

# TOWARDS A DEMOCRATIC AND NON-VIOLENT TRANSITION IN SYRIA THROUGH INCLUSIVE CONSTITUTION BUILDING PROCESS



## GENDERED CONSTITUTION BUILDING PROCESS FOR SYRIA

### REPORT

GENDER ENTRY POINTS TO A DEMOCRATIC CONSTITUTION IN SYRIA  
AND LESSONS LEARNED FROM CONSTITUTION MAKING PROCESSES IN  
THE MIDDLE EAST AND NORTH AFRICA



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This report was produced by the Coalition of Syrian Women for Democracy with the support of the European Feminist Initiative IFE-EFI

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## Contents

<b>Contents</b> .....	3
<b>FOREWORD</b> .....	5
<b>1. THE CONTEXT OF CONSTITUTION-BUILDING PROCESS IN SYRIA</b> .....	8
1. The current political situation .....	8
2. A General framework: the patriarchal legacy .....	9
3. The Syrian Constitution: a historical overview .....	13
4. An approach to the Syrian Constitution from a democratic point of view	14
5. The three authorities, electoral system, and mechanisms .....	16
6. Consequences for economic, social and political rights.....	18
<b>2. LESSONS LEARNED FROM CONSTITUTION BUILDING IN TRANSITION</b> .....	21
<b>3. MAIN PRINCIPLES, VALUES AND PROCEDURES TO STRUCTURE AND FOLLOW THE CONSTITUTION BUILDING PROCESS</b> .....	25
<b>4. GENDER ENTRY POINTS TO THE CONSTITUTION</b> .....	29
1. Political Identity.....	30
2. Structure of powers, composition and functioning, electoral system .....	31
3. Civil, political, social, economic, cultural rights.....	32
<b>5. CONCLUSIONS AND NEXT STEPS TOWARDS A DEMOCRATIC CIVIL STATE</b> ...	33
<b>ANNEX – REGIONAL CONTRIBUTIONS</b> .....	37

Favouring a participatory approach frequently advocated by the legal arena and frequently exposed to exclusion and suppression and practices of elimination and despotism, women’s organizations make use of the category of gender as a tool for analysing and understanding social relations. Women are aware of the element of discrimination implicit within the framework of gender division. We wish to draw attention to proposals stemming from urgent and important needs emerging in the aftermath of the revolution and the dismantlement of the props and basics of the authoritarian and totalitarian regime that preceded it. Within this context, the Constitution occupies the forefront in defining power relationships between

citizens (men and women), determining the nature of the system and ensuring fundamental rights and freedoms for all. We will next consider a group of projects of associations concerned with human rights; for obvious reasons we are not going to include the projects of political parties that reported to the Constituent Assembly..... 62

## FOREWORD

Today there are around 200 national constitutions worldwide, over half of which have been drafted or re-drafted in the form of peace accords designed to end conflict.<sup>1</sup> As a number of feminist researchers have demonstrated, states emerging from conflict or authoritarian rule, seeking democratic credibility, have placed great emphasis upon producing democratic constitutions that enshrine respect for human rights, the rule of law, and equality. Women's rights activists in these different contexts have availed themselves of the opportunity to draw attention to women's rights and gender equality.

Although recent experiences in the Arab world have provided new illustrations of women's exclusion from constitution-building bodies and processes, they have also demonstrated that the mobilization of women's rights and civil rights organizations renders the constitution-making process participatory. More constitutions which acknowledge the need of gender equality are being created, as is the case with Tunisia's new constitution of 2014. In Syria, women's rights and human rights activists and organizations have striven to learn from these experiences and to prepare for a political transition, voicing their demands for women's rights and gender equality and pronouncing them as central to the constitution-building process and to the transitional phase as a whole.

Since 2011 several major events have taken place which prove the need for a democratic constitution in Syria. This constitution must be based on the principles of gender equality and full respect for women's rights and must enable activists of women's rights to express their ideas and be heard. The Syrian Women's League produced a paper titled *The Founding Principles of the Constitution*, based on comprehensive research of several constitutions in the region. The Women's Studies Centre Musawa published the booklet *Women's Rights in the Syrian Constitution*.<sup>2</sup> The Coalition of Syrian Women for Democracy (CSWD) published jointly the booklet "*Looking for a Democratic Constitution*", with a comprehensive analysis that has served as a basis for broadening the discussion and the process. The European Feminist Initiative IFE-EFI and the CSWD wrote the *Strategic Paper*<sup>3</sup> identifying the needs

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Democratic Constitution Making, Report by Vivien Hart  
[http://www.peacemaker.un.org/sites/peacemaker.un.org/files/DemocraticConstitutionMaking\\_USIP2003.pdf](http://www.peacemaker.un.org/sites/peacemaker.un.org/files/DemocraticConstitutionMaking_USIP2003.pdf)

2

<http://www.efi-ife.org/page/publications#.VEo9QSwcT4g>

3

<http://www.efi-ife.org/publications>

and gaps to be addressed by Syrian activists and the international community in the future work on constitution-building in Syria.

This report is one of the outcomes of the program *Towards a Democratic Transition in Syria by Building an Inclusive Constitution Process*, funded by Sweden, through which the European Feminist Initiative IFE-EFI provides institutional and organizational support to its Syrian partners, thus demonstrating solidarity with them and backing their demands for a non-violent, political transition in Syria. The program strengthened the work on constitution-building throughout 2013-2014. A four day training on *Engendering Constitution*<sup>4</sup> in December 2013 brought together constitutionalists, lawyers, academics, and activists from Syria, MENA, and Europe to highlight the major challenges of building a gender-sensitive constitution. Participants were able to share best practices and benefit from lessons learned across different contexts.

The international conference *Promoting Nonviolent Transition towards Democracy through Engendering a Constitution-Building Process* (April 10-11, 2014) in Brussels aimed to provide visibility and highlight the crucial role of civil society as an independent actor for non-violent transition in Syria. It provided a platform for Syrian activists to voice their analyses and demands to the EU, UN, and other relevant decision-makers. Activists demanded a substantive presence of women and women's rights in the transitional political process, strengthening of cooperation, and to elaborate a common discourse among women's and human rights organizations from Syria among other parts of the Euro-Med region in order to widen the ongoing constitution-building process.

The report integrates the results of such events and numerous other gatherings, organized in Syria by the partners. It draws attention to challenges and highlights good practices related to the institutionalization of women's rights and gender equality principles and values in the constitution. It also emphasizes the efforts of women's movements to include and/or preserve women's rights and gender equality as founding principles in democratic constitutions, and as core issues in times of transition. The role of progressive men in the effort toward the institutionalization of gender equality is also underlined.

This document is the result of several months of collaborative work of the Coalition of Syrian Women for Democracy, bringing together diverse groups of Syrian activists, mobilized for a constitution-building process to support a non-violent transition towards democracy. Many of these advocates have suffered tragic losses and hardships including imprisonment,

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IFE-EFI Brief, December 2103 <http://www.efi-ife.org/publications>

restrictions on peaceful activities, and travel bans, forcing many of them to leave the country. In spite of this, they continue to play a major role in the future of their country.

We would like to thank all who have contributed, with their time and reflections, to this report and particularly the members of the reference group who drafted it.

We would also like to thank the regional reference group consisting of constitutional experts and women's rights activists from Tunisia, Egypt and Morocco for their contributions and solidarity.

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Democracy



## 1. THE CONTEXT OF CONSTITUTION-BUILDING PROCESS IN SYRIA

### 1. The current political situation

**The Syrian uprising was started in order to eliminate tyranny and build a state founded on citizenship and equal rights for all citizens, men and women alike, based on the Universal Human Rights Declaration.**

The 15th of March, 2011 constitutes a watershed in the current history of Syria. The Syrian people started a peaceful movement to put pressure on the regime and persuade it to carry out democratic reforms and restrict the influence of the state security forces on citizens' lives, which prevented them, irrespective of their gender identity, from exercising their rights or participating in public life.

This movement aimed at creating a new social contract which would lead to the establishment of a pluralistic democratic system. Thousands of Syrian civilians, women and men alike, took part in this movement. Young Syrians were especially attracted to the revolution and stood at the forefront of the peaceful revolutionary uprising.

The regime chose to rely primarily on state security forces to address this uprising. As a result the movement ignored slogans of reform and attempted to overthrow the regime. This was heightened after all the regime's "reform" attempts faded, which were nothing more than a change in the balance of power within the structure of the regime itself. Indeed, this is what happened with the amendment of the Constitution in 2012 which abolished the Baath Party leadership of the state and society in exchange for the expansion of the powers granted to the President of the Republic.

The result was the replacement of a peaceful revolutionary movement with armed and bloody conflict, leading to the death of tens of thousands of Syrians, the destruction of large parts of the country, and the displacement of more than six million persons and three million refugees, 75 % of whom are women and children, according to the UNHCR. Added to this is the high (but largely unmentioned) price of death, displacement, violence, rape, and starvation which was paid by women in this conflict.

The complexity of Geneva Negotiation Conference 2 has heightened the severity of the crisis, suffered by Syrian women and men alike, as each side tried to achieve military and political gains, while sieges of civilian areas and starvation of the population have extended

across the country. More than half of the country has fallen under the control of battalions of Islamic-oriented armed opposition or under the control of *Daesh*, the most extreme branch of al-Qaeda.

In addition to the previous complexity, the inability of the Syrian opposition to agree on a broad and comprehensive representation of all opposition parties and its inability to have a national democratic program with a common vision for the future of Syria or values to oppose the “value” of tyranny and totalitarianism adopted by the regime is unacceptable. This situation was described as a major problem by the participants at the international conference *Promoting Non-Violent Transition towards Democracy through Engendering a Constitution-Building Process*, on April 10-11, 2014, in Brussels (hereafter *the Brussels Conference 2014*). They pointed out that in the early phase of the Syrian revolution the chance for consolidation of an opposition front wasn't taken and the difficulties increased with the complexity of the overall political situation.

The Syrian uprising started in order to eliminate tyranny and build a state founded on citizenship and equal rights for all citizens, men and women alike, based on the Universal Human Rights Declaration. However, this revolution will not be able to achieve its objectives if the old tyranny is simply replaced by a new type of tyranny, and if it does not ensure a democratic system, supported by a constitution which includes the values of gender equality and rejects all forms of discrimination on the basis of gender, religion, or ethnic origin.

With the full bias to the demands of the Syrian people who rose up for freedom, dignity, and justice, we as part of the Syrian civil society believe that the point reached by this uprising by the suppression from the regime on the one hand and by the militarization of the uprising and heavy interference from regional neighbours on the other has brought us to where we are with the open war on the Syrian ground fuelled by all the Syrian people. We believe the only way out now is through political negotiation with an active, essential role of the Syrian civil society; not just because this is the only possibility to preserve the Syrian state, but also because it may facilitate the civil society and the Syrian people with their roles in drawing the future for Syrians.

## 2. A General framework: the patriarchal legacy

**Patriarchal thought, which obviously constitutes a big obstacle to feminist thought in Syria, is also a major threat to democracy.**

The general framework that controls the lives of Syrian women is steeped in discriminatory patriarchal ideas, especially considering the Syrian regime's relentless attempts to stifle civil society and block the way for the spread of democratic civil libertarian thought. Successive governments have "abandoned their responsibility to regulate the rights of individuals within the family and referred them to different religious organs under the pretext of 'sacred' customs, traditions and the preservation of 'cultural identity'. Women's rights within the family have become subject to outdated provisions unrelated to the present situation."<sup>5</sup>

There have been great developments in the field of gender equality such as the international conventions on the prohibition of discrimination against women and on gender equality in citizenship rights, and the Convention for Elimination of all Forms of Discrimination Against Women (CEDAW). Nevertheless, patriarchal thought contradicts these conventions, in particular CEDAW, and its followers tend to empty them of content, thus continuing to exercise dominance over women. Syria, like the majority of Arab countries which have ratified CEDAW, has expressed reluctance on all matters relating to the prevention of gender discrimination in the family. Moreover, within the Syrian context, the government had reservations on Article Two, the second clause of Article Nine, the fourth clause of Article Fifteen, and paragraphs C, D, G, F of the first clause of Article Sixteen,<sup>6</sup> as well as on the second clause of Article Sixteen related to early marriage.

