

## Post Arab Uprising—Where Are The Voices Of Women In Tunisia In 2020?

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**ABSTRACT:** *The state is committed to the protection of acquired rights for women and works to support and develop them. The state shall endeavour to achieve the principle of parity between men and women in elected councils. The state shall take measures to ensure the elimination of violence against women*.<sup>1</sup> *Family life moulds men and women and determines both where and how they live. The family is however also a nucleus of society. To organise the family is to organise society and to democratise the family is to democratise society.*<sup>2</sup>

**Keywords:** *Arab-Spring, Women, Reforms, Elections, Progress and Equality.*

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### I. INTRODUCTION

December 2010 and January 2011 saw countries in the Middle East and North African region (referred to the Mena Region) transcending into chaos, one of which was Tunisia.<sup>3</sup> For example, the assassination of two political leaders in 2013<sup>4</sup>, the lethal attacks on the Tunisian army in the Chaaubi mountain range, and the ongoing clashes between protestors and the police.<sup>5</sup> These incidents, arguably, resulted in a deteriorating situation of security and political instability within Tunisia, amidst other issues. However, despite these obstacles, Tunisia remained steadfast progressing towards a democratic transition trying to meet the demands of protestors.<sup>6</sup> In contrast to other countries situated within the Mena region, Tunisia, with the exception of and historically Turkey, has made distinct progress in what has come to be known as the “Arab Spring uprising”. Political parties (established and newly established) have agreed to navigate this general sense of uncertainty that would have made it almost impossible to achieve. The result is that civil society and trade unions were treated as important political allies that partook in the shaping the political scenery in Tunisia, which included women’s organisations, Islamists, leftists and liberals.<sup>7</sup> After a series of setbacks, frustrations, disagreements and comprises, which endured over a period of several years, post the “Arab Spring uprising” the National

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<sup>1</sup>Article 45 of the Tunisian Constitution.

<sup>2</sup> Chekhir H “Women, the Law, and the Family in Tunisia” *Gender and Development* (1996) 4(2) 43-46.

<sup>3</sup> It has been commonly acknowledged that the act of self-immolation on 17 December 2010 of Mohammed Bouazzi sparked the wave of spontaneous protest. The root of these protest was as a result of decades of repression, injustice, exclusion and the absence of the most basic of fundamental rights afforded to human beings.

<sup>4</sup>R Hinds “Conflict analysis of Tunisia – GSDRC” (2014) available at <http://www.gsdrc.org> [accessed on 22 July 2020] 1-24. In 2013, there were also two high profile political assassinations that have been attributed to Islamist groups. In February, Chokri Belaid, leader of the left-secularist Democratic Patriots’ Movement, was assassinated as he left his home in the Tunis suburb El Menzah VI. Just five months later Mohamed Brahmi, the leader of the nationalist Movement of the People party was similarly murdered as he left his home in the capital. Brahmi’s assassination prompted widespread protests and increased political polarisation across the country. Both murders have been linked by the Tunisian government to the Salafist-jihadist organisation Ansar al-Sharia Tunisia (AST).

<sup>5</sup> Tunisia (1956-present) Political Science University of Central Arkansas available at <http://uca.edu> [accessed on 1 September 2019] pages 1-3.

<sup>6</sup> Zoglin “Tunisia at a Crossroads: Drafting a New Constitution” *American Society of International Law* (2013) Volume:17 Issue 18 1-13.

<sup>7</sup> Abdelhamid Rhaïem “Tunisia in Transition: Women in Limbo” *al-raida issue 145-146-147 Spring/Summer/Fall* Al-Raida Journal, 2014 - [alraidajournal.com](http://alraidajournal.com) [accessed on 28 June 2020] pages 1-8.

Constituent Assembly(NCA) succeeded in finalizing the first Tunisian post “Arab Spring uprising” constitution.<sup>8</sup>

Tunisian women, since independence the French have always enjoyed women friendly rights, this despite being under an autocratic style of government. The post-revolutionary atmosphere created by the protestors and the already women friendly rights that women have won and maintained has now set the scene of the new Tunisia. As Tunisia has moved away from an autocratic style of government, an unparalleled opportunity presented itself for women to take up and secure more rights. Sadly, and despite the role of women situated on the frontlines of the uprising, it has become now more important than before, to ask how, can women maintain and receive even greater rights in the new Tunisian constitutional dispensation. The question, which this article, hopes to answer, is where are the voices women of Tunisia now?

