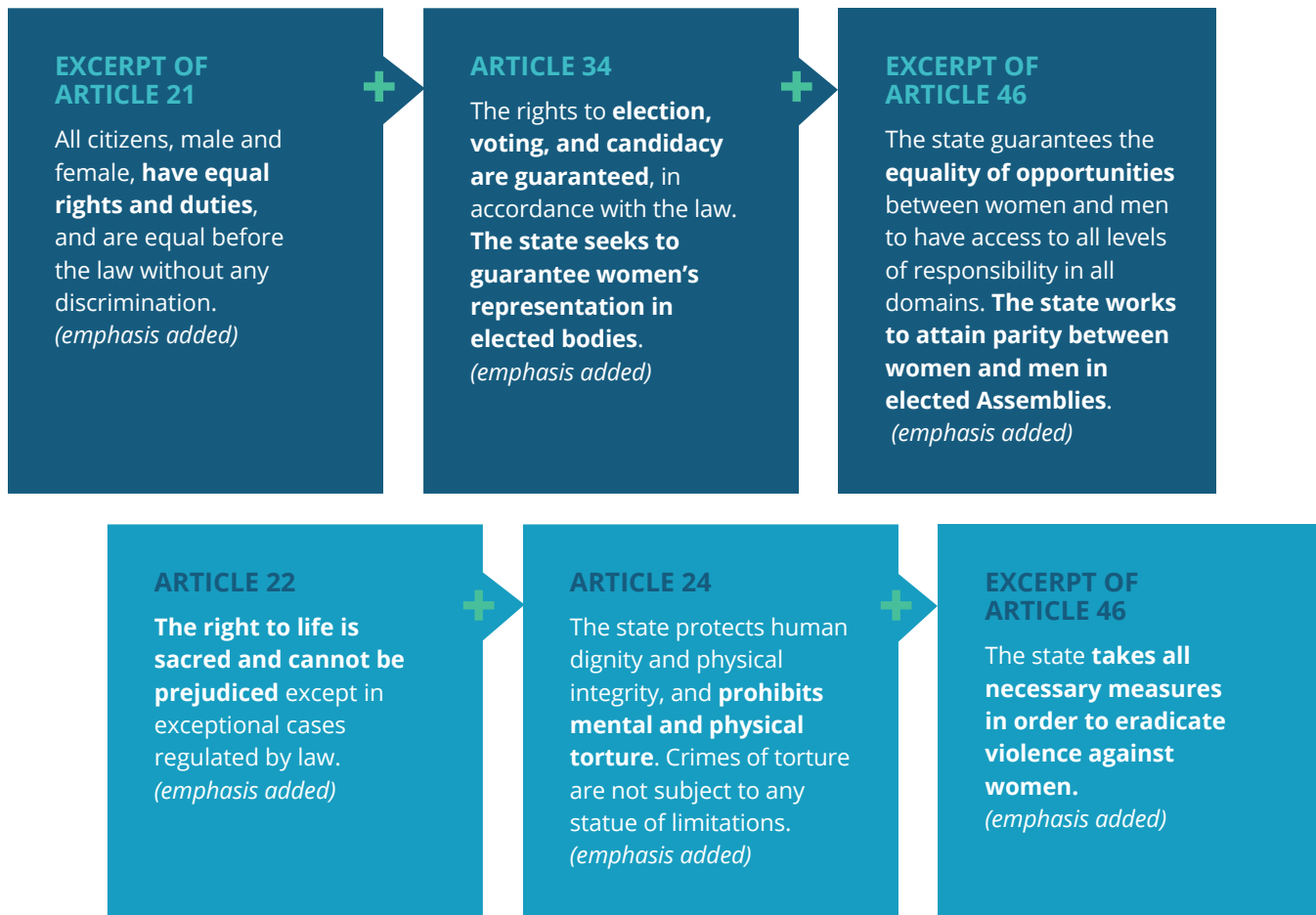
As legal expert Salsabil Klibi wrote shortly after the constitution's adoption, “the first mechanism of implementing the [post-revolution] Constitution is legislation. The legislature is the body that regulates how the rights and freedoms enshrined within the Constitution are practiced, as well as creates the new institutions and determines their operating methods and procedures.”<sup>1</sup> Yet disputes are already evident in the interpretation and application of the constitution's provisions; the constitutional court, which has yet to be established, will likely play a decisive role in resolving them.