In addition to challenging feminist thought in Syria, patriarchal thought is also a major threat to democracy. *The Brussels Conference 2014* recalled that in the present context, people cling to pre-Civil religious affiliation and work at the grassroots level is necessary to explain and advocate for the real meaning of secularism, and refrain from compromising women's rights under the pretext of cultural heritage.

On the "theoretical" level, the patriarchal philosophy behind Syrian legislation is exemplified by the right of "guardianship" granted to men in the family over women, especially in the personal status laws that are based on religious references which had constitutional immunity in the recent amendment of the Constitution of Syria.<sup>7</sup> Article Three of the Constitution stipulates that "the status of religious communities shall be

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<sup>5</sup>

Syrian Women's League (SWL), comparative research: discrimination in personal status laws in Syria, 2011

<sup>6</sup>

Decree No. 330 on 25/09/2003

<sup>7</sup>

February 2012

cherished and safeguarded.”<sup>8</sup> The same discrimination in the personal status laws applies to the "civil" laws, which are supposed to be the same for all citizens, men and women alike, such as the nationality law, penal law, labour law, and social insurance law.

Moreover, discrimination in the legal framework interacts with patriarchal thought, underlying the so-called "cultural specificity," each reinforcing the other. Thus, the laws consecrate discrimination against women in order to "maintain identity", which is determined and defined by religious institutions. *The Brussels Conference 2014* also acknowledged the weak link between citizenship and human rights in the political structure of Arab societies, and women are paying double the price both in the public domain and family space. As one participant pointed out, men have an important role in understanding the interplay between patriarchal traditions and current legislation and in supporting its dismantling by women's rights activists.

In terms of practice, it is obvious that this discriminatory system has generated two types of consequences:

The first is a decline in the percentage of women's participation in public, economic, social, and political life. This decline limits the representation of women in decision-making positions, including committees for the preparation of laws that could later enable women's participation in public life. In addition to that, the Syrian regime has placed religious leaders within all committees in charge of laws and policies governing the lives of women.<sup>9</sup>

Syrian national statistics indicate a decline in the percentage of women in the labour force. In 2010 the percentage of women's contribution to the labour force did not exceed 13.2%<sup>10</sup>. The definitions used in data collection surveys on the labour force in Syria<sup>11</sup> have excluded the largest percentage of women because they were represented as "housekeepers" and placed outside the labour force. However, most Syrian women count as housekeepers, according to the personal status laws.

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8

The fourth paragraph of Article Three of the Constitution of Syrian Arab Republic

9

There is a recent example on this issue, where in 2007, the Commission of the Minister of Justice and a professor in Islamic Sharia' and two unknown experts were assigned to prepare a draft for a new law of personal status. The result was a draft classifying non-Muslim Syrians as "people of the Book" who do not enjoy full citizenship rights.

10

Bulletin of the labour force in 2010, the Central Bureau of Statistics.

11

The Central Bureau of Statistics, manual of definitions and instructions for the completion of the labour force data survey, the first session, 2007

In political life, the percentage of women's participation in the national parliament as compared to men (less than 12,4%)<sup>12</sup> has become lower than corresponding percentages in most other Arab countries. In addition to that, the "increase" in women's representation in decision-making positions in Syria discussed by the Syrian government can be considered a form of silent representation.<sup>13</sup> "In spite of the relative increase of the importance of women's social and cultural role, there are still significant discrepancies between the value of the index of political empowerment and educational empowerment, on the one hand, and economic empowerment, including the extent of women's control over resources, on the other hand".<sup>14</sup>

The second consequence is the sustainability of dominant patriarchal mentality in the Syrian context, which characterizes most men and women, especially in positions of decision-making, where traditional approaches to development issues predominate without any regard to overall human development. The gender approach, which is *formally* a part of government planning but is not applied *in practice*, cannot lead to equality between women and men. Statistically, this approach does not go beyond gender classification and without a deep analysis of the gender-based causes behind legal discrimination, most Syrian women are deprived of autonomy and the value of their invisible work is disregarded.

In addition, this contributes to the forced absence of civil society in general and the women's movement in particular. Women have thus lost their right to form social organizations, unable to advocate for gender equality and justice as well as the elimination of discrimination against women.

As for the opposition, the majority of the Syrian opposition is unable to place women representatives in decision-making positions in its bodies. The percentage of women in Syrian Opposition Coalition forces does not exceed 6% and most opposition forces haven't put the issues of gender equality among their political priorities. These forces have also been unable to provide democratic secular alternatives for the future of Syria. In fact, some secular forces have made significant concessions in exchange for a successful alliance with the Islamists.

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<sup>12</sup>

People's Assembly elections results in the Syrian Arab Republic, May 2012

<sup>13</sup>

Prof. Dr. Ahmed Ibrahim Abu Shook indicates that the silent dimension of political participation is represented in "the constitutional principles and legal norms, and then manifested in the management of the electoral process."

<sup>14</sup>

The first national Report on the Population in the Syrian Arab Republic, 2009.

Although the role of the feminist democratic movement has grown significantly over the past year, new components in this movement need to be linked to theoretical empowerment related to the values of gender equality and women's rights as universal human rights. The emergence of women's groups of Islamic reference adds a new complication because they perceive the Islamic Sharia as the only solution for Syrian women and for the realization of "justice."

At the same time, Islamic extremist armed forces and other Islamic forces that some call "moderate" control half of the country, resulting in further exclusion of women from public life and tighter restrictions on women's freedom of movement, dress, education, and work.

### 3. The Syrian Constitution: a historical overview

The first constitution Syria knew was the Ottoman Constitution, issued in 1876, under the name of *The Basic Law of the Ottoman State*. After liberation from Ottoman domination, the Syrian Conference drafted the Constitution of 1920 under the name of *The Basic Law of the Syrian Arab Kingdom*. In 1928 a new constitution was issued under the French occupation. The most important articles of the 1928 Constitution stated: a) Syria is a Parliamentary Republic; b) all Syrians are equal before the law. They are equally entitled to their civil and political rights as well as their duties. No discrimination shall be tolerated on the basis of religion, sect, ethnic origin, or language; c) absolute freedom of religion; d) guaranteed freedom of thought and expression for everyone, whether in speech or writing; e) guaranteed freedom to establishing organizations and hold assemblies; f) the nation is the source of all authority; and g) the national parliament wields legislative power.

After the end of the French occupation the Syrian Constituent Assembly issued a new constitution in 1950. Most importantly, the Constitution confirmed that "supreme authority belongs to the people; no person, or group, is allowed to claim it," whereas the 1973 Constitution stated that "the Socialist Arab Baa'th Party is the leader of the state and society, and leads the Progressive National Front."

The 1950 Constitution included an article that guaranteed "the right, of all Syrians, to create political parties, provided they have legitimate goals, peaceful means and democratic conduct." The 1973 Constitution, on the other hand, stated that "it is the right of every citizen to participate in political, economic, social and cultural life," excluding the right to create new political parties.

The 1950 Constitution contained several articles regarding women including:

*Article no. 7: All citizens are equal before the law, in terms of rights, duties, personal dignity, and social status.*

*Article no. 8: The government guarantees freedom, peace and equal opportunities to all citizens.*

*Article no. 38: Electors are men and women who are eighteen years of age or older, provided they are properly identified and registered in the civil records and comply with the conditions stated in election laws.*

However, “all citizens” are not one homogenous entity and as demonstrated above women have remained legally discriminated against in the personal status law, the nationality law, penal law, labour law, and social insurance law. Therefore it is far from clear if the term “all citizens” without the added specification “regardless of sex and gender” includes women as well as men.

The latest constitution was issued in 2012 and it does not contain any positive additions regarding women's rights.

#### **4. An approach to the Syrian Constitution from a democratic point of view**

**The Constitution is established on the basis of full equal citizenship between women and men and between different components of Syrian society.**

If we are involved in stimulating and forming a new, promising Syrian society, then we shall start by building a modern and comprehensive constitutional process focused on the generation of ideas conducive to the creation of a new social contract; based on the institutionalization of participatory and equal citizenship; which expresses the aspirations of the Syrian people - men and women alike – for freedom, dignity, equality between genders, and the establishment of a constitutional state in which the exercise of governmental power is constrained by the law.

The State Constitution is the origin of laws as the higher legal standard. It expresses the development of the legal thought of the regime and the state in respecting the freedoms and rights of citizens, especially those related to full equality in citizenship among all persons and between genders. It aims at ensuring the preservation of individual rights, promoting gender equality, restricting the power of the ruling authorities, and precluding injustice. The Constitution can be seen as a social contract considered legitimate and agreed upon unanimously by the various components of the nation. It is a tool for social progress.

The Constitution is established on the basis of full equal citizenship between men and women and between different components of Syrian society. It recognizes that the people are the source of authority and they cannot be ruled by one single individual, a small group, or one single party.

The Constitution is gendered, and this includes its language. It considers both women and men fully fledged citizens. It ensures this in all its articles and has explicit provisions with affirmative action on women's rights, and acknowledges the need to embrace them.

The Constitution represents the will and general spirit of the people - women and men alike - wherein the clear affirmation of the rights and individual/collective freedoms, especially those related to conscience, belief, opinion, property, assembly, movement, voting, and safety, exists.

The Constitution recognizes the rule of law and respects the separation of powers in order to prevent tyranny, and to guarantee all freedoms by adjusting the balance within the state and in its relationship with society.

Controlling the constitutionality of laws is necessary in order to ensure that the Constitution is more than a document of symbolic value.

The Constitution is a reference of all laws, not only designed to serve the current and future generations but also to represent the nation's cultural heritage transmitted from past generations to the present and future ones.

Consequently, the principles and values that structure the ongoing Constitution building process are:

- Syria is an independent, free, pluralistic and sovereign republic.
- Syria has full sovereignty over its indivisible territories and has the right to all its occupied territories.
- Syria is proud of its culture and civilization which reflect the diversity of the country's population.
- The Syrian people are brought together by a common national identity; their affiliation comprises diverse cultural, religious, and ethnic components; the Constitution guarantees respect, equality, gender equality and non-discrimination to all citizens.
- The key pillars of the Constitution are the principles of equality and gender equality, freedom of conscience, justice and freedom of beliefs, non-discrimination between citizens, women and men alike, protection of human dignity, and fundamental human rights for all genders.



## 5. The three authorities, electoral system, and mechanisms

**These absolute powers of the president make women's rights hostage to his own absolute will.**

The Syrian struggle confirms the close relationship between indicators of democracy and levels of women's empowerment. Although the constitutional articles do not carry in most cases any signs of discrimination, the nature of the relationship between the three forms of power (the legislative, executive, and judicial) places human rights, including the rights of women, under the exclusive jurisdiction of the executive power, which is concentrated in the hands of the president of the state. Added to this is the large overlap between the authority of the president and the legislative and judicial authorities.

The Syrian Constitution, accredited on 15/02/2012, indicates the existence of three forms of power in Syria:<sup>15</sup> legislative and executive power, which are "shared" (theoretically) by the President and the Council of Ministers, and the power of the judicial authority. On the contrary, a preliminary analysis of the articles of the Constitution which explains the distribution of power exposes that the president has a wide range of prerogatives that impact the work of the legislative and the judicial authorities. In theory, such authorities are meant to be independent so that they can exercise their legislative and regulatory roles and be a resource for all citizens, men and women alike, or their representatives.