## II. HISTORICAL BACKGROUND

In Tunisia, the beginning of democratic political organization stretched for back beyond the colonial period to the middle of the 19<sup>th</sup> century. The *Destour* (constitution) party was formed to curb the power of the Ottoman Bey, it was active during the early years of French rule but represented mainly the wealthy citizens. In 1934 Habib Bourguiba broke away from the old party and formed a new political party called the New *Destour* party composed of younger, more radical group, with a modern secular policy. Bourguiba proclaimed that, “The Tunisia we mean to liberate will not be a Tunisia for Muslim, for Jew, or for Christian. It will be a Tunisia for all with no distinction of religion or race, who wish to have it as their country and to live in it under the protection of just law”. Just a few months after independence in 1956, Habib Bourguiba, the first president of Tunisia, post the French Protectorate asked women to remove their head scarves and drop their veils.<sup>9</sup> In what was considered a revolution against religion, morality, and law in an Arab Muslim dominated country, Bourguiba encouraged women to go out without what he called an “odious rag” and a “dreadful burden”.<sup>10</sup> In his endeavour to lay the foundations of a modern state, Bourguiba, who was educated in France and was influenced by the precepts of reason and modernization, strongly believed that the development of his newly independent but poor country would, reasonably, depend on the participation of all citizens, men and women alike.<sup>11</sup>

Historically, as in most Arab countries, where Islam, is the dominant religion, the status of women bear the weight of culture and religion.<sup>12</sup> Evidence, can be deduced that in most instances it can be based on the superiority of male elders or males, which has been described as a patriarchal order.<sup>13</sup> The particular practice of Islam developed in Tunisian society was based on kin groupings that allowed male members of the group to have almost complete control over women.<sup>14</sup> The *shariah*, as inspired by the *Maliki* and *Hanafi* schools of religious thought, was particularly important to the exercise of this type of control. These two schools of thought also sanctioned a special bond especially amongst the male members of the extended kin group. The combined power of the husband and his male kin over women's lives, referred to by Charrad as “kin-based patriarchy”, represented a particular form of subordination and control that women experienced, not only in Tunisia, but also in most Arab and Middle Eastern states.<sup>15</sup>

Tunisia like many other countries in North Africa, was based on the family and classism, owing allegiance either to the family, which in turn would owe it's allegiance to the clan or grouping to which they belonged.<sup>16</sup> This type of allegiance was particular, prevalent in the rural parts, where as in the city it was closely related to

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<sup>8</sup> The Fundamental Pact was issued in Tunis in 1857. It was legally adopted as the country's constitution in 1861, at which point it became the first written constitution in the Mena Region available at <http://www.britannica.com> [accessed on 10 June 2019].

<sup>9</sup> Wing AD and Kassim H “The Future of Palestinian Women's Rights: Lessons from a Half-Century of Tunisian Progress” *Washington & Lee Law Review* (2007) *Washington & Lee Law Review* 1551.

<sup>10</sup> Tchaïcha J and Arfaoui K “Tunisian women in the twenty-first century: past achievements and present uncertainties in the wake of the Jasmin Revolution” *The Journal of North African Studies* (2012) 17(2) 215-238.

<sup>11</sup> Tchaïcha J and Arfaoui K “Tunisian women in the twenty-first century: past achievements and present uncertainties in the wake of the Jasmin Revolution” *The Journal of North African Studies* (2012) 17(2) 215-238.

<sup>12</sup> Chekhir H “Women, the Law, and the Family in Tunisia” *Gender and Development* (1996) 4(2) 43-46.

<sup>13</sup> Chekhir H “Women, the Law, and the Family in Tunisia” *Gender and Development* (1996) 4(2) 43-46.

<sup>14</sup> Charrad MM “Tunisia at the Forefront of the Arab World: Two Waves of Gender Legislation” *Washington and Lee Law Review* 64:4 (2007) 1521.

<sup>15</sup> Buskens L “Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Sphere” 10:1 *Islamic Law and Society* (2003) 70-75.

<sup>16</sup> Salem L “Tunisia” available at <http://www.freedomhouse.org> [accessed on 5 May 2020] 1-29.

class. However, Tunisia having a dominant Muslim population, their allegiance was to Islam. It could therefore be argued that the above everything else, that the Tunisian society identified Islam as a common denominator or a shared common identity above class, race or classism. There is anecdotal evidence that the independence of Tunisia, was as a result of Islam, meaning that Tunisian's put aside their differences and fought as a nation ousting the French, maintaining their identity as Muslims against a foreign non-Muslim state.<sup>17</sup> As the struggle for independence gathered momentum from around the 1920's and 1930's, voices emerged for greater equality between the sexes. Publicly only a handful of women protested women's confinement, illiteracy, and subservient status within the family and imposed marriages, sadly, these concerns went unanswered.<sup>18</sup> Women went on to participate in the fight for independence, and slowly validated their place in society.<sup>19</sup>