## The promise of an “indissoluble” foundation

From their experiences during the Ben Ali era, Tunisian women understood the importance of layering constitutional provisions to create strong legal arguments as they looked ahead to future executive, legislative, and judicial action. Under the 1959 constitution, for example, the right to stand for presidential office was reserved for “any Tunisian” who fit several criteria relating to religion, nationality, and age.<sup>2</sup> However, the Arabic text used only male pronouns. “We argued that it was meant to be inclusive of all,” constitutional expert Salsabil Klibi explained, “but others said ‘No, [not] when read together with the Article 1 provision, which said the state religion is Islam. They said ‘In Islam, women can't lead.’”<sup>3</sup> Women were thereby excluded from standing for the highest office in the country. In response to this experience, women advocates ensured that Article 74 of the 2014 constitution, which lays out the criteria for presidential candidates, specifically spelled out the right of “every male and female voter” to stand for office.<sup>4</sup>

As noted by Monia Ben Jemia, President of the Tunisian Association of Democratic Women, “a constitutional provision cannot be interpreted independently from the others and an article cannot be interpreted in isolation to other articles, as advised by article [146],” which stipulates that “the Constitution's provisions shall be understood and interpreted in harmony, as an indissoluble whole.”<sup>5</sup> As a result, she argues, the articles in the constitution combine to strengthen each other.<sup>6</sup> Article 34, for example, states that “the rights to election, voting, and candidacy are guaranteed, in accordance with the law. The state seeks to guarantee women's representation in elected bodies.” At first glance, this article—the second provision in particular—may seem redundant to Article 46, which commits the state to attaining gender parity in elected assemblies.

## EXAMPLES OF LAYERED CONSTITUTIONAL PROVISIONS



By spelling out the state's guarantee of political rights, however—which Article 21 stipulates must be applied equally to men and women—Article 34 provides another layer of guarantees of women's right to vote and stand for office. Article 34 also offers additional legal grounds for affirmative action aimed at ensuring women's representation in elected assemblies. Though, according to legal analysis by International IDEA, the language is weaker than that of Article 46.<sup>7</sup> Similarly, liberal women argue, the right to life (Article 22) and the ban on moral and physical torture (Article 23) collectively point to women's right to security, reinforcing Article 46's aspiration to eradicate violence against women.<sup>8</sup>

Women employed the same strategy to ensure that the spirit and principles of the law, as outlined in the preamble and Chapter 1, reinforced the rights and freedoms awarded in Chapter 2.<sup>9</sup> The preamble, for example, reaffirms "equality of rights and duties

between all citizens, male and female," which women could use in conjunction with Article 21 to strengthen appeals to the constitutional court on equality.<sup>10</sup> It was for this very reason that women advocated for Article 21 and other provisions to be moved from Chapter 1 to Chapter 2.<sup>11</sup> "Including these rights in the chapter for rights and freedoms actually gives more strength to these rights, which become enforceable and no longer simple principles that the legislator must respect," explained Monia Ben Jemia, President of ATFD.<sup>12</sup> Similarly, the preamble expresses commitment to "the highest principles of universal human rights" and the "supremacy of the law and the respect for freedoms and human rights." When overlaid with the language in Article 2 that "Tunisia is a civil state based on citizenship, the will of the people, and the supremacy of the law," these provisions emphasize human-made law (as opposed to religious law) and the primacy of rights and freedoms.<sup>13</sup>