Since there is an overlap between the powers of the legislative authority and the president of the state, the president may veto laws passed by the national parliament. The parliament would then need to approve such laws again by a majority of two-thirds of its membership in order to compel the president to issue them.<sup>16</sup> The president may also dissolve the national parliament<sup>17</sup> and has the right to assume the power of legislation under the pretext of "extreme necessity", even though the national parliament may be fully functional.<sup>18</sup> In

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<sup>15</sup>

Chapter III of the Constitution, the state authorities

<sup>16</sup>

Article 100 of the Constitution

<sup>17</sup>

Article 111 of the Constitution, first paragraph

<sup>18</sup>

Article 113 of the Constitution

order to cancel or modify any particular legislation, the national parliament needs a "majority of two-thirds of its registered members to attend a session".<sup>19</sup>

As for executive power, it is wielded in the hands of the president of the state, who "appoints the prime minister and his deputies and all ministers and their deputies, and accepts their resignations and/or relieves them from their duties [whenever necessary]."<sup>20</sup> In addition to the above, the Constitution states, "The President of the State, in a meeting with the Council of Ministers under his chairmanship, shall proclaim the public policy of the State and oversee its implementation."<sup>21</sup>

The powers of the president thus include the tasks of the judicial authority; the president is head of the Supreme Judicial Council<sup>22</sup> and also appoints the members of the Supreme Constitutional Court.<sup>23</sup> As the president "may call a referendum of the people on important issues that relate to the interests of the state, the result of the referendum is binding and effective".<sup>24</sup> Also, "the Supreme Constitutional Court is not entitled to consider the constitutionality of laws for which the President of the State has convened a referendum; such laws are regarded as approved by the people."<sup>25</sup>

These absolute powers of the president make women's rights hostage to his own will, without a single mechanism for checking this "omnipotent will" and without the presence of any independent mechanism to review the decisions of the president and speculate on their legitimacy. It is as if the patriarchal system was fully embodied in the state as the site of unlimited masculine power. The articles of the Constitution defining the prerogatives and duties of the president assume that he must be a man.

The full powers of the president subvert the credibility of the current electoral system. This deficiency in the political system must be corrected for two reasons. Firstly, it is essential to

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<sup>19</sup> Ibid., Article hundred and thirteen of the Constitution

<sup>20</sup> Article 97 of the Constitution

<sup>21</sup> Article 98 of the Constitution

<sup>22</sup> Article 133 of the Constitution

<sup>23</sup> Article 141 of the Constitution

<sup>24</sup> Article 116 of the Constitution

<sup>25</sup> Article 148 of the Constitution

re-define the nature of power vested in the legislative body, as the electoral system "is the set of laws and regulations in force that result from the election of the political body of representatives of the people."<sup>26</sup>

Secondly it is vital to reinforce the important role of the electoral system in the organization and legalization of the fundamental forms of citizen participation in the state's political life; moreover, the electoral system should ensure the representation of different sections of the population. The composition of the legislative body should mirror the nation's composition, as a mirror reflects the same shape, ... thus, the desired parliament must include representatives of both genders (men and women), all ages (young and older citizens), and rich and poor... "<sup>27</sup>

Due to its extreme importance, the focus shall be on the preparation of such a system that will guarantee a participatory process enabling all citizens (women and men alike) to exercise their right of election. If a technical committee has been formed to propose the law, then the Commission's proposals shall be subject to a "public referendum or be submitted to the legislative authority which is to take relevant decisions."<sup>28</sup>

It can be said that the discriminatory framework that has ruled the lives of Syrian women for decades and whose negative impact was exacerbated after the isolation of the peaceful movement and the intensification of armed conflict, is only a manifestation of a patriarchal mentality to exercise power and control. The latter is a challenge to the global feminist democratic movement that seeks equality between women and men.

## 6. Consequences for economic, social and political rights

**Gender-blind policies often hide behind general statements that refer to the "citizens" without bearing in mind that those "citizens" do not enjoy the same status since men have full rights while women have semi-rights.**

Gender-blind policies often hide behind general statements that refer to the "citizens" without bearing in mind that those "citizens" do not enjoy the same status since men have

<sup>26</sup>

Nader Abdulaziz al-Shafei, <http://www.lebarmy.gov.lb/ar/news/?33046#.UwWelvmSw->

<sup>27</sup>

International Institute for Democracy and Elections. Forms of Election Systems. Guide of the International Institute for Democracy and Elections.

<sup>28</sup>

Article 48 of the previous reference.

full rights while women have semi-rights. Such policies might even – though unintentionally—contribute to widening the gap between women’s and men’s rights.

If we take a look at the current Syrian Constitution, we find that Article Nineteen talks about the "maintenance of the human dignity of every individual"<sup>29</sup> but the Constitution itself states that religious communities have the right to manage "personal status" for "citizens", with men exclusively having full guardianship rights. Women shall comply with the duties and with the rights of men in the guardianship.

Therefore, all rights that women enjoy, theoretically, are subjected to the will of the men in the families to which they belong. This renders women "will-alienated, oppressed, for in order to obtain safety they have to give up their freedom. And even if they are working outside, the balance of power in the family remains a key issue, often leading them to sacrifice their work for its sake."<sup>30</sup>

A survey of the current Constitution indicates that the exercising of each "right" it specifies is hindered by some Syrian law(s), in particular by the personal status law.

Whereas Article Thirty-Three talks about freedom as a sacred right, with personal freedom being guaranteed by the state,<sup>31</sup> Article Twenty, which considers the family as the nucleus of society, doesn’t specify the nature of relations within the family. Are they relations of equality or relations of dominance? Is the family unit a partnership of equals or is control by one family member the mainstay of the system? Moreover, the article states that "[t]he law maintains the family structure and strengthens its ties", but there are no national laws specific to the family.

For example, Article Twenty-Nine<sup>32</sup> of the Constitution guarantees the right for free education and its being compulsory until the end of the basic education level. However, allowing early marriage restricts the right to education and makes it subject to the will of the family, specifically the will of the men in the family. This trend is particularly evident in the dropout rate: the first national report on population indicates that dropout is prevalent

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<sup>29</sup> Article states: "The community in the Syrian Arab Republic based on Solidarity, interdependence and respect for the principles of social justice, freedom, equality and maintenance of human dignity of every individual."

<sup>30</sup> Dr. Viuliet Dagher, *Women and Family in Arab Societies*, Chapter IV on women and the family, psychic reading.

<sup>31</sup> Article states: 1 - Freedom is a sacred right and the State shall guarantee the personal freedom of citizens and maintain their dignity and security. 2 - Citizenship is a fundamental principle involves the rights and duties enjoyed by every citizen and exercised in accordance with the law. 3 - All citizens are equal in rights and duties without discrimination on grounds of sex, origin, language, religion or creed...

<sup>32</sup> 1 - Education is a right guaranteed by the state and is free at all levels, and the law regulate the cases in which education will be rewarded for the universities and government institutes.

2 - Education is compulsory until the end of basic education and the state is working to extend the obligation to other stages ..."

among "the female more than among the male population."<sup>33</sup> It is also manifested in the illiteracy rate, which, in the case of adult females, tends "to exceed 25%".<sup>34</sup> In 2006, "half of the women in the governorates of Al-Hasakah and Raqqa and Deir al-Zour were illiterate."<sup>35</sup> Accordingly, it is certain that "the unauthorized labour sector is the main source of work for these women who did not receive adequate education."<sup>36</sup>

Although the Syrian Constitution allocates Article Twenty-Three<sup>37</sup> to talk about the "duties" of the state toward women, the commitment is floating and vague rather than clear and specific. The text, for example, features words such as "do, work on" instead of "committed", "pledge" or "guarantee", which limits the binding character of this article.

Besides, it is unclear how we can apply Article Thirty-Six, which guarantees the inviolability of private life, or Article Fifty-Four, which states that "every attack on personal freedom, or on other public rights and freedoms guaranteed by the Constitution and the law is considered a crime," having in mind that, at the same time, the Penal Code is still using the pretext of "honour" to ease punishment for perpetrators of female murders.

Upon the above mentioned, we can say that despite the fact that the Syrian Constitution acknowledges civil, political, social, economic, and cultural rights, the right to live without violence, with maternity protection, with adequate housing and with the help of the state in the care of minors, the elderly and dependents, it lacks specific provisions addressing the large gender gap between women's and men's rights that would empower women to exercise and enjoy these rights. This makes the unequal relations within the family structure a perpetuating factor in the denial of women's formal rights. The percentage of women who own land does not exceed 5%.<sup>38</sup> Unemployment is rife among women enrolled in the labour force, taking into consideration that the indicators of female unemployment are inaccurate, as there are thousands of qualified women who want to work but are subdued without spousal consent. Labour laws, the agricultural sector, and social insurance exclude from their provisions women who work in the investments. As for the reproductive role of

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<sup>33</sup> The first national report on the status of the population in the Syrian Arab Republic, the education, the Syrian Commission for Family Affairs 2008

<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Article states: "The State shall provide for women all the opportunities that allow them to fully and effectively participate in the political, economic, social and cultural life, and is working to remove the restrictions that prevent their development and participation in community building."

<sup>38</sup> The evolution of women's status indicators, the tenth five-year plan, evaluate the performance of the ninth five-year plan

women, the social insurance law states that in case of the resignation of a fully insured individual, because of marriage or birth of her first child, she is compensated in both cases by 15 % of the average wage, regardless of years of service. Syrian mothers are denied their right to confer their nationality on their children. The personal status law also deprives women of an independent civil record: they have to follow either the father or the husband. Moreover "the mother has no guardianship right over minors [in the family] and their property, or the right to represent them".<sup>39</sup>

In addition to the above mentioned, "custom" and "habit" play a dominant role in the formulation of laws relating to the lives of women: "laws and social norms work together in limiting women's freedom of choice in the interest of male control; this kind of control is based on the right of guardianship, which embodies in essence the values of a patriarchal masculine society."<sup>40</sup> Both the discrimination and deprivation of the enjoyment of constitutional rights are reinforced through educational curricula which still hardly address and analyse the generic stereotype of the woman as a "housewife". In addition, the media helps further marginalize women by not acknowledging the existence of different categories of women and solely acknowledging female roles linked to reproduction.<sup>41</sup>

## 2. LESSONS LEARNED FROM CONSTITUTION BUILDING IN TRANSITION

**Over the diversity of contexts, many common elements were highlighted: while the constitution is at the forefront of the political scene, people continue to struggle on all other fronts to create new institutions of state and ensure true democracy.**

This report integrates lessons learned from the constitutional processes in Tunisia, Egypt, Morocco, the Balkans, and other parts of Europe. During the course *Engendering Constitution* (November to December 2013), eminent lawyers, jurists, constitutionalists, and women's rights activists from the above mentioned countries and regions provided

<sup>39</sup>

The discretion of the Court of Cassation date 21/08/1982, Resolution No. 565 based on 981

<sup>40</sup>

Syrian Women League, Discrimination in personal status laws in Syria, comparative research, conclusions

<sup>41</sup>

Syrian women in the development process, Lena Diob in her study on the image of women in the media, versions of the Syrian capital of Damascus Secretariat for Culture

diversified, rich analyses and shared their experiences.<sup>42</sup> The historical background, objectives achieved in the new constitutions, and challenges faced during the constitutional processes were discussed. Furthermore, attendees identified problems associated with weak female participation in constitutional committees, traps to avoid, ways to transform inalienable rights into constitutional sentences, and tricky expressions to be aware of (i. e., the importance of vocabulary, grammar, orthography, and even pronunciation). The roles of civil society and women's rights organizations as agents of change were particularly stressed, together with the importance of field work, the function of national mobilization, and international partnerships.