By 1956, the leader of the *Neo Destour*, political party, Habib Bourguiba's, articulation emphasized that the development of the independent state of Tunisia depended on the participation of all, women and men alike.<sup>20</sup> Bourguiba himself declared, "In the task of changing people's mentality, we have difficulty not only with the men but also with the women themselves, who cling to this state of servility, decadence, and bondage and consider it their normal state".<sup>21</sup> Rhaiem, argues, that the feminist movement did not exist at that time, however, in 1936 the first women's organisation, Tunisian Women's Islamic Union emerged to promote women's education, following the ideas of Haddad.<sup>22</sup> It was in 1956, that Bourguiba merged the three main feminist movements into a single movement, referred to as the *National Union of Tunisian Women (UNFT)*, emerging from Bourguiba's newly formed party, *Neo Destour*.<sup>23</sup> According to Arfaoui, the (*UNFT*) was and still is a mirror of the governmental regime and its feminist policy.<sup>24</sup>

Personal law systems are legal systems in which a different type of body of law is applied in different communities within a country, as well as other countries.<sup>25</sup> Walking in the footsteps of Mohammed Abduh and Qasim Amin in Egypt, and the nationalist intellectual Tahar Haddad in Tunisia, Bourguiba challenged the dogmatism and conservative norms governing his society in the mid-1950s.<sup>26</sup> Although, the realisation and protection of women's rights within the Mena Region, date back as early as the 19<sup>th</sup> century. Reformists such as Mohamed Abdu. Abdel Aziz Thalbi al-Din and Ibn Al Diaf, held the believe that the cause of the socio-economic deficit in most Muslim countries could be attributed, in part, to the position of women, who in most Muslim states occupy an inferior position when compared to men.<sup>27</sup> A discussion of the status of women in Tunisia, especially its family law, from the perspective of the early introduction of the Code of Personal Status (CPS), illustrates historically that women's rights were expanded as a top down policy or politics from above, rather than from a bottom up approach, as was demonstrated by the Arab Spring.<sup>28</sup> In contrast the drafting and finalisation of Tunisia post Arab Spring revolution was essentially a bottom up approach. We could include South Africa's constitutional democracy as an example of a bottom up approach in 1993/1994.

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<sup>17</sup> Salem L "Tunisia" available at <http://www.freedomhouse.org> [accessed on 5 May 2020] 1-29.

<sup>18</sup> Salem L "Tunisia" available at <http://www.freedomhouse.org> [accessed on 5 May 2020] 1-29.

<sup>19</sup> Salem L "Tunisia" available at <http://www.freedomhouse.org> [accessed on 5 May 2020] 1-29.

<sup>20</sup> Salem L "Tunisia" available at <http://www.freedomhouse.org> [accessed on 5 May 2020] 1-29.

<sup>21</sup> Hawkins S "Who Wears Hijab with the President: Constructing a Modern Islam in Tunisia" *Journal of Religion in Africa* (2011) 41(1) 35-58.

<sup>22</sup> Haddad argued that Islam was not oppressive to women but rather actually improved the status of women when compared with their pre-Islamic conditions by protecting them and guaranteeing their basic rights. Haddad criticised practices such as veiling, polygamy, arranged marriages and repudiation, the husband's unfettered prerogative, known in Islam as *talaq*, infringing on the rights of women.

<sup>23</sup> Arfaoui K "The Development of the Feminist Movement in Tunisia 1920s-2000s" *International Journal of the Humanities*, Vol. 4, No. 8 (2007) pages 53-59.

<sup>24</sup> Arfaoui K "The Development of the Feminist Movement in Tunisia 1920s-2000s" *International Journal of the Humanities*, Vol. 4, No. 8 (2007) pages 53-59.

<sup>25</sup> Tagari "Personal family law systems – a comparative and international human rights analysis" (2018) 8(1) *International Journal of Law in Context* 231-252.

<sup>26</sup> Sonneveld N "From the Liberation of Women to the Liberation of Men? A Century of Family Law Reform in Egypt" *Religion and Gender* (2017) 7(1) 90-93.

<sup>27</sup> Amir, Shuriye and Ismail 2012 *AJMSE* 63-73.

<sup>28</sup> Charrad M and Zarrugh A "Equal or complementary? Women in the New Tunisian Constitution after the Arab Spring" *Journal of North African Studies* (2014) 19(2) 230-243.

regulate matters of family law. The issue of gender equality in a Tunisian context has been pertinent for some time, albeit with little or no substantial progress. It was only after Tunisia's independence from French colonial rule that Bourguiba came to make substantial changes to family law, which were promulgated through the Code of Personal Status in 1956. The Code of Personal Status (CPS) was enacted only six months after independence and is considered as a monumental step towards the modernisation of Tunisia. The CPS was introduced as law on January 1, 1957, and represented a forward-thinking reform imposed from above, attached to the executive branch. It is true that the CPS applies only to Tunisian Muslims. French Law regulates the personal status of Christians, while Jewish citizens have their own code. It would be incorrect to draw a conclusion, that the CPS was targeted and meant for the liberation of women.