## Weaknesses, risks, and ambiguities

Women in the constituent assembly and in civil society fought fiercely over single words and phrases they felt would tilt interpretations of the constitution toward or away from their own understanding. They noted that “sometimes even a comma can change interpretation of a text.”<sup>14</sup> Yet political compromise also necessitated that certain language be left intentionally vague or risk losing majority support. Take, for example, the constituent assembly’s decision to delete the provision on the inviolability of “Islam as the State religion.”<sup>15</sup> At times, competing—or, to some, contradictory—principles were the price paid for consensus. Article 6, for example, makes the state the “guardian of religion” and commits it to “the protection of the sacred, and the prohibition of all violations thereof,” while guaranteeing freedom of conscience, belief, and religious practice. To many, this language appears contradictory. “How can we [reconcile] the rights of [LGBTQ individuals] with two contradictory articles: A civil state [that protects] religion?” asked one female parliamentarian, “I think the question of ambiguity will remain because the constitution is not a text of exact science—it’s the result of a balancing of powers and consensus.”<sup>16</sup>

Some Tunisians are already pointing to what they see as worrisome interpretation and implementation of Article 46. In spring 2014, after the ratification of the constitution, the constituent assembly debated the electoral law for the new parliament. A group of assembly members argued that the constitution required not only vertical, but also horizontal, parity in electoral lists, citing Article 46 that requires the state to “[work] to attain parity between women and men in elected Assemblies.” When a majority of the assembly members rejected this interpretation, proponents of horizontal parity took their case to the Tunisian Constitutional Commission (Instance Provisoire de Contrôle de la Constitutionnalité des Projets de Lois), a temporary body empowered to review draft laws for their constitutionality before the constitutional court is established. Legal expert Salsabil Klibi argued in favor of parity, explaining to the commission that “you are obliged to choose the appropriate measure that leads you to the result [of parity]” and “as we already tested, vertical parity alone...doesn’t get you there.”<sup>17</sup> The commission rejected the petition, ruling that the state is only required to “work to attain” parity, putting the

emphasis on the state’s effort, rather than the outcome of that effort.<sup>18</sup> According to Klibi, “it’s a problem if [Article 46 is] interpreted this way because each time you ask for something, they can tell you ‘we just have to [‘work to attain’]’... This can be repeated each time we ask for implementing provisions of the constitution—maybe about [women’s] economic and social rights too.”<sup>19</sup>

**“You are obliged to choose the appropriate measure that leads you to the result [of parity]” ...As we already tested, vertical parity alone doesn’t get you there.**

LEGAL EXPERT SALSABIL KLIBI’S ARGUMENT  
IN FAVOR OF HORIZONTAL PARITY

Article 7 elicits similar concerns from liberal Tunisian feminists. Because the article stipulates “The family is the nucleus of society and the state shall protect it,” some are worried that this article will be used to defend gender inequities and discrimination within the home. “In the name of family, you can kill women,” one woman parliament member explained, referring to so-called honor killings, in which families—typically male members—kill female relatives who are believed to have brought dishonor upon them. “Fifteen years ago, marital violence was not considered violence if the couple was married, because it was [considered] private.”<sup>20</sup> One of the first bills feminist advocates took to the parliament was therefore the Comprehensive Law for Combating Violence Against Women. They invoked several of the legal foundations layered into the constitution, including Article 46 (“the state takes all necessary measures in order to eradicate violence against women”), Article 21 (“all citizens, male and female, have equal rights and duties and are equal before the law without any discrimination”), and Article 23 (“the state protects human dignity and physical integrity”). Despite its strong constitutional basis, the bill’s passage initially stalled; reflecting the necessary, but sometimes insufficient, role of the constitution in advancing women’s freedoms.<sup>21</sup>