Over the diversity of contexts, many common elements were highlighted: while the constitution is at the forefront of the political scene, people continue to struggle on all other fronts to create new institutions of state and ensure true democracy. The presence of women in power structures and decision-making is quite low, in spite of their crucial role in the political scene as well as in everyday life situations. Women have to bare many threats of backlash during these processes. One of the biggest challenges women face is the struggle for a constitution that enshrines the principles of full equality and non-discrimination without restriction due to incompatibility with religious precepts. At the intersection of elected people, judges, and officials there are many deviations or learning errors, but there are also a lot of valuable achievements.

The *Brussels Conference 2014* reaffirmed the view that women's rights are a cornerstone of democracy, and emphasized the importance of goals such as the consolidation of citizenship values, civic responsibility and empowerment. The link between citizenship, gender equality, development, culture, and secular values was highlighted. The conference also stressed ways to promote and preserve international women's rights mechanisms as a reference, as well as strategies that help to implement international law, such as UNSCR 1325 on women's peace and security.

The accumulated lessons that every participant learned can be used on two levels: the strategic level and the level of content.

## **1. On the strategic level**

All lessons learned indicate that the engendering of the constitution is a necessity, and once all essential concepts have been elaborated, it is also important to develop a plan for the full inclusion and implementation of the concept of gender equality. Bold efforts should

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<sup>42</sup>

See the presentations in the Annexes

be made to place the citizenship rights for women and men at the heart of the discussions concerning the future constitution. Kurdish women are deprived of citizenship rights, so the inclusion of Kurdish activists and experts in the constitution-building process as Syrian citizens to fully guarantee their rights is essential.<sup>43</sup>

The following inferences could be made on the basis of practical experience of engendering constitutional processes in Tunisia, Morocco and Egypt:

- Be prepared to engage with the drafts presented by other groups and constituent bodies;
- Lobby the government and mobilize public opinion to include women who are representatives of civil society and women's rights organisations in the Constituent Assembly;
- Plan the best strategy in terms of alliances to maximize input to the Constituent Assembly;
- Continue a parallel process, along with the constitutional process, by exerting pressure on the government and the Constituent Assembly, alerting different media and organs of international opinion;
- Come to the table always prepared with a Plan B, anticipating resistance and thinking of second best solutions, but also of alternative ways to achieve the results you want;
- Plant seeds for desired results that cannot be immediately achieved;
- Link the discourse of gender equality to democracy and social justice discourse to allow broader mobilization;
- Connect the Constitution-making process to international human rights and women's treaties ratified by the state and get the support of international actors;
- Work for the creation of the needed balance of power to support the process: raising awareness, mobilization, and alliances.

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Report from the International Conference "Promoting nonviolent transition towards democracy through engendering a constitution building process" April 10-11, 2014 Brussels



## 2. On the level of content

**The future Syria must be built on the vision of citizenship, separation of powers, and equality between women and men, and all citizens regardless of their religion, gender, ethnicity, or age.**

In the course of debates throughout the national and international activities and trainings, the notion of citizenship has been underlined by legal and constitutional experts as well as by women's rights and human rights activists. After 40 years of tyranny and dictatorship by the regime, concepts like citizenship and statehood have been withdrawn from political discourses. Therefore, we have stressed the value of recreating the ideas of dignity and freedom. The future Syria must be built on the vision of citizenship, separation of powers, and equality between women and men, and all citizens regardless of their religion, gender, ethnicity, or age. Major lessons, which we have learned, include:

- Ensure that women's rights issues are present in all sections of the Constitution, not only in articles supposed to concern women specifically;
- Frame women's claims about constitutional law in line with the feminist understanding of the meaning of justice, dignity, freedom and equality.
- Adopt a gender perspective (gender mainstreaming) on all functions that we expect a constitution to perform: identity of the community, structure of powers, fundamental rights. Guarantee the means for their implementation;
- Define the sources and hierarchy of norms: supremacy of the Constitution, relationship between state law and international human rights law and relationship between state law and other sources of law, such as religious or customary law;
- Design mechanisms to ensure constitutional supremacy and stability, such as a constitutional court, amendment procedures, enforcement bodies;
- Use gender inclusive language;
- Place special emphasis on enforcement guarantees and mechanisms to ensure that the Constitution does not remain merely a declaration of principles;

- Enhance political empowerment of women and their balanced participation in all decision making positions, and commit to women's quotas.
- Counteract the public/private divide, unveil its negative consequences for women's rights, and enshrine:
  - Egalitarian family structure;
  - Equality provisions that allow tackling all forms of discrimination in the public and private sphere;
  - Proactive measures to combat discrimination and ensure equal opportunities;
  - Provisions banning violence against women;
  - Provisions addressing the fight against the stereotyping of women (in the media, in education, etc.);
- Combat the delegation of legislative powers to non-state sources of law (e.g. customary law/religious law) to the extent that they violate women's constitutional rights and their human rights;
- Include provisions that ensure women's reproductive freedoms but also a care-centred society:
  - Free reproductive autonomy clauses;
  - Clauses for the protection of pregnancy and motherhood;
  - Clauses that ensure adequate housing, assistance of the state in care for minors, the elderly and dependents;
- Include provisions that ensure women can enjoy all their social, economic, cultural rights and freedoms in effective ways.

### **3. MAIN PRINCIPLES, VALUES AND PROCEDURES TO STRUCTURE AND FOLLOW THE CONSTITUTION BUILDING PROCESS**

The accumulated analyses and experiences throughout the process and the common discussions by the involved stakeholders formulated different steps and illuminated some major elements essential for both process and content.

## 1. Process

- A successful process bears the insight and affirmation that framing women's claims about constitutional law begins with women's life experiences and the articulation of what justice, dignity, freedom, and equality mean and require for them. Constitution-building is tightly linked to other processes: peace negotiations, the peace process, transitional justice initiatives, institutional reform, and the participation of the women themselves. All these are key democratic requirements and entry points.
- A gender-sensitive constitution requires gender mainstreaming throughout all its articles, not only those that concern women specifically. It is thus necessary that feminist women and men are structurally associated with and consulted on all aspects of the process.
- Integration of lessons learned from comparative experiences from the region and internationally is beneficial for using best successful strategies, while bearing in mind that copying legal norms across different contexts has obvious limitations.
- An important insight is that activist lawyers and constitutionalists, women and men alike, create their spaces for strengthening and widening their gender analyses and are involved in providing legal expertise on gender issues for the drafting of the constitutional project. In this process cooperation with women's rights activists and networks nationally and internationally is a precondition to make sure that women's rights are mainstreamed across the whole project.
- Last but not least, it is of paramount importance to involve progressive men in decision-making positions and to request their support of the process.

## 2. Gender equality as a value structuring the content of a constitution

The constitution should be grounded in the values of democracy, gender equality, and participation. These values are defined in the Preamble and even if not legally binding, they provide the vision of the state and its commitment to ensure that women and men are of equal worth and their different knowledge and experience are taken into account in

promoting progress in all spheres of society, “which is not liable to any sort of interpretation or jurisdiction”.<sup>44</sup>

Explicit reference to equality between women and men should be coupled with explicit prohibition of direct and indirect discrimination based on gender, marital status, language, race, religion, opinion, ethnic or social origin, property, background, or other status-related factors. Subsequently this will facilitate the development of gender-equal legislation and/or a specific law-defining gender equality and gender-based discrimination<sup>45</sup> (as per CEDAW), and will ensure that women and men enjoy the same opportunities, rights, and responsibilities in all aspects of life. In this way the constitution provides a clear frame, leaving no room for interpretation by constitutional courts and ensures the building of full democracy from the start of the transition.

### **3. Principles structuring the content of a constitution**

In order to ensure and preserve women’s rights, the constitutional project should follow several major principles:

- The Constitution is secular in nature and stipulates separation between religion, state, and legislation in unambiguous language, while clearly guaranteeing freedom of belief, worship and the practice of rituals;
- The Constitution prevents legislative authority from amending its articles in a manner that may negatively affect equality between men and women, or obstruct the essence of justice and freedom. It states in plain language that articles which guarantee civil rights and liberties and equality between men and women are not subject to change except to enhance and enrich them, in case there is a need to modify certain articles of the constitution by the legislative authority;
- It ensures mechanisms for enhancing women’s participation in public and political life, as zipper quotas, and explains that these affirmative measures are temporary until the principle of full, equal participation is achieved. Women should never be regarded as the “complementary” or the “other” but rather regarded as

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<sup>44</sup>

Looking for a Democratic Constitution, p5, CSWD

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CEDAW Part I, Article 1

independent subjects in thought and personality. Genuine democracy enables all individuals, men or women, to express their views and participate in social life.

- All international conventions and agreements ratified by the state have a higher precedence over national laws. This includes but is not limited to the Universal Declaration of Human Rights. The national constitution and legislation should be harmonized to comply with international conventions concerning political, economic, and social rights and the major international agreements ratified by the state, especially the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ensuring all reservations are lifted and ratifying the optional protocol.
- Thereof, the Constitution prohibits discrimination against all citizens, women and men alike, in all its forms, in conformity with international law, in particular with CEDAW.
- The Constitution provides enforcement mechanisms, such as gender equality bodies and laws, to guarantee that it is more than a mere declaration of principles.
- The Constitution is written in gender-sensitive language and explicitly specifies “women and men” after general terms, such as “all citizens” or “individuals” in order to emphasize that all genders are to be considered as equal citizens in both value and law.

#### **4. Follow up procedures**

After instituting the aforementioned principles, several procedures must be undertaken, including:

- Work on existing laws, by the legislative authorities, to comply with the rights and liberties guaranteed by the draft Constitution. No articles of law shall contradict the spirit of the Constitution. If any such contradiction is observed, laws must be harmonized with the Constitution and international resolutions stipulating human rights and women’s rights. It is therefore crucial that feminist groups and human rights activists are included in the reviewing of existing laws and regulations. They must be a part of the development of civil and criminal laws in order to achieve an integrated elimination of all forms of discrimination and violence against women;
- Find mechanisms that guarantee the preservation of women's rights in reality; the Constitution alone cannot protect women against cultural stereotypes and other forms of prejudice, which marginalize them in overt and covert ways;

- Provide women with their own independent civil records as part of institutionalizing full citizenship for them;
- Establish a national authority on the highest decision-making level mandated to support, protect, and advance women's rights. Gender equality must be institutionalized in all ministries, local institutions, and authorities by a gender equality law, alongside a gender equality committee in the national parliament or government, which will specialize in resolving any gender inequality issues. Gender equality must be included in all governmental plans and programs.
- Form a national policy that reflects a positive image of women and counteracts social acceptance of discrimination against women.

#### 4. GENDER ENTRY POINTS TO THE CONSTITUTION

**The aim is to build a state whose constitution guarantees human rights to all its citizens, women and men alike, and criminalizes all forms of discrimination against women as featured in the International Charter of Human rights and the Convention for Elimination of All Forms of Violence against Women.**

As explained above the guarantee of equal rights for all citizens, women and men alike, presupposes explicit recognition of full equality between women and men at all levels together with the necessary mechanisms and means to achieve said equality. A guiding example can be taken from the Constitution of Morocco, which states in Article 19 that: "The man and the woman, enjoy, in equality the rights and freedoms of civil, political, economic, social, cultural, and environmental character ...the State works for the realization of parity between men and women", thus generating conditions for equality and combating all forms of discrimination. Or from the newly adopted Tunisian Constitution (Feb 2014), Article 21 stipulates that: "all male and female citizens have the same rights and duties; [t]hey are equal before the law, without any discrimination". However, female and male citizens need to be equal not only "before the law" but also equal in law.

Temporary positive measures in accordance with CEDAW must also be implemented in order to ensure women are empowered and are able to counter the effects of centuries of discrimination and marginalization.