According to Charrad, the introduction of the CPS, was not a victory for women. In contrast, it was a victory for the Bourguiba and his party to place a claim on Islam and adopt a reformists approach. In addition, gaining the support of women meant that he could create an atmosphere to silence his political rivals and the Muslim clerics, that could possibly be a hurdle as the president of the country, by having a majority of the population on his side. The point of the above is that the rights women has never been on the policy makers agenda, we may as far to argue that this trend continued post Arab Spring. As a matter of fact, one could conclude, that women were used as a political pawn in the political arena fending off other issues.<sup>29</sup> Under the regime and ousted presidency of Ben Ali, this clearly highlighted. The Ben Ali regime, did proceed with certain reforms to the CPS, however, these reforms were regarded by many as inadequate as it was viewed as only trying to keep the peace and ward off the threat from political and non-political activists. For example, raising the minimum of marriage to 18 (eighteen) years for all parties, under the Bourguiba regime, it had been 15 (fifteen) years for girls and 18 (eighteen years for boys, supporting divorce women by creating funding by the state in an effort to guarantee financial maintenance to the mother and her children. Furthermore, in 1993, the Nationality Code was sanctioned allowing women to pass on their nationalities to their if they were married to non-Tunisian men.<sup>30</sup> During the 1990's, the state once again, found women's rights organisations strong allies to further and maintain its survival in the face of a surging rise threat of Islamic fundamentalism. This threat to both women and state created an allegiance to join forces with the state, fearing that if Islamic fundamentalists were to succeed, the rights contained in the CPS would be in peril.<sup>31</sup> The result was that the Association of Women Democrats and the National Union of Tunisian Women came out in support of the state for its survival. This was evidence of the following appeal by the Ben Ali presidency: "We launch an appeal to all citizens, and foremost to Tunisian women, to show vigilance especially at this time... and to mobilise themselves even more around our President".<sup>32</sup> It has been argues that the Ben Ali presidency used women's agency as a pawn as well as tool of propaganda to hide what was in reality taking place in Tunisia. The autocratic style of the Ben Ali regime suppressed human rights advocates, civil society activists, journalists and political opponents by way of torture and silence.<sup>33</sup> Inferences can be drawn from the above, that gender equality and the empowerment of women was a smoke screen produced to broadcast to the international community as a façade to gain legitimacy and support. The feminists struggle in Tunisia, allowed the Ben Ali regime to put forward a progressive production of women's rights, in order to distract the international community away from a record of shameful violations of basic human rights, while repressing and torturing opponents that the state viewed as an obstacle.<sup>34</sup>

### **III. The Arab Spring And The Voices Of Women In The Various Spheres Of Government**

A few reasons can be forwarded for the uprising in Tunisia, for example, its citizens bore the brunt of a declining economy, a regime complicit in corruption, and a scarcity of political basic freedoms affecting men

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<sup>29</sup> Charrad M & Zarrugh A *The Arab Spring and Women's Rights in Tunisia* (2013) available <https://www.e-ir.info/2013/09/04/the-arab-spring-and-womens-rights-in-tunisia/> pages 106.

<sup>30</sup> Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs *Women's Rights And Gender Equality, Gender Equality, Gender equality policy in Tunisia* available at [www.europarl.europa.eu](http://www.europarl.europa.eu) [accessed on 28 June 2020] pages 1-22.

<sup>31</sup> Abdelhamid Rhaïem "Tunisia in Transition: Women in Limbo" *al-raïda issue 145-146-147 Spring/Summer/Fall* Al-Raïda Journal, 2014 - [alraïdajournal.com](http://alraïdajournal.com) [accessed on 28 June 2020] pages 1-8.

<sup>32</sup> Charrad M "Policy Shifts: State, Islam and Gender In Tunisia, 1930s-1990" (1997) 4:2 *Social Politics* pages 284-319.

<sup>33</sup> Abdelhamid Rhaïem "Tunisia in Transition: Women in Limbo" *al-raïda issue 145-146-147 Spring/Summer/Fall* Al-Raïda Journal, 2014 - [alraïdajournal.com](http://alraïdajournal.com) [accessed on 28 June 2020] pages 1-8.