Nevertheless, thanks to a concerted push from parliamentarians, women's and human rights organizations, and international supporters—which included public consultations and campaigns, open debates, and strong advocacy by the bill's backers—Tunisia passed the groundbreaking Elimination of Violence Against Women bill in July 2017.<sup>22</sup> The law adopts an expansive definition of violence, prohibiting physical, economic, and even psychological abuse in both public and private life. It provides protections, such as increased penalties for domestic violence; legal, medical, and mental health support for survivors; and the elimination of a penal code provision that allowed rapists to marry their victims in exchange for impunity. But the law also sets out provisions to prevent violence in the first instance, including training for educators to address violence in schools and new family violence units within Tunisia's Internal Security Forces.<sup>23</sup>

Some proponents of gender equality are also keeping a close eye on the interpretation and implementation of Article 21, given an ongoing dispute over its ability to extend equality from the public into the private realm. Women demanded that the article's initial version, “all citizens shall have equal rights and obligations and shall be equal before the law,” include a more explicit reference to gender. A proposal was floated to replace “citizens” with “men and women.” This was ultimately rejected in favor of the final text which states “all citizens, male and female, have equal rights and duties.”<sup>24</sup>

Retaining the word “citizens” was reportedly important for some religious conservatives, who perceive it to refer to the relationship between the individual and the state—as distinct from relationships between family members.<sup>25</sup> But some liberal legal scholars rejected this formulation, arguing that the only limitation implied



*Members of the Tunisian National Constituent Assembly celebrate the adoption of the new constitution in Tunis, January 26, 2014.*

AP Photo / Almen Zine

by “citizen” is nationality.<sup>26</sup> ATFD President Monia Ben Jemia suggests that equality in private and public spheres are interdependent, and any rejection of gender equality within the home would violate women’s rights as guaranteed in other constitutional provisions, such as equal political rights, the right to work, and the right to culture—especially since “the constitution’s provisions shall be understood and interpreted in harmony, as in indissoluble whole” (Article 146).<sup>27</sup> Regardless, the July 2017 passage of the law on the Elimination of Violence Against Women, which applies Article 21 to the protection of women within the home, points the interpretation of that article in the direction of both public and private gender equality.

## The unknowns of the constitutional court

Critical to the interpretation of these and other provisions will be the makeup of the constitutional court itself, which, at the time of writing, has not yet been established. The court is the sole body authorized to oversee the constitutionality of draft laws, constitutional amendments, and adopted laws in the case of alleged unconstitutionality, among its other responsibilities.<sup>28</sup> In October 2016, Tunisians took a significant stride towards standing up the court by electing members of the Supreme Judicial Council.<sup>29</sup> In a complicated arrangement designed to ensure the independence of the judiciary, the council will be tasked with appointing four of the twelve judges on the constitutional court, with the President of Tunisia and the Assembly of the Representatives of the People responsible for appointing another four members each.<sup>30</sup>

How these twelve judges will interpret the new constitution and their roles in its implementation may vary greatly. One international observer noted that the majority of Tunisia’s judges have only ever worked with the previous constitutional council, which Ben Ali intentionally weakened, and will be unaccustomed to the more active role the constitutional court has been charged with playing.<sup>31</sup> Further compounding this challenge is the fact that the constitution has created many new concepts and standards in the political-legal system.<sup>32</sup> The timeline granted to the court for grappling with these new concepts is

tight. The constitutional court has three months, with the option to extend once by another three months with justification, to render a decision on the unconstitutionality of laws.<sup>33</sup> Constitutionally-mandated deadlines for other decisions, including the constitutionality of draft laws and constitutional amendments, drop to 45 days or less.<sup>34</sup> Any of these factors may make a more passive, conservative interpretation of the constitution the easiest course for the court’s members. Indeed, after organizing several dialogues with both men and women judges, Sana Ben Achour, a lawyer and women’s rights activist, noted a significant need for trainings on human rights, gender equality, and gender-based violence.<sup>35</sup>

Although the constitutional court has sole jurisdiction over the interpretation of the constitution, other judges may also require training on how to interact with the court, given that under Ben Ali’s regime, the president alone could refer questions to the constitutional council.<sup>36</sup> This challenge was laid bare by a 2014 incident in Sousse, in which a court invalidated a marriage between a Muslim woman and a non-Muslim man by applying the provisions of the Personal Status Code instead of the new constitution.<sup>37</sup> Tunisian judges’ unfamiliarity with the new constitution, mechanisms available for referring cases to the constitutional court, and the court’s expanded powers may jeopardize implementation of the hard-fought compromises that the many parties to the constitution-making process ultimately agreed upon.