The Constitution thus guarantees civil, political, social, economic, and cultural rights, including the right to live without violence and the reproductive rights of women. Protection of pregnancy and motherhood, adequate housing, and state assistance in care for minors, the elderly and dependents are also assured.

## 1. Political Identity

- Provision of full equality between all citizens, women and men alike, in citizenship rights, including civil, political, economic, and social rights, and in all areas of public and family life.
- All citizens, women and men alike, are equal before the law and by law; they enjoy equal legal protection and access to legal institutions with equal treatment.
- Prohibition of all forms of discrimination against women; discrimination is considered a crime subject to punishment by law. Non-discrimination clauses and gender equality provisions should also focus on particular areas, such as marriage and work, and address and oppose the stereotyping of women in the media and in education.
- Successive governments work on developing policies and adopt provisional measures to ensure the political empowerment of women: parity democracy, gender balanced participation in all instances of power. They should institute a minimum of 40% representation for women in all legislative, executive, and representative bodies and institutions in order to address structural discrimination and exclusion based on gender and aim at achieving gender equality (50/50%).
- Gendered language and focus on gendering all terms, bearing in mind the symbolic value of a constitution. This work should be supervised by a commission on the gendering of language, titles and functions. “Man” is not a neutral reference. Feature also clear, precise, and unambiguous language to prevent any possible mis/interpretations. The Tunisian example of “the right to life “warns of such traps.
- Special provisions that counteract the public/private divide (which relegates women to the private sphere and reproduces negative stereotypes and female subordination). Egalitarian family structure, provisions of equality that allow

tackling all forms of discrimination in the public and private sphere and allows the combining of work and family life.

- A gender equality committee at the highest governmental decision-making level and /or a gender equality ombudsman office mandated to fight all forms of discrimination against women and work according to the international agreements and conventions to protect women's rights.

#### **Examples of amendments:**

Article 12 , 26, 27, 84: Whenever the text features "candidates", "voters", "citizens", **Add** "*female and male*" or "*women and men*" so as to have "*female and male candidates*", "*female and male voters*", "*female and male citizens*".

Article 19: The community in the Syrian Arab Republic is based on solidarity, respect, and the principles of social justice, freedom, equality and the protection of human dignity for every individual. **Add:** "*protection of human dignity for all individuals, women and men alike*".

Article 33: Citizens are equal in duties and rights, without discrimination based on gender, ethnic origin, language, religion or belief. **Add:** "*Citizens, women and men alike, are equal before the law and in the law, with the commitment of the state to equality.*" **Add** "*and protect women from violence in all its forms in both the public and private spheres*".

## **2. Structure of powers, composition and functioning, electoral system**

- The main sources of legislation are international human rights and women's rights conventions (ratified by the state), international humanitarian law, and the principles of social justice.
- The personal status law is regulated by a civil law.
- The separation of the executive, legislative and judiciary powers and complete neutrality of the Syrian Army in all aspects of political life.
- Provisions of affirmative measures, such as gender quotas, to ensure participation of women and the gender parity principle in the structures of all powers: the



legislative, judiciary and executive authorities, as well as in national governing bodies and local self-governments.

- Provision of measures in the fields of education, health, and criminal law in order to combat all forms of criminality, including violence against women.

### **3. Civil, political, social, economic, cultural rights**

- The measures in the field of civil, political, social, economic, and cultural rights are binding and are regulated through international and regional women's rights mechanisms such as the CEDAW. They include:
  - Prohibition of all forms of violence against women in private and public life;
  - Specific protection against sexual violence, physical abuse and sexual exploitation;
  - Right to education, work, and own property/land /inheritance;
  - General commitment to women's political participation, plus legislative quotas of no less than 40% representation set-aside to ensure equal participation of women in politics at all levels.
- The children of all citizens, women and men alike, have the right to acquire Syrian nationality and full citizenship.
- Children, girls and boys alike, have the right to be protected against all forms of violence, especially family (domestic) violence.
- The right to life and abolition of the death penalty as a form of punishment for any crime. Prohibition of ill-treatment of any person, woman or man, and in particular, prohibition of torture, including rape as torture, and any other kind of cruel, inhumane or degrading treatment; punishment by law for such crimes.
- Support for weak, vulnerable women, such as the poor, or women who are heads of households; education and employment opportunities, capacity building and skill development. For that purpose, governments should adopt related comprehensive empowerment policies and provide vulnerable women with the necessary protection.

- Support for the disabled, women and men alike, of education and work opportunities, development of skills and abilities; efforts should be made in providing necessary protection and support for them and on facilitating their full integration into society.

#### **Examples of amendments:**

Article 19: The community in the Syrian Arab Republic is based on solidarity, respect, and the principles of social justice, freedom, equality and maintaining human dignity for every individual. **Add:** *“protecting human dignity for both men and women”*.

Article 29: On compulsory education. **Add:** *The state guarantees compulsory education for both women and men equally.*

Article 40: Paragraph 2: Each worker has a fair wage based on the quality of the work and its benefits, but not less than the minimum wage needed to ensure the requirements of the livelihood and their changes. **Add:** *For each worker, man or woman, fair and equal wages; the state is committed to guarantee all work rights to women and ensure their rights during pregnancy, birth and motherhood.*

## **5. CONCLUSIONS AND NEXT STEPS TOWARDS A DEMOCRATIC CIVIL STATE**

**The women’s movement in Syria demands nothing less than full equality and parity as founding principles in the constitution and as a constitutive part of democracy.**

This report is a major step in the constitution building process; a collective work, bringing together experts and activists, women and men alike, around a common goal: the engendering of a constitution, framed by the values of freedom, human dignity, gender equality and social justice and prevailing over religious and custom-based laws. In order to reach a democratic society, such a constitution integrates the achievements of years of women's struggle, previous progressive achievements as well as the principles of a civil state.

Preparing a democratic future means exposing and opposing the dictates of the patriarchal mentality in all fields without waiting for dramatic changes in the social structure that may take decades. The values of gender equality, respect of human rights, prohibition of violence, and discrimination, promoted through international declarations and conventions, notably the International Charter of Human Rights, CEDAW and UNSCR 1325 on women, peace, and security, will be key references and will provide a supportive framework for this process.

The construction of this framework needs to define its political identity as a key reference to it in order to guarantee the right to full equality for Syrian women and to criminalize discrimination and violence against them. As such, all patriarchal references that promote non-civil affiliations, such as religious, sectarian, tribal, and ethnic affiliations that enforce contradictions and conflicts must be excluded, as for example, stating that the personal status law of a particular sect is better than the law of another sect.

The framework needs to determine its political identity that shall reflect the comprehensiveness of the participatory process in its construction and express its democratic and fair character. This identity must reflect the vision of future Syria and the status of Syrian women in society with the knowledge that the mentioning of religious reference would create an obstacle to women's access to their universal human rights. Experiences have demonstrated this, not only in Syria but in all countries that included religious references in their constitutions, where all laws are civil, except laws relating to the lives of women.

Means and mechanisms compatible with the reference and identity must be carefully chosen because it is no longer possible or acceptable to talk about equality between women and men as a fundamental principle of human rights without granting to the women's rights movement an effective role. The women's rights movement is capable of dismantling patriarchal speech patterns and unveiling patriarchal domination, origins and expressions. At the same time, this movement can provide alternative policies that could speed up the achievement of equality and overcome the effects of centuries of marginalization and exclusion of women.

The conclusions we have reached through this work reaffirm some of the major lessons we have learned from vital experiences in Tunisia, Egypt and Morocco, among others, and confirm the crucial need of:

- explicit references to the universality of women's rights and international women's rights mechanisms;
- a thorough consideration of the balance of powers during the process;
- the representation of all categories of Syrian people in the constitution writing committee;
- the separation of religion from the state, legislation and political sphere;
- gender-sensitive language to ensure effective equality in the constitution, as well as a strong impact on the ground; language thus becomes a powerful tool for change.

The process has accumulated key strategic objectives to be achieved:

- To work with all categories inside Syria on gender equality and women's rights awareness; to be closer to the street, as even progressive forces in Syria are reluctant to engage with it, when it comes to women's rights and equality.
- To involve feminist organizations and civil society organizations in the preparation of the negotiations process, to participate in them actively, and form transitional ruling bodies. Civil society organizations must have the freedom to operate and be represented in committees for the endorsement of programs and in all policies.
- To involve women in the negotiating delegations that the parties and the Syrian political forces form in all phases, with a rate of not less than 30%.
- To fight for the adoption of mechanisms to ensure the integrity and transparency of the constitutional referendum and all levels of elections, and guarantee the involvement of civil society in the monitoring of electoral processes.
- To focus on the Drafting Committee as the state is never neutral. The Committee's members will always be partial to whoever is in power. This shows the importance of engaging the participation of organizations at grassroots level in the drafting process and their role in monitoring that process, and of making the constitutional courts accessible to the people.

- To define a clear gender equality agenda and seek all windows of opportunity to promote this issue.
- To lobby for a proportional representation election system that favours gender equality.
- To link this process with the overall democratic process. Women's rights are not a marginal issue but an integral part of the general framework of human rights based on international documents.
- To keep in mind that the power-balance can be changed by the continuous mobilization of the democratic and progressive forces. Therefore, building the constitution is based on continuous negotiations and debates. In Egypt for example the balance of power prevented the creation of a new constitution and they had to resort to modifying the 2012 constitution, so compromises within certain limits should be considered.

Throughout the process, most debates highlighted the need to build alliances with all the components of the democratic movement in order to create the needed balance of power enabling the achievement of substantive and sustainable gains for women in the areas of human rights, gender equality, and democracy. These debates emphasized the importance of mobilization and mass movements to support the constitution-building process and to have the process owned by the social movements themselves.

The women's movement in Syria demands nothing less than full equality and parity as founding principles in the constitution and as a constitutive part of democracy.

## ANNEX – REGIONAL CONTRIBUTIONS

### Afaf Marie, Egypt



*Afaf Nasrel-Din Marie is a founder and an executive director of the Egyptian Association for Community Participation Enhancement (EACPE). She has been a consultant for UNICEF, ESCWA, UN Women, and other international organizations such as the Woodrow Wilson Centre, ABA, NED, Solidarity Centre, USIP, PDP and EU. She has also worked as a trainer, at national and regional levels, to build capacities of Egyptian, Moroccan, Jordanian, Tunisian, Lebanese, Syrian, Iraqi, and Palestinian NGOs. Ms Marie has likewise participated in several research activities. She coordinated and edited a shadow report of the CEDAW Coalition in Egypt and took part in developing a number of training manuals on CEDAW, women's health, violence against women, Parliament & MDGs, and monitoring elections from a gender perspective.*

### PUBLIC PARTICIPATION IN THE PREPARATION OF THE CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT

#### The role of Egyptian civil society

Over nearly nine months before the issuance of the Constitution of 2012 and five months before the issuance of the Constitution of 2013, the coalitions, organizations, and associations that operate in different areas held community dialogues which were expanded through meetings, workshops and public and media conferences, and went down to different governorates to consult with different groups of Egyptian women and men: workers, students, farmers, professionals, fishermen, doctors, engineers, artists, creators with special needs, writers, journalists, etc. Furthermore, these coalitions, organizations, and associations used varied media outlets to provide an integrated view of the most important principles and basic provisions that had to be considered during the writing of the new Egyptian Constitution, as well as the rights and interests of different social groups. In addition, they thwarted attempts to introduce a strong religious element into the Egyptian Constitution and made sure that it was oriented towards the establishment of a civil state relying on the values of civility and modernity and fully benefiting from the world's heritage, with all philosophies and religions therein.