<sup>34</sup> Abdelhamid Rhaïem "Tunisia in Transition: Women in Limbo" *al-raïda issue 145-146-147 Spring/Summer/Fall* Al-Raïda Journal, 2014 - [alraïdajournal.com](http://alraïdajournal.com) [accessed on 28 June 2020] pages 1-8.

and women.<sup>35</sup> Although, during the Ben Ali's twenty three rule, any type of resistance was crushed, the result of such measures meant that there was very little resistance, this not to suggest there was no resistance. So, the question is what sparked this uprising? On the 17<sup>th</sup> December 2010, a vegetable vendor had his cart confiscated by the police, as he did not a license to operate, selling his wares. On appeal, the vendor, was unable to retrieve his cart, he set himself on fire. This was viewed by many as the catalyst for the uprising, in addition, a couple of similar incidents occurred in the face of Tunisia's bleak economic conundrum.<sup>36</sup> The result of these events erupted in protesting taking place in several of Tunisia's cities. By early January 2011, Tunisian citizens from various socioeconomic spheres took to the streets. The uprising and resulting protest were not ignited by ideology but rather forwarded by socioeconomic gripe and political dissatisfaction of the people.<sup>37</sup> The presence of women was resounding. Across the gender line they took it upon themselves to participate in the uprising not only as protestors but as organisers and leaders. Although, the events that sparked the uprising was sad, women mobilised this opportunity to reshape the existing Tunisian dynamics and to have their voices heard. Oliver Roy referring to the uprising sums it up as:

“For the first time in the Arab world, revolution has not attached itself to some grand, supranational cause ... [t]hese movements are patriotic rather than nationalists, taking root in a domestic context and confronting the authorities without accusing them of being puppets of a foreign power”.<sup>38</sup>

The active participation and involvement of women enabled them to acquire the skill to create a network of other women's organisations to forward their voices. This create a solid foundation and networks which in turn enable women to take a pivotal role in the process of reconstructing and reshaping a Tunisia they envisaged.<sup>39</sup> This is in stark contrast to the long history of reforms which was predominantly a top-down policy to a policy of bottom-up reforms.<sup>40</sup>

Before the uprising, women's political representation in the political arena, was the highest in the MENA region, namely 27.6% in the 2009 elections.<sup>41</sup> As a first step, and fearing a backlash, the establishment of Constituent Assembly in October 2011, appointed the High Commission for the Achievement of the Objectives of the Revolution, Political Reforms and Democratic Transition was appointed to draft the rules for Tunisia's specific election.<sup>42</sup> The findings and adoption of an electoral system of proportional representation in multimember constituencies (with up ten seats per constituency). A sharp departure from previous constitutions was the formation of a quota system, the so-called 'zipper system'.<sup>43</sup>

“Candidates shall file their candidacy applications on the basis of parity between men and women” – (Decree 35, Article 16).

“Lists shall be established in such a way to alternate between men and women” – (Decree 35, Article 16).

The implications of the above, is that 50% of candidates shall be women, 50% men, and furthermore, men and women shall alternate throughout the candidate lists. Failure to comply with the abovementioned Decree, party

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<sup>35</sup> Nepstad S “Nonviolent Resistance in the Arab Spring” *Swiss Political Science Review* (2011) available at <http://www.ocnus.net/artman2/publish/Analyses> pages 1-4.

<sup>36</sup> Nepstad S “Nonviolent Resistance in the Arab Spring” *Swiss Political Science Review* (2011) available at <http://www.ocnus.net/artman2/publish/Analyses> pages 1-4.

<sup>37</sup> Moore E “Was the Arab Spring a Regional Response to Globalisation” *e-International Relations* available at <http://www.e-ir.onfo> pages 1-6.

<sup>38</sup> Moore E “Was the Arab Spring a Regional Response to Globalisation” *e-International Relations* available at <http://www.e-ir.onfo> pages 1-6.

<sup>39</sup> Usher G “The Reawakening of Nahda in Tunisia” (2011) available at <http://www.merip.org> [accessed on 1 July 2020] pages 1-4.

<sup>40</sup> Charrad M & Zarrugh A “The Arab Spring and Women's Rights in Tunisia” (2013) available <https://www.e-ir.info/2013/09/04/the-arab-spring-and-womens-rights-in-tunisia/> pages 106.

<sup>41</sup> Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs Women's Rights And Gender Equality, Gender Equality, Gender equality policy in Tunisia available at [www.europarl.europa.eu](http://www.europarl.europa.eu) [accessed on 28 June 2020] pages 1-22.

<sup>42</sup> Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs Women's Rights And Gender Equality, Gender Equality, Gender equality policy in Tunisia available at [www.europarl.europa.eu](http://www.europarl.europa.eu) [accessed on 28 June 2020] pages 1-22.