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# LESSONS FROM THE TUNISIAN EXPERIENCE



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*Constituent Assembly members pose for a group photo during the final plenary session of the parliament in Tunis, November 20, 2014.*

In January 2014, Tunisia ratified what is arguably the most progressive constitution in the Arab world. In doing so, it marked a major milestone in its peaceful transition from dictatorship to democracy. As Tunisian women chose to prioritize positive rights like equality and political participation, they gave life to the ideals of the revolution. The mass protests of December 2010 and January 2011 were borne of widespread discontent and frustration with marginalization, repression, and corruption associated with the Ben Ali regime. Women from all political shades sought to bring about a new future for Tunisia, one grounded in pluralism, equality, and good governance.

Throughout the constitution-making period, women in the constituent assembly and civil society shaped the process and the outcomes. They played critical roles in setting the substantive agenda and driving constitutional discourse. They built consensus around language now enshrined in the 2014 constitution. They served as leaders and decision makers and proved to be adept politicians and negotiators. Women also linked their communities with the national process and promoted citizen participation, whether at the polls or in the streets. All the while, they fought against discrimination, doubt, and even physical threats; their

political legitimacy constantly under question. Yet, despite these challenges, women achieved important gains. They won almost one-third of seats in the constituent assembly. They mobilized their constituents around issues like gender equality and political parity. They proved, through their leadership and actions, that women can serve as effective political actors.

However, women did not operate as a single, monolithic bloc during the Tunisian transition. Their experiences and views echoed the diversity of Tunisian society. In almost every case, they stood on opposing sides of the debate and occupied nearly every position in between. While divisions between conservatives and liberals received the most attention, women's participation was also affected by geographic and class divides. Where women were able to coalesce, they made great strides forward—but they by no means agreed on all issues.

The story of Tunisian women during this period was one of diversity, perseverance, and political savvy. Their contributions illustrate how women, individually and as a group, can impact constitutional outcomes and challenge social norms around what it means to be a woman.



# Insights from Tunisia: How women effect change

While many lessons can be drawn from this collection of women's experiences in Tunisia, there are three key insights that can help women in other countries preparing for or undergoing constitution reform, particularly where this is the result of societal upheaval, revolution, or conflict. While every context is unique, these strategies represent common leverage points that could be tailored to particular settings.

## 1

### Early mobilization lays an important foundation.

Constitution reform has long been studied as a standalone process with a distinct beginning and end, opening with something like constituent assembly elections and closing with the ratification of a final constitution. Yet recent scholarship has suggested that the timeline for constitutional negotiations is much more nuanced and varied in practice. The Tunisian case shows that women's early mobilization (i.e., mobilization prior to the election/appointment of a constitution-drafting body) can have positive impacts on women's inclusion or the inclusion of their priority issues in the constitutional process—and this echoes findings from elsewhere.<sup>1</sup> In Tunisia, political bargaining and mobilization around the constitutional process began well before the October 2011 constituent assembly elections and women during this period zeroed in on two key issues: 1) *who* would ultimately draft the constitution and 2) *what* issues they would prioritize.