These steps were inspired by historical experiences that tell us that the process of drafting constitutions and laws in all countries, that pass through transitional stages, does not take

place in closed rooms and does not involve only groups of specialists in law and constitutional jurisprudence. Drafting constitutions is done through a process of extensive social debate and consultation with citizens (women and men alike), in order to evolve principles of wise governance and manage public affairs through and for the people, on the basis of respect for human dignity and equality. This democratic process is the cornerstone of the stage of preparing a constitution and a key part of the transitional stage. Through it the constitution's rules express the spirit and consciousness of the nation, and human rights, including those of women, minorities and other marginalized and vulnerable groups, are guaranteed.

Two good examples of the adoption of a participatory approach and the use of social dialogue is provided by the drafting of the South African Constitution in 1996 and the Venezuelan experience of 1999. Significantly, the drafting of the South African Constitution took seven years (1989 - 1996). South Africa succeeded in involving citizens (both women and men) in the process through the use of innovative and varied methods, such as media campaigns and advertising campaigns in newspapers, radio and television stations, and on buses. Moreover, a newspaper was published by the Constituent Assembly in which important issues were explained in a clear and simple way through cartoons. Internet sites were made use of and public conferences and meetings were held.

The elected representatives of the people in the Constituent Assembly initiated measures that enabled them to communicate with the electorate as well as educate people politically and invite them to express their views. Through such measures, people whose voices were rarely heard – such as women, poor and marginalized individuals, and tribal leaders managed to have their say and participate in the ongoing debate so that their needs and interests could be reflected in the new Constitution. As a result between 1994 and 1996 the Constituent Assembly received two million proposals by individuals and civil society organizations, trade unions, professional associations, and other stakeholders.

The Venezuelan experience, which includes the full recognition of natives' rights, and especially the right of citizenship, is considered a particularly good lesson and an example to be followed. Initially the National Constitutional Assembly comprised 131 members who were elected by universal suffrage but only three of them represented the country's native population. In September 1999 native organizations from various regions of Venezuela submitted a document to the President of the Republic which contained their main proposals on the new Constitution. Most proposals were accepted after due consideration and a chapter on natives' rights was inserted into the draft. However, there was strong opposition from the Security and Defence Committee which was headed by a group of army officers who objected to the native people's proposals, claiming that they threatened the country's sovereignty. In their view, using the expression "native people(s)" was not

permissible as the Venezuelan nation was comprised of one people only and could not be divided. After tough negotiations, an agreement was reached whereby the Security and Defence Committee accepted the term “native people(s)” with the addition of an article stating that such people were part of the nation and state.

From that perspective and based on those experiences, the efforts of Egyptian civil society are currently reviewed. At the conference held in Cairo in September 2012 and at the conference held in November 2013 it was unanimously agreed that the new Egyptian Constitution should take into account the following provisions and general principles:

**First:** Egypt is a multi-religious, multi-ethnic, and multi-cultural nation adhering to its national and territorial unity and maintaining the cohesion of its national identity. There is a single Egyptian identity with multi-dimensional civilizational roots. Accordingly, the Constitution must guarantee this diversity, which is one of the most important sources of the culturally rich Egyptian identity and establish a basis for a society in which everyone is blessed with security, freedom, dignity, equality, equal opportunities, social justice, and the elements of a decent living.

**Second:** The drafting of the Constitution must be done in a way which expresses the spirit of the revolution and respect for human rights. The Constitution’s provisions must reflect the establishment of a modern civil state based on citizenship and the establishment of a democratic government based on a real separation of powers and ending the absolute dominance of the executive power over the legislative and judicial ones. It is essential to end the absolute power enjoyed by the President of the Republic and ensure the devolution of that power, likewise the launching and protection of public freedoms, especially political and civil freedoms, including freedom of expression and the organization and formation of parties, associations, and civil society organizations. It must be stressed that the abolition of all forms of discrimination, not only on the basis of gender, but also on any grounds of class, ethnicity, belief, or ideology, is the correct path to achieving citizenship for all. In addition, freedom of religion and belief must be guaranteed for all male and female citizens without any kind of discrimination and incitement to religious hatred and sectarian belief must be criminalized.

**Third:** International human rights agreements, including conventions, charters and protocols that have been signed and ratified by the Egyptian authorities, must rank above national legislation. Such international agreements and conventions shall not be adjustable or suspended under any law. In addition, the Constitution must ensure the independence of state-owned media institutions from the executive power.

**Fourth:** Legislative measures shall be taken to prevent the referral of civilians (women and men) to trial before military and exceptional courts, and limit military jurisdiction to



prosecute military officers on crimes of contravention within their units or breach of the requirements of their jobs.

**Fifth:** A democratic state should adopt the principles of equality and non-discrimination between men and women, which are principles that the Constitution shall be based on.

**Sixth:** Social participation must be acknowledged in legislation, monitoring, and accountability of officials in connection with the rights stipulated in the Constitution and the laws. The widest participation of rights holders, popular committees and civil society organizations must be allowed and they must have an effective role in managing the affairs of the community and guaranteeing the community's right to knowledge and circulation of information. The rights stipulated in the Constitution are the inalienable property of every man and woman in Egypt; they can be enhanced and developed further but cannot be disparaged for any reason.

Also, the documents to which female and male representatives from all classes of Egyptian society contributed include economic, social, cultural, civil, and political rights, in addition to the right to development.

**Economic, social and cultural rights include:**

- The right to have a real job opportunity with fair and adequate wages for each citizen (woman and man), who is able to work;
- The right to have fair and satisfactory work conditions;
- The right for everyone to form associations, with the participation of others, and to join an association of his/ her choice;
- The right for everyone to have social security, including social insurances;
- The family, which is the natural and fundamental unit of society, shall be given the greatest possible protection and assistance;
- Special protection shall be provided to mothers during a reasonable period before and after childbirth;
- Children and adolescents are entitled to protection and assistance without any discrimination.

- Everyone has the right to an adequate standard of living for himself/ herself and his/her family, including adequate food, clothing and shelter, and the right of continuous improvement of living conditions;
- The right of education for everyone;
- Free and compulsory guarantee of primary education.

**The right of every individual to:**

- participate in cultural life;
- enjoy the benefits of scientific progress and its applications;
- benefit from the protection of moral and material interests resulting from any practical, literary or artistic effort of his/her own making.

**Civil and political rights include:**

- The right of self-determination;
- The principle of non-discrimination;
- The right of equality between women and men;
- Non-infringement of human rights in times of emergency;
- Non-infringement of human rights guaranteed by international conventions;
- Respect for the right of life;
- Protection from torture or other forms of cruel or inhuman treatment;
- Prohibition of the use of force or coercion on any individual;
- The right to personal safety and the inadmissibility of arbitrary arrest or detention;
- Humane treatment of persons deprived of their freedom and respect for the dignity of every person;
- Not to imprison any person on account of their inability to fulfil a contractual obligation;
- Freedom of movement;

- Recognition of the legal status and nationality of everyone;
- The right of equality before the law and of fair and equitable court hearing;
- Respect for the privacy of personal life;
- The right of freedom of thought, conscience and belief;
- The right of opinion and expression; freedom of the circulation of information; freedom of access to information;
- Prohibition of war propaganda or any form of national, racial or religious hatred;
- Freedom of peaceful assembly;
- The right to organize peaceful political associations;
- Protection of the rights of the family;
- The right of every child to protection;
- The right of participation in public life and management of public affairs;
- The right of equality before the law;
- The right of racial, religious and language minorities to enjoy their own culture, practise their religion, and use their own language.

**Ensure the inclusion of women's rights in the Constitution and enable participants, women and men alike, to:**

- set purposes and tasks;
- determine capacities, resources and needs;
- figure out obstacles and challenges;
- determine properties of issues and alternatives;
- develop a plan of action;
- coordinate efforts.

**Questions to be answered:**

1. Where shall we begin?
2. What are the main themes?
3. What are the key processes?
4. Who is involved?
5. What are our plans?
6. What is the timetable?
7. How do we implement the tasks entrusted to us?

#### **Standards:**

- **The process of preparing the Constitution draft should take into account:**
  - commitment to international conventions;
  - proportional representation (quota);
  - understanding the status of women.
- **Women's participation in the preparation of the Constitution, legislation and policies, which meet their needs;**
- **Public awareness of the importance of participating in the process of constitutional political reform.**

#### **Strategic planning aims at:**

- raising awareness;
- capacity building;  
impact on the concerned parties;  
impact on key processes;  
**In order to**
- produce a Constitution and legal frameworks and policies that take into account gender differences

#### **Objectives:**

- Ensuring women's rights in the Constitution, legislation and major policies;
- Building leadership capacity for women;
- Full implementation of the international conventions that deal with women;
- Building effective networks and links;

- Strengthening advocacy and negotiation skills;
- Facilitation of access to expertise and comparative information;
- The availability of legal information to all members of society.

### **Objectives that have been achieved: some provisions of the new Constitution**

#### **Article (1)**

The Arab Republic of Egypt is a sovereign state, united and indivisible; it has a democratic republican system based on citizenship and the rule of law.

The Egyptian people are part of the Arab nation and contribute to the integration and unity of that nation. Also, Egypt is a part of the Islamic world. It is situated in Africa, but takes pride in its historically extensive links with Asia. Egypt has contributed to the building of human civilization.

#### **Article (2)**

Islam is the state religion. Arabic is the official language and the principles of Islamic law are the main source of legislation.

#### **Article (3)**

The religious principles of Egyptian Christians and Jews are the main source of legislation that regulates their personal and religious affairs as well as their choice of spiritual leaders.

#### **Article (4)**

The sovereignty of the people is the main principle of the Constitution and the state. This principle should be universally applied. The people are the source of the power that safeguards national unity, which is based on the principles of equality, justice and equal opportunities for all citizens, according to the manner prescribed in the Constitution.

#### **Article (5)**

The political system is based on political and party pluralism, peaceful transfer of power, separation of powers, balance between them, the association of power with responsibility, and respect of human rights and freedoms, in the manner prescribed in the Constitution.

#### **Article (6)**

Nationality is a right of those born from an Egyptian father or an Egyptian mother, and they have the right to be recognized and provided with legal papers containing personal information. This is a right guaranteed and regulated by the law. Also, the law prescribes conditions for the acquisition of nationality.

#### **Article (9)**

The state is committed to the achievement of equal opportunities for all citizens, without discrimination.

#### **Article (11)**

The state is committed to achieving equality between women and men in all civil, political, economic, social and cultural spheres, in accordance with the provisions of the Constitution, and shall endeavour to take measures that ensure the representation of women adequately in parliaments and local councils as prescribed by law; likewise, the state must ensure that women exercise their right to hold public office and managerial positions in the executive power and in the entities and judicial bodies without any discrimination against them. The state is also committed to protecting women against all forms of violence and ensuring that they are able to reconcile family duties and work requirements. It is also committed to providing care and protection of motherhood, childhood, and the elderly.

#### **Article (18)**

Every citizen has the right to integrated health care according to state standards of quality. The state shall ensure the maintenance of the facilities of public health services, and support and work on the upgrading of these facilities. It shall likewise ensure their fair geographical spread. The state is committed to the allocation of a proportion of governmental expenditure of not less than 3% of GNP for health care, and to raising the allocated sum gradually until it becomes consistent with global averages. The state is committed to establishing a comprehensive health insurance system for all Egyptians, which covers all diseases; the law regulates citizen's contributions to the health system and may exempt them from payment altogether, on the basis of their income levels.

#### **Article (19)**

Every citizen has a right to education. The educational system aims at building Egyptian character. It likewise strives to preserve national identity, consolidate a scientific method of thought, develop talent, encourage innovation, and instil high spiritual values, in addition to the concepts of citizenship, tolerance, and non-discrimination. Moreover, the state is

obliged to take into account education's objectives and encourage academic curriculum development consistent with international quality standards. Education is compulsory until the end of the secondary stage or equivalent.