<sup>43</sup> Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs Women's Rights And Gender Equality, Gender Equality, Gender equality policy in Tunisia available at [www.europarl.europa.eu](http://www.europarl.europa.eu) [accessed on 28 June 2020] pages 1-22.

candidates will not be allowed to participate in the elections.<sup>44</sup> This radical quota system with all its good intentions were a sad disappointment for women who supported the uprising in 2011. It was disappointing for the following reasons, namely, among the elected members of the Constituent Assembly 27% were women, sadly not even reaching the 27.6% in parliament under the Ben Ali regime, however, it was still above the world average of 19% in 2011.<sup>45</sup> Although, it was recorded as the highest in Mena region until 2012, when Algeria surpassed Tunisia with 32% of women elected to parliament. A study that was conducted, found that more 60 political parties which stood in the election did not comply with the quota rules – alternating women and men on their ballot lists.<sup>46</sup> Approximately 4,000 women presented themselves as candidates for the 2011 election, however, most of the political parties won at most only one seat in the different constituencies, and women stood as numbers 2 and 4, most of the candidates that elected were men.<sup>47</sup> Sadly, only 7% of all lists had a woman who stood as number 1. The 2011 parliamentary elections revealed that 49 parliamentarians consisted of females to a 217-seat National Constituent Council, 42 of the females were affiliated to the Ennahda party, which won a total of 89 seats.<sup>48</sup> The situation in 2014, saw a change, when a total of 68 female parliamentarians were elected to the National Constituent Council, 27 were affiliated to Ennahda party, which now won 69 seats in total<sup>49</sup>, whereas 35 were members of a coalition partner *Nidaa Tounes* (Call for Tunisia), which claimed 86 seats.<sup>50</sup> From the above, it becomes evident that Ennahda and forming a coalition of partners created a factional setting for female parliamentary involvement, with the result of that female parliamentarians could and should have say in the political reshaping of Tunisia. As, a consequence of the collaborative efforts of the coalition and other political party's the National Constituent Assembly promulgated a bill referred to as Gender Parity Bill in 2016 forwarding parity in municipal elections as well. Previously, women held 27% of the seats in in the municipal councils and 32% in regional councils, according to the findings of a particular study.<sup>51</sup> Post Arab-uprising and the establishment of a new government regime, the all previous councils were dissolved, and new councils have been elected. This is a remarkable development as a policy from the bottom-up stemming from the uprising. The situation now enables women to have access to 50% of the total number of candidates on all ballot lists, as well as alternating men and women names on the lists in the municipal and regional council elections.<sup>52</sup>

On face value the above seems to be a re-invention of 2011 Gender Parity Bill that was promulgated, however the wording of the 2016 Bill, has created more opportunities for women participation in the national, regional and local spheres of governance. The promulgation of the 2011 Bill stipulated that party ballots alternate between men and women's names on the ballot lists, however, there is no clause regulating the gender of candidates listed as which gender should appear as the first candidate. In practice, however, men's names would appear first on the ballot lists, thereby granting men them an unfair advantage to obtain/win/elected as

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<sup>44</sup>C AbdøKatsipis "Islamists in Power and Women's Rights: The Case of Tunisia" *Crown Center for Middle East Studies Middle East Brief Brandeis University* available at <http://www.brandeis.edu> [accessed on 1 July 2020] pages 1-7.

<sup>45</sup>Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs Women's Rights And Gender Equality, Gender Equality, Gender equality policy in Tunisia available at [www.europarl.europa.eu](http://www.europarl.europa.eu) [accessed on 28 June 2020] pages 1-22.

<sup>46</sup>C AbdøKatsipis "Islamists in Power and Women's Rights: The Case of Tunisia" *Crown Center for Middle East Studies Middle East Brief Brandeis University* available at <http://www.brandeis.edu> [accessed on 1 July 2020] pages 1-7.

<sup>47</sup>Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs Women's Rights And Gender Equality, Gender Equality, Gender equality policy in Tunisia available at [www.europarl.europa.eu](http://www.europarl.europa.eu) [accessed on 28 June 2020] pages 1-22.

<sup>48</sup>C AbdøKatsipis "Islamists in Power and Women's Rights: The Case of Tunisia" *Crown Center for Middle East Studies Middle East Brief Brandeis University* available at <http://www.brandeis.edu> [accessed on 1 July 2020] pages 1-7.

<sup>49</sup>Elections: Tunisia Parliament 2014 – IFES Election guide available at <http://www.electionguide.org> [accessed on 3 July 2021].

<sup>50</sup>Elections: Tunisia Parliament 2014 – IFES Election guide available at <http://www.electionguide.org> [accessed on 3 July 2021].