As members of the Higher Authority, women like Yosra Fraoues and Hafida Chekir were on the frontlines of early constitutional negotiations. The Higher Authority was responsible for drafting the constituent assembly electoral law and they saw the law as an opportunity to set the stage for women's participation and representation in the formal constitution-drafting process. Fraoues, Chekir, and their allies championed a vertical parity provision that would require political

parties to alternate between male and female candidates on their electoral lists. They advocated to their fellow Higher Authority members, as well as political party representatives, leveraging public opinion at a time when political parties sought to grow their popularity ahead of the elections.

The parity provision was seen by many as contributing directly to the relatively high number of women elected to the constituent assembly. The provision also served as a precursor to the parity debates that arose in relation to Article 46 in the constituent assembly. Female assembly members who supported parity pointed to the 2011 electoral law as proof that some kind of quota was needed to ensure fair political representation; even with the parity provision, fewer women had been elected to the assembly than men. In many ways, the work of the Higher Authority and the resulting electoral law set an important precedent and paved the way for Tunisia to continue the conversation around the most effective ways to ensure women's equal political participation and representation.

## 2

### Identifying, and acting on, shared interests builds power.

There is often an assumption that women will agree on certain issues because of their shared identity as women. However, this essentialization overlooks the multifaceted nature of women's identities, which are often shaped by elements tied to their political, social, cultural, and religious beliefs, in addition to their gender. Women in Tunisia, for example, represented the full spectrum of political views, from conservative to liberal and everything in between. While some remained as divided as Tunisian society—even on issues relating to women's rights—others began to collaborate more closely, building understanding and even trust through shared experiences and the many hours spent together in meetings and committees. Though they remained loyal to their parties, some began to find that—despite their differences—they agreed on principles like gender equality and parity and could work in tandem to achieve these shared interests.

A group of women in the constituent assembly coalesced around the issue of gender parity in elected assemblies. They sought to ensure that women, regardless of party affiliation, would continue to be well represented in parliament. Female assembly members who supported parity spanned the political spectrum; members from the Democratic Bloc, Ettakatol, Ennahdha, and others came together to draft the initial parity language. Working across parties allowed these women to begin building consensus before deliberations began in the drafting committees and plenary. They negotiated with each other over language their parties could agree on and prepared the ground by anticipating potential counterarguments to their proposal.

This process, however, was not without challenges and even controversy. In some cases, women and men risked their political careers by acting independently from their party. Some women in the assembly staunchly opposed the parity provision, claiming it undermined the principle of gender equality. Several assembly members threatened to vote against the adoption of the entire constitution if the parity provision was included. Despite these challenges, advocates succeeded in adding the parity provision to Article 46.

This cross-party collaboration illustrated to other constituent assembly members that working across the aisle was possible, even as political consensus began to splinter. It also helped to elevate women's rights and freedoms as important constitutional issues while some men were telling their female colleagues that this was not the appropriate time to address such issues. Nonetheless, this collaboration also illustrated the limits of women's overlapping interests. After the passage of the constitution, female assembly members remained divided over how to implement principles like parity and gender equality. While women could agree on the importance of enshrining parity in the constitution, what it entails in practice remains an area of disagreement.

Women across the political spectrum, both inside and outside the constituent assembly, shared similar challenges and experiences of gender bias, such as negative perceptions around women's participation in politics. Mehrezia Labidi, member of the Ennahdha party, felt she was initially not taken seriously and had to demonstrate her credibility as first vice president

of the constituent assembly. She had to enforce her authority when she served as plenary chair and prove that she was not just a token woman. Bochra Bel Haj Hmida, a liberal women's rights activist who became a member of parliament in 2014, also found that media outlets overlooked women as credible sources in their coverage on the constitutional process. She seized every opportunity to speak to the press because women were not being portrayed as relevant actors in this groundbreaking process.

Labidi, Bel Haj Hmida, and others worked to address these biases—not only for their own benefit, but for the benefit of other women. Labidi encouraged other female assembly members to take charge and speak out in assembly proceedings. Bel Haj Hmida worked to convince the media of women's competence to speak on constitutional issues and pushed journalists to engage with more women. These are only a few examples of the many ways that women pushed the boundaries to assert their place as legitimate political actors. In a society that does not always see women as equally capable to men in the realm of politics, women worked hard to prove that they could engage in political discussions and contribute to substantive outcomes.