The state shall guarantee the allocation of a percentage of governmental expenditure of not less than 4% of GNP for education, and will raise the allocated sum gradually until it is consistent with global averages. The state shall also supervise such expenditure to ensure that all schools and public and private institutions observe standard educational policies.

#### **Article (25)**

The state is committed to setting a comprehensive plan to eradicate alphabet and number illiteracy among citizens of all ages. It is also committed to putting into implementation mechanisms linked to the participation of civil society institutions.

#### **Article (51)**

Dignity is the inalienable right of every human being and may not be breached. Therefore, the state is committed to respecting and protecting it.

#### **Article (53)**

Citizens are considered equal before the law in public rights and duties, without discrimination on account of religion, gender, ethnic origin, race, language, disability, social status, or political or geographical affiliation, or for any other reason.

Discrimination and incitement to hatred are crimes punishable by law.

The state is obliged to take the necessary measures to eliminate all forms of discrimination and the law regulates the establishment of an independent Commission for this purpose.

#### **Article (60)**

The human body is inviolable, and therefore any form of assault, disfigurement or torture is a crime punishable by law. Trafficking bodily organs is prohibited as are medical or scientific experiments on the body, without the free consent of the person involved. Medical treatment should conform to the fundamental ethical principles of medical science and be regulated by the law.

#### **Article (80)**

A child is a person aged under eighteen years; every child has the right to a name, identity papers, free compulsory vaccination, health care, family care or alternative, basic nutrition,

safe shelter, religious education, and affective and cognitive nurture. The state guarantees the rights of children with disabilities and rehabilitates and integrates them into society.

The state is committed to child care and protection from all forms of violence, abuse, ill-treatment, and sexual and commercial exploitation. The child has a right to early education until the age of six. Child labour is prohibited until the age of completion of basic education; any hazardous work for children is likewise prohibited.

**Article (88)**

All forms of slavery, subjugation, forced exploitation of humans, sex trade, and other forms of human trafficking are criminalized by law.

**Article (92)**

The state is committed to the agreements, covenants and universal conventions of human rights ratified by Egypt; this has the power of law after being published in accordance with the conditions prescribed.



**Abdullah Mohammed KHALIL, Egypt**

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*In 1991 he was honoured with an award by the Egyptian Organization for Human Rights for his voluntary work. He is a member of the Board of Trustees and the Elected Executive Officer of the Egyptian Organization for Human Rights. Mr.*

*Khalil was Head of the Legal Committee (May 1991 - June 1998), and did a lot of valuable volunteer work.*

**POLITICAL TRANSFORMATION IN EGYPT AND THE NEW CONSTITUTION****Challenges during the constitutional process**

- Decay of women's rights in particular and human rights in general – 2012;
- Religious aspects of the state that restrict human rights and make the jurisprudence doctrine and its negative impact the basis of the governance on women's rights;
- Continuous aggression toward the judicial power;
- The prevalence of violence against women, especially harassment of protesters;
- Lack of experience and skills in transforming the inalienable rights of women into constitutional and legislative clauses.

**Models of women's rights entry points into the 2012 Constitution****The Preamble of the Constitution of 2012**

- Fifth: equality and equal opportunities for everyone: citizens (women and men); no discrimination, no mediation, no favouritism in rights and duties;
- The Constitution did not consider the preamble as one of its fundamental provisions. Therefore it is regarded as a literary text.
- **Article 2 and Article 219**

Equality between religion and doctrine

- Article (2)  
Islam is the state's religion; Arabic is the official language, and the principles of Islamic law are the main source of legislation.
- Article (219)

The principles of Islamic law include the general evidence, fundamental and jurisprudence rules, and recognized sources as acknowledged by the Sunni school of thought.

- **Article (81), the last paragraph**

These rights and freedoms shall be exercised insofar as they do not contradict the principles set out in the chapter on state and society in this Constitution.

The chapter in question was a clear expression of the religious state.

### **Stage of post-June 30, 2013**

- **On the appointment of the temporary president of the republic,**

The president was granted legislative power as well as the authority to select experts for a committee that would propose constitutional amendments. The president was likewise entitled to form a committee of fifty members representing all sections of society. However, religious, political and sectarian participation reflected negatively on the performance of the committee.

- **Percentage of female participation in the committees**

The Committee of Experts = 0%

Committee of Fifty= 10%

Brotherhood Committee = 7%

### **Stages and models to solve the problem**

- Maximizing the impact of female participation in the Committee of Fifty and in organizations initiating social debates;
- Transformation of inalienable rights into constitutional clauses;
- Utilizing global experience and knowledge in the drafting of the Constitution's articles dealing with human rights in general and the rights of women and vulnerable groups in particular;

- Models to be used:  
 Constitutions elaborating methods of social participation;  
 Manual on Human Rights in the World Constitutions;  
 Women and the Constitution;  
 Women's Access to Justice.

**The skill of transformation of inalienable rights into constitutional and legislative articles**

- Keep in mind feminine and masculine forms in the Arabic language
- The Constitution and law are tools for social change

So

- What is the inalienable right that you want to prove, comply with, or guarantee?
- What are the patterns of behaviour that you want the Constitution to change or prohibit?
- If the articles of the Constitution or law do not explain "who their rules are addressed to", and "what" they should do, then the Constitution will not encourage compliance with the desired forms of behaviour; upon reading the clause it should be shown that:
  - The clause identifies the agent [active participle in the Arabic language] "who"
  - The verb identifies "what" directs the law to the agent and prohibits or allows him/her to do;
  - The agent shall be eligible to act;
  - Use the active, rather than the passive voice in the language;
  - The agent can be identified (the state - person - judicial power ----- etc.)
  - May not - must: imperative and "not to do" grammar. [Both phrases cannot be used unless we wish to impose a certain obligation];
  - May: reserved for the Fourth Estate;
  - Be sure to use pronouns correctly: "for him" or "for her" or "for them- women" or "for them- men", therefore, the context should clearly indicate the person who is referred to by the pronoun;

- "Al = The": the definite article refers to a specific person;
- Includes: actions and forms of behaviour that are imposed or prohibited by the Constitution Means: that the actions and forms of behaviour are specifically mentioned;
- Write always: in the simple present tense!
- Use action verbs directly: say "Study the court" rather than "*Put the court under study*" [literal translation];
- If: to describe the situation and conditions in which a particular duty or power is applied;
- And: a conjunctive tool;
- Or: a separation tool;
- Law: When the legislator is addressed in order to ban or allow an act or conduct. For example, "the law ensures punishment of all forms of discrimination against women."

### **Beware of tricky expressions**

- Pay attention to the use of passive and active grammatical constructions;
- When no agent is mentioned in a legislative sentence, the intention may be to conceal the identity of the real party in charge;
- **Use and transfer of knowledge and expressions of women's rights in other countries' constitutions**
- We must always look forward and not backwards; we must strive to overcome territorial borders and learn from other countries' constitutions and experiences in the present; unlike recently adopted constitutions, ancient constitutions were products of their time;
- While female participants in the drafting of the Constitution can benefit from foreign experience, they should also bear in mind that the text should reflect their own situation and that electronic citation and mechanical transfer of sentences from other sources cannot be viable solutions; mature understanding of their reality and expectations is needed.

## **Drafting clauses expressing prohibition of discrimination and the relationship between the prohibition of discrimination and the principle of equality**

- In the light of Article 2 in the two International Covenants of Human Rights and Article 1 of the Convention of (CEDAW) and Article 26 of the International Covenant on Civil and Political Rights.

### **Models of the formulation of the prohibition of the discrimination principle:**

- **South African Constitution (1996), Article (9):**

#### **Equality:**

Everyone is equal before the law and everyone has the right to enjoy equal protection and to benefit from the law.

The state may not implement unfairly discrimination directly or indirectly against any person because of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, creed, beliefs, culture, language, birthplace, or a combination of these reasons.

No person shall implement unfairly discrimination directly or indirectly against another person for the reason or more, stated in paragraph (3). Furthermore, national laws, which prevent or prohibit unfair discrimination, must be issued.

Discrimination for one or more of the reasons set forth in paragraph (3) is considered unfair unless it is proved that it is fair.

### **The principle of equality and the prohibition of discrimination and the protection of some of the vulnerable and marginalized groups**

- **Equality between spouses**

#### **Turkey's constitution, Article (41) (as amended on October 17, 2001)**

The family is the basis of Turkish society which is based on equality between the spouses.

- **Consent to Marriage**

#### **Constitution of Azerbaijan (1996), Article 40:**

Every citizen has the right to marry upon reaching the legal age, the marriage is concluded based on a voluntary acceptance, and no one shall be compelled to marry.

Spouses have equal rights, and child care and upbringing is a duty required from the parents.

- **Provision of special protection to mothers**

Provide special protection to mothers during a reasonable period before and after childbirth

**Constitution of Slovakia, Article 41:**

- Guarantees special care for women in the pregnancy period, and protects them in labour relations in accordance with specific work conditions.
- Children born outside and inside the marriage frame shall enjoy equal rights.

**Latvian Constitution (1992), Article 38:**

- The State protects the families raising up their children in their homes and provides them with assistance in accordance with the system stipulated by the law.
- The law stipulates to pay wages for mothers on maternity leaves, and grant them comfortable working conditions and other benefits, as well, the law protects juveniles.

- **Pregnant women:**

**Constitution of Ecuador, Article (43):**

The State guarantees for pregnant women and nursing mothers:

- Prohibition of discrimination due to pregnancy in educational and social work.
- Providing all health services for mothers.
- Priority in protection, comprehensive health care and life during pregnancy, childbirth and postpartum.
- The existence of facilities needed for recovery after pregnancy and during lactation.

**Constitution of Ecuador, Article 363:**

- The state is responsible for providing services for sexual and reproductive health, and must ensure comprehensive health care, especially during pregnancy, childbirth and postpartum for women.

## Separation of powers and its effects on gender equality

### Adopting measures of separation and cooperation, otherwise, the society becomes discriminatory

- The main idea that the principle of separation of powers is based on is summarized in the necessity of distributing the key functions of governance: legislative, executive and judicial, as separate and equal entities, wherein each function is separated from the other; accordingly, the power will not be concentrated in the hands of one individual who misuses it and oppresses people, which results in discrimination and serious infringement of human rights.
- In the absence of this separation, we cannot say that the legal system is fair and it [forfeits the right to equity];
- Public authorities create obstacles and barriers, or refrain from implementing judicial rules issued in favour of the victims;
- The criminal justice system is unjust and unfair if it does not allow conducting serious, fair, fast and effective investigations for claims or allegations of human rights violations relating to torture, forced disappearances and inhuman treatment or violence against women or any other discriminatory practices, especially when committed by persons acting in their official capacities;
- The high cost of litigation, the absence of an effective and convenient legal and judicial aid system, the difficulty in obtaining legal advice, the absence of the human element qualified to provide legal service efficiently and professionally, the complexity of the procedures, and lastly the unreasonable length of the litigation period are all very serious obstacles.

#### **Constitution of India, Article 32:**

- Remedies in order to save the rights granted under this section:
- The Supreme Court has the power to issue directions of judicial orders, including orders, such as summoning of appearance before the judiciary, order notice, prohibition, any inquiry and arrest order, or confirmation, in case of need, for the enforcement of any of the rights granted under this section.

## Immediate trial of the perpetrators of violence and hatred crimes

#### **Constitution of Ecuador, Article 81:**

- The law stipulates special and urgent measures to prosecute and punish the perpetrators of domestic sexual violence crimes and crimes of hatred and those committed against children, adolescents, young people, the elderly, the disabled and the persons with first category of care and protection. Prosecutors, defenders and human rights advocates and specialists to treat these reasons are appointed according to the law.

- This right is based on the legal certainty to respect the Constitution and the existence of clear legal rules, and their implementation by public authorities -

- The state is obliged to investigate the crimes committed by its sections ... and inflict punishment legally.

### **Punishment for Discrimination**

#### **Constitution of Brazil:**

Article 7, paragraph 42: the law shall punish any discrimination that would prejudice or threaten fundamental rights and freedoms.

#### **Constitution of Ecuador:**

- The law stipulates the punishment of any discrimination. The state may adopt positive procedures to promote the actual equality of rights in the favour of marginalized or vulnerable groups.

### **Punishment for Discrimination and the establishment of an Anti-Discrimination Commission; combating all forms of violence against women in the 2013 draft**

- **Article 11/ Paragraph 3**

- The state is committed to protecting women against all forms of violence, and ensure that they can reconcile family duties and work requirements; it is also committed to providing care and protection of motherhood, childhood, women-headed households, the elderly, and women most in need.

### **Ensure the principle of gender equality in the draft of the Egyptian Constitution with respect to all civil, political, economic and social rights in the light of constitutional provisions and not in the principles of Islamic law**

- **Article 11, Paragraph 1**

- The state is committed to achieve equality between women and men in all civil, political, economic, social and cultural rights, in accordance with the provisions of the Constitution.



- **Ineffective positive measures in Article 11, Paragraph 2**

- The State shall endeavour to take the measures that ensure the representation of women adequately in parliaments and local councils as prescribed by law, likewise, ensure that women exercise their right to hold public office and managerial positions in the executive power and in the entities and judicial bodies without any discrimination against them.

**Direct application of international conventions of human rights**

- Judge commitment in the interpretation of the terms mentioned in the international conventions of human rights, issued by treaty entities

**Constitution of Ecuador, Article 11:**

- The rights and guarantees stipulated in the Constitution and international covenants of human rights are immediately applicable, upon the request directly from any employee by virtue of his position, whether a public, administrative or judicial employee

**Disappointing clause in the draft of the Egyptian Constitution**

- **Article (92)**

- The state is committed to the agreements, covenants, and universal conventions of human rights ratified by Egypt, which have the power of law after being published in accordance with the conditions prescribed.

- Tricky expression.

**Using the letter (T), which indicates the feminine form in the Arabic language**

**Swiss Federal Constitution, Article 136:**

**Political Rights:**

- All Swiss men and Swiss women who have completed 18 years and not under guardianship because of mental disease or weakness, enjoy political rights within the Swiss Federation. All have the same rights and the same political duties.

- Citizens that enjoy political rights may participate in parliamentary elections and in the vote regarding federal issues. They can also propose initiatives and referenda at the federal level and sign them.

**Zahra OUARDI, Morocco**

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### **THE MOROCCAN FEMINIST MOVEMENT: THE INITIAL PRECURSORS OF THE CONTEMPORARY MOROCCAN FEMINIST MOVEMENT**

Our movement was initiated by the launch of the feminist publication **8 mars** in 1983, which led to a wide discussion aiming to raise awareness of the real situation of Moroccan women. *8 Mars* published studies, research and inquiries into the reality of discrimination and legal injustice experienced by Moroccan women. The publication also initiated campaigns, protests, and petitions, which alerted people to important gender issues. This enabled us to establish *L'Union de l'Action Féministe* four years later, in 1987.

Our feminist struggle has been associated with the struggle for democracy, since we have continually tried to link women's demands to the demands of the democratic community in general for the amendment of the Moroccan Constitution.

In 1990 we held a very important conference, conducted awareness campaigns, and stated our demands for change of the unjust laws against women. One of our initiatives was the "One Million Signatures" campaign which aimed at modifying the 1992 Personal Status Code. Because of this campaign the Code was changed in 1993.

### **Morocco entering into consecutive progress of legislative improvements**

Morocco has put a lot of effort into harmonizing its national laws with international standards ever since becoming involved in the ratification of international conventions.

- Morocco first experienced a turning point in the field of rights and freedoms activation in 1998 when a new government took office; this government issued the first declaration of women's rights; it established a governmental sector

concerned with women's issues, and initiated a plan to ensure women's participation in the process of democratic development;

- The creation of institutions and entities for the protection and promotion of human rights: the Advisory Council for Human Rights, the National Council for Human Rights, and the Equity and Reconciliation Commission. The creation of the National Observatory to improve the image of women - National Observatory on Violence Against Women; the setting up of a gender budget as a work frame in order to strengthen accountability in terms of respect for women's rights and the transformation of international standards of human rights to measurable indicators, to ensure equal access to fundamental rights;
- Morocco has an impressive number of legislative resources, which ensure equality and prohibit all forms of discrimination between men and women: the Family Code, the Labour Law, the Law of Nationality, the Communal Charter, measures for the improvement of women's representation in elected assemblies and their appointment to positions of responsibility, the Law of Parties, the Election Law, etc.

### **The Constitution of 2011 as the crowning achievement of our efforts**

After the ratification of the Constitution of July 2011, the following documents were endorsed:

- In November 2012 , the Governmental Council endorsed the Optional Protocol to CEDAW, the Convention Against Torture (CAT);
- The Council also endorsed the supplement to the International Covenant on Civil and Political Rights;
- The Council endorsed the regulatory Law of appointment to senior positions to ensure devolution of governance, equality of opportunity and non-discrimination;
- Amendment of Chapter 475 of the Criminal Code which allowed the offender, who kidnapped or lured a minor, the possibility of impunity; the penalty of imprisonment was introduced;
- The issuing, in May 2013, of a law on the conditions of employment as an activation of Chapter 4 in the Labour Code in order to prevent the employment of underage girls and ensure the economic and social rights of domestic workers;

- Approval of the reform charter of the justice system, taking into account the gender approach in criminal policy and compatibility of the law with international conventions and the Constitution: July 2013;
- Government Board approval of the fund to support women's representation in elected councils: September 2013.

### **International mechanisms:**

Morocco's commitment to submit periodic reports and implement the recommendations of the periodic review. HCP ministerial role for human rights.

### **Institutional achievements:**

Morocco has adopted the principles of participatory democracy, under the impact of civil society, which has become an active partner in the formulation of public policy.

### **The trend of experiment**

The women's movement and the forces of democracy and human rights were all engaged in all of this dynamic work, following a precise and a realistic methodology that is based on:

- Monitoring and tracking of public policies, exposing violations and condemning them, sensitization and mobilization, issuing statements and press releases, organizing press conferences, and putting pressure on the government. We weren't only acting as a pressure group on the government. We also acquired our own power.
- Preparation and submission of a draft law in each of these fields: the Personal Status Code - the Constitution - the parity – The reform Charter of the justice system - the Advisory Council of the family and childhood.
- Pleading: holding meetings with ministers, officials, party leaders, unions, parliamentary groups and human rights institutions.
- Organizing protests, marches, and a human chain inside the dome of the national parliament and seminar halls.
- The formation of alliances and networks to channel energies and efforts; openness to other international and local groups, and working in cooperation with them.
- Engagement with up-to-date methodology for the development of our methods in campaigns and advocacy, and developing action plans and strategies.

- Consolidation of intellectual debate and organizing symposia to sum up our findings, crystallize our visions, and unify our views in addressing realistic needs. Exchange of wisdom between experts and specialists from foreign organizations close to us.
- The development of the Charter of the Alliance and using it to develop domestic laws; stimulating debate within the Alliance by organizing seminars in order to identify forms of engagement, areas of intervention, impact tools, and viable methods of packaging.
- Organization of debates to define key concepts and assess their compatibility with the Moroccan situation.
- Field work and introduction of innovation into the community.
- Evoke the social context and work to influence the social base to support modernization measures in opposition to a conservative society that is against our campaign.
- Work with the intellectual elite to support our project and with democratic political parties to implement our modernization measures.
- Emphasis on references framed for our work in order to establish state institutions favouring democracy, equality, and full citizenship for all.

### **Investment gains stipulated by the 2011 Constitution to hold and issue its regulating laws**

The involvement of the women's movement in the defence of democracy and equality and the introduction of the status of women's rights within civil society's agenda of democratic demands.

The Constitution of 2011 emerged as the crowning achievement of a long-term struggle that reaped other gains as well; the Constitution explicitly states the rights for which the women's movement has been fighting.

### **Freedoms and Fundamental Rights**

#### **Chapter 19**

Both women and men equally enjoy civil, political, economic, social and environmental rights and freedoms that are mentioned in this section of the Constitution and any other reference and in the international agreements and conventions that Morocco has ratified.

Morocco is seeking equality between men and women by assigning a commission to ensure that both genders are treated equally and all forms of discrimination are rejected.

## Section 164

The commission, which is responsible for fighting all forms of discrimination and which ensures equality for all citizens (see Section 19 of the Constitution), guarantees that all stipulated rights and freedoms are respected.

The human rights and legal gains that have been achieved for the benefit of women in Morocco through the struggle of the women's movement remain fragile in light of the social and economic status wherein women are the most affected, because of massive illiteracy, poverty, and violence against them.

Despite the fact that Morocco has been putting a lot of effort, over recent years, into achieving gender equality, there is no guarantee that what has been gained will be preserved under a conservative government. This is why even more effort should be put into the fight for gender equality, and mechanisms should be developed for the safeguarding of what has been achieved.

The Moroccan Feminist Movement continues the fight for gender equality and, in particular, for the adoption of a gender approach by all ministries and state institutions.

### Lessons learned

- The importance of openness to all sections of democratic civil society willing to support our project;
- Field work and bringing innovation into the community by working closely and accumulating experiences;
- Evoke the social context and work to influence the social base of support to modernization in opposition to a conservative society that is against our campaign;
- Emphasis on references framed for our work in order to establish state institutions and democracy for achieving equality and full citizenship for all;
- Investment gains stipulated by the 2011 Constitution;
- The involvement of the women's movement in the defence of democracy and human rights and the introduction of women's rights within the agendas of democratic demands of different sections within civil society.

### Monia EL ABED, Tunisia



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### CIVIL SOCIETY APPROACH TO EQUALITY

Tunisia has experienced a socially and politically prominent movement since the outbreak of the revolution. The continuous dynamism, which has been characteristic of Tunisian society, has diverse positive implications, the most prominent example being the consensus to put into practice the principles of the revolution: freedom, dignity, and equality.

Tunisian women have played a pivotal role in supporting the democratic path since they are the holders of initiatives and interests; specifically, the holders of initiatives targeted at gender equality at grassroots level. As the democratic path requires equality for all citizens, men and women alike, the concept of citizenship and the conditions in which citizenship manifests itself need to be clarified.

In this connection, the perceptions and proposals for the content of the Constitution shall be studied from the perspective of organizations and civil society associations.

In our context, a large number of associations initiated proposals and produced valuable documents in the course of thoughtful discussions of the basic principles of public and individual freedoms and social, cultural, and economic rights.

Favouring a participatory approach frequently advocated by the legal arena and frequently exposed to exclusion and suppression and practices of elimination and despotism, women's organizations make use of the category of gender as a tool for analysing and understanding social relations. Women are aware of the element of discrimination implicit within the framework of gender division. We wish to draw attention to proposals stemming from urgent and important needs emerging in the aftermath of the revolution and the

dismantlement of the props and basics of the authoritarian and totalitarian regime that preceded it. Within this context, the Constitution occupies the forefront in defining power relationships between citizens (men and women), determining the nature of the system and ensuring fundamental rights and freedoms for all. We will next consider a group of projects of associations concerned with human rights; for obvious reasons we are not going to include the projects of political parties that reported to the Constituent Assembly.

The projects in question are of women's associations and societies as well as independent initiatives of national figures. The organizations behind the projects are the following:

- The Tunisian Association of Democratic Women;
- Association of Tunisian Women for Research on Development;
- The Tunisian Association of Female Jurists;
- Association of Equality;
- League of Tunisian Women Voters;
- Tunisian Association of the Activation of the Right of Difference in Bizerte;
- The Association of Women of Safax City