<sup>51</sup> Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs Women's Rights And Gender Equality, Gender Equality, Gender equality policy in Tunisia available at [www.europarl.europa.eu](http://www.europarl.europa.eu) [accessed on 28 June 2020] pages 1-22.

<sup>52</sup>C McCormick-Cavanagh "Tunisian parliament passes gender parity bill for local elections" (2016) available at <http://www.constitutionnet.org>. [accessed on 3 July 2020].

candidates. The end-result would then produce the narrative that men won/elected more parliamentary seats than women. The promulgation of the 2016 Bill, which is in stark contrast to the 2011 Bill, now stipulated that women's names appear first on municipal ballot lists at a regional and local level.<sup>53</sup> So the parity in the municipal elections will be both horizontal and vertical, as it stipulates gender parity in the number of candidates as well as in the top candidates. The law is unique worldwide and it is expected to make a huge difference, especially in the poorer and more traditional south and interior parts of Tunisia.<sup>54</sup> Not surprisingly, the Bill passed with an overwhelming majority of 127 votes out of 134 present parliamentarians. Although, the Tunisian legislature is often complicated for the promulgation of the Bill, one must not forget the input of women's organisations and NGO's who lobbied and conducted various workshops training women who wish to enter into the political arena. This too must be viewed as a bottom up policy stemming from the uprising in Tunisia, in which women could become parliamentarians and help promote and protect the rights of women for which they fought for.

#### **IV. The Arab Uprising On The International Plain – Cedaw**

The creation of treaties and conventions by the international community serve only as a basis from which to build further structures that will both protect and administer the protection of fundamental rights and freedoms. Wing rightly observes that:

“[i]nternational law is a significant symbolic tool, but may be a very weak device in reality to assist in improving the actual lives of women around the world, including Muslim women”.<sup>55</sup>

A number of United Nations treaty bodies, including the Committee on Economic, Social and Cultural Rights<sup>56</sup> and the Committee on the Elimination of Discrimination Against Women (CEDAW Committee)<sup>57</sup> have recognised that giving effect to the rights to equality and non-discrimination requires states to take the appropriate action. The state thus carries a three-fold obligation, notably to respect the rights to non-discrimination, both in law and through the actions of its agents, to ensure that a legal framework is both in place and is enforced to provide protection from discrimination, and to take such measures, including positive action, as are necessary to address substantive inequalities.

Tunisia signed CEDAW in 1980 and ratified this instrument five years later, while issuing an interpretative declaration saying that: “[t]he Tunisian government shall not take any organisational or legislative decisions in conformity with the requirements of this Convention where such a decision would conflict with the provisions of Chapter 1 of the Tunisian Constitution”.<sup>58</sup>

As permitted by Article 28 of CEDAW, Tunisia made reservations to Article 9(2) regarding the right of a woman to pass her nationality to her children.<sup>59</sup> Article 15(4) regarding the right of a woman to choose her own domicile,<sup>60</sup> several sub-paragraphs of Article 16, notably Article 16(c), (d), (f), (g) and (h) relating to marriage

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<sup>53</sup> Tunisia Gets Unique Gender Parity Elections Law KVINFO Danish Center for Research and Information on Gender, Equality and Diversity June 27 2016 available at <http://www.kvinfo.dk> [accessed on 4 July 2020].

<sup>54</sup> Tunisia Gets Unique Gender Parity Elections Law KVINFO Danish Center for Research and Information on Gender, Equality and Diversity June 27 2016 available at <http://www.kvinfo.dk> [accessed on 4 July 2020].

<sup>55</sup> Wing AK *Encyclopedia of Women and Islamic Cultures* 1 at 1 available at <http://www.encyislam.brill>. [accessed on 5 July 2020].

<sup>56</sup> Committee on Economic, Social and Cultural Rights, General Comment 20: Non-discrimination in economic, social and cultural rights, UN Doc. E/C. 12/GC/20, 2009 available at <http://www.equalrightstrust.org> [accessed on 5 July 2020].

<sup>57</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation 28 on the core obligations of States parties under Article 2 of the Convention on the Elimination All Forms of Discrimination Against Women, UN Doc. CEDAW/C/GC28, 2020 available at <http://www.equalrightstrust.org> [accessed on 5 July 2020].

<sup>58</sup> Wing A K “The Arab Fall: The Future of Women’s Rights” (2011) 18:2 *University of California Davis School of Law* 446-462.

<sup>59</sup> The reservation to Article 9(2) reads: “[t]he Tunisian Government expresses its reservation with regard to the provisions in Article 9, paragraph 2 of the Convention, which must not be in conflict with the provisions of Chapter VI of the Tunisian Nationality Code”.