### 3

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## Meaningful participation happens outside and inside the constituent assembly.

Obtaining 31 percent of the seats in the constituent assembly was a vital accomplishment for Tunisian women. The assembly was, after all, at the heart of the drafting process; its members served as the ultimate arbiters of the constitutional text. However, the constituent assembly did not operate in a political vacuum. Given the nature of the revolution and the political transition overall, the events happening outside the assembly inevitably influenced the actions inside from 2011 to 2014.

Women like Amira Yahyaoui and her organization Al Bawsala played a critical role in strengthening this insider-outsider connection. After realizing the insular nature of the assembly in its early stages, Yahyaoui

sought to make the drafting process more transparent. Little was known about what was happening within the walls of Bardo Palace, so Yahyaoui and her associates began broadcasting the proceedings via social media to hold assembly members accountable and make the process more accessible and transparent.

The debate over complementarity is perhaps the most telling example of how external events shaped the internal proceeding of the assembly. When the complementarity clause initially emerged in August 2012, civil society's response was overwhelming. Thousands of protestors spilled into the streets calling on the constituent assembly to amend the clause. While there were arguments on both sides of the debate, the massive pushback from civil society tipped the balance; the next draft abandoned the concepts of gender partnership and complementarity. Some believed that supporters of the complementarity clause had no other option than to concede because of the public's strong response.

Women also influenced the constitutional process as legal experts, providing technical support to constituent assembly members. The vast majority of members, both men and women, had little familiarity with the political and legislative process, so women like Salsabil Klibi and Sana Ben Achour gave legal advice and testimony to help guide the process. These women helped shape important provisions like Article 6,

which addresses freedom of conscience. They also ensured that language on key rights and protections, like equal rights and opportunities, left little room for interpretation by judges.

## A basis for equality, peace, and democracy

Through their mobilization and advocacy, Tunisian women influenced the range of substantive issues debated in the constitutional process, particularly those related to women's rights. They made critical gains toward gender equality and fair representation. Moreover, the specific articles championed by some women in the constituent assembly (e.g., Article 21 on equal rights and duties, Article 34 on women's representation in elected bodies, and Article 46 on equal opportunities, parity, and protection of women) offer layered protections and legal foundations for future legislation on issues like equal inheritance.

As Tunisia turns from drafting to implementation, the constitution serves as a social contract and roadmap that will evolve over time, whether driven by debates on the meaning of specific provisions or the broader principles contained in the constitution's framework. Indeed, the rights and freedoms provided in the constitution may have little meaning until they are



Thierry Bresillon / Sipa via AP Images

*A deputy of the National Constituent Assembly signs a copy of the Tunisian constitution in Tunis, November 20, 2014.*



enforced. And questions persist concerning how the legislature and courts will interpret the constitution, particularly in light of the constructive ambiguity that allowed constituent assembly members to reach consensus.

For example, debates have arisen around what it means for the government to “work to attain parity between women and men in elected assemblies,” as mandated by Article 46. In 2014, the Tunisian Constitutional Commission ruled that the language of Article 46 does not require the government to institute horizontal parity in addition to vertical parity for parliamentary elections. How the constitutional court will respond to this and similar disputes remains to be seen.

Even in the absence of a constitutional court, women will continue to play an important role in shaping legislation as members of the Tunisian parliament. For example, in June 2016, female parliamentarians convinced their colleagues to pass an electoral law that included both horizontal and vertical parity for municipal and regional elections. This was a significant victory, given the pushback against similar efforts to include horizontal parity in 2014. Passage of this electoral law was also a product of continued collaboration across partisan divides; women who supported parity exerted pressure on their fellow parliamentarians and even threatened to denounce the entire electoral law if horizontal and vertical parity were not included. The real test now lies in how the law will be implemented.