<sup>60</sup> The reservation to 15(4) reads: “[i]n accordance with the Vienna Convention on the Law of Treaties, dated 23 May 1969, the Tunisian Government emphasizes that the requirements of article 15, paragraph 4, of the Convention on the Elimination of All Forms of Discrimination Against Women and particularly that part relating to the right of the women to choose their residence and domicile, must be interpreted in a manner which

and divorce,<sup>61</sup> and Article 29(1) regarding arbitration of disputes arising from CEDAW.<sup>62</sup> Of interest, post-uprising, the regime change saw it fit in 2012 to withdraw all reservations to CEDAW, according to a legislative decree.

Therefore, treaties and conventions are useful in that they provide a type of human rights structure, yet the effective monitoring of policing of states' observation and obligations of signatory states is often sadly ineffective.<sup>63</sup> Once these measures are in place at international level, it will filter down to ensure greater accountability, responsibility and enforcement of international human rights instruments. Only in this way will states be answerable for all (or any) violations of the rights of women.<sup>64</sup>

## V. Conclusion

Family life has the tendency to shape men and women and to determine both where and how they live. Chekir astutely observes that to organise the family is to organise society, and to democratise the family is to democratise society.<sup>65</sup> Tunisia has chosen a decidedly secularised approach to promote and protect women's rights in a state that boast a Muslim population of almost 80 percent.<sup>66</sup> Tunisia can also be trumpeted as one of a minority of Middle Eastern and North African states that is widely secularised, however, Charrad, ironically observes:

“[t]his is unquestionably the freest country for women in the Arab world. But the irony is that it is not women who fought for their rights in this country. It was men who gave them to [women].<sup>67</sup>”

Although, the abovementioned narrative, by Charrad, is correct the post-uprising has displayed a different narrative as put forward by Charrad for Tunisian women. Yet, all that glitters is not gold. There are still serious challenges facing Tunisian women in general, for example, inequality in the workplace relating to availability of top positions and salary parity, despite modernising legislation relating to protection and promotion of women's rights, old patriarchal structures remain as well as the cultural tendency to consider males to be superior to females persists. In addition, property rights although, guaranteed by law enabling a woman to own property, sadly, the right to exercise the right to own property in practice has not been a realisation, because of traditional Islamic laws. This seems to be more evident in the rural areas of Tunisia, rather than in the main cities of Tunisia. Furthermore, of concern for many women, is rise of various Islamic groups demonstrating and sometimes these demonstrations have turned violent attacking secular intellectuals and harassing women for their dress code. Going forward as a country, it would be wise to listen and participate with the many actors, such as political parties, NGO's, feminists movements, European institutions, and other activists, whether far right or far left in the form of dialogue to attain gender equality. However, Tunisia must be completed for the various positive reforms that have taken place post-uprising and ensuring that the country did fall into a state of civil war.

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conflicts with the provisions of the Personal Status Code on this subject, as set forth in Chapters 23 and 61 of the Code”.

<sup>61</sup>The reservation to Article 16 reads: “[t]he Tunisian Government considers itself not bound by Article 16, paragraphs (c), (d) and (f) of the Convention and declares that paragraphs (g) and (h) of that article must conflict with the provisions of the Personal Status Code concerning the granting of family names to children and the acquisition of property through inheritance”.

<sup>62</sup>The reservation to Article 29(1) reads: “[t]he Tunisian Government declares, in conformity with the requirements of Article 29, paragraph 2 of the Convention, that it shall not be bound by the provisions of paragraph 1 of the Article which specify that any dispute between two or more State Parties concerning the interpretation of the present Convention which is not settled by negotiation shall be referred to the International Court of Justice at the request of any one of those parties”. The reservation continues to state: “The Tunisian Government considers that such disputes should be submitted for arbitration or consideration by the International Court of Justice only with the consent of all parties to the dispute”.

<sup>63</sup>Wing AK *Encyclopedia of Women and Islamic Cultures* 1 at 1 available at <http://www.encyislam.brill>. [accessed on 5 July 2020].

<sup>64</sup>Wing AK *Encyclopedia of Women and Islamic Cultures* 1 at 1 available at <http://www.encyislam.brill>. [accessed on 5 July 2020].

<sup>65</sup>Chekir H “Women, the Law, and the family in Tunisia” (1996) 4:2 *Gender and Development* 43 at 43.

<sup>66</sup>Salem L “Tunisia” (2010) available at <http://www.freedomhouse.org> [accessed on 5 July 2020] 1-29.

<sup>67</sup>Charrad MM ‘Policy Shifts: State, Islam, and Gender in Tunisia, 1930s-1990s’ 4:2 *Social Politics* 284.



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