Although progress has been uneven in the area of women’s political participation, the constitution has clearly provided a foundation for further shifts toward gender equality in terms of violence against women and family law. In 2017, the parliament passed landmark legislation to protect women from domestic violence and repealed the penal code provision allowing rapists to avoid punishment if they marry their victims. The government also annulled an administrative order from 1973 that prohibited Muslim women from marrying non-Muslims. President Béji Caïd Essebsi invoked the constitution while announcing his intent to move toward equal inheritance rights for women. Although this issue remains contentious, Ennahdha has not opposed the proposed review of this element of the Personal Status Code, and a commission has been appointed to do so.

“We must state that we are moving toward equality between [men and women] in every sphere,” Essebsi said.<sup>2</sup> Even amid setbacks, there is clear momentum toward gender equality. As the country moves toward instituting a new constitutional order, many Tunisian women and men will continue to strive for *de facto*, as well as *de jure*, gender equality.

## Gender equality is a greater predictor of peace than a country’s economic wealth, levels of democracy, or religion.

In fact, Tunisia’s constitutional provisions on women’s rights and gender equality will likely have impacts far beyond gendered concerns. They also relate to peace and security more broadly, which will remain critically important as Tunisia’s new constitutional order continues to unfold. New research has uncovered a strong correlation between gender equality and peaceful societies. Statistical analysis of the largest dataset on the status of women in the world today suggests that gender equality is a greater predictor of peace than a country’s economic wealth, levels of democracy, or religion.<sup>3</sup> This research has further found that inequitable family law—structures regulating rights around property, inheritance, divorce, and child custody, for example—is a strong determinant of societal instability. These inequities provide a foundation for violence against women. When violence and control are engrained within the very fabric of families, these patterns of behavior become normalized and diffuse throughout society.<sup>4</sup> So, while gender equality and the protection of women’s rights are, of course, ends in themselves, these gender provisions may have repercussions for society as a whole, far beyond the status of women. The more structural and physical violence are eliminated, and the more citizens are enabled and incentivized to invest in stability and prosperity, the more secure a nation becomes.

In addition, women’s varied contributions to the constitution and continued participation in the legislative process signal hope for Tunisia’s journey as an emerging democracy—particularly in light of the diverse opinions and sectors of society they represent.

Indeed, given the myriad roles women played in the constitution-making process, there is no singular narrative that describes the totality of women's experiences. The accounts shared in this report represent only a fraction of the narrative threads woven into Tunisia's social fabric. There are countless stories to be told, full of nuance and texture that ultimately define Tunisia's transitional journey. What perspectives are missing from this narrative arc? What other stories capture the experiences of women outside the political elite, rural women, poor women, women from every shade of Tunisia's diverse political spectrum? What role did international actors play in supporting or inhibiting women's participation? There is more to be explored, expressed, and documented, particularly by Tunisian women themselves, and we hope others will build on the findings shared in this report.<sup>5</sup>

There are also lingering questions around the future of Tunisia's constitutional framework that deserve further exploration. What impact, if any, will women's

participation have in the long term? Will provisions on equal rights and equal opportunity translate into measurable gains in gender equality for the country as a whole? Will these provisions also support outcomes related to peace, stability, and robust democracy? While this report has offered a glimpse into what women accomplished in the constituent assembly and in civil society during this transitional period, the long-term impacts of those accomplishments remain to be seen.

Although the 2014 Tunisian constitution is celebrated as a success, many Tunisians continue to feel excluded and forgotten by the state despite all of the *de jure* gains achieved through the transition. In response, women may continue to play a leading role in promoting and establishing inclusive systems and practices, as they have in the past. The constitution provides a formidable tool for them to continue to advocate for their participation. As the country moves toward instituting a new constitutional order, the evolution of women's participation will continue to unfold, as will the story of Tunisia's democracy.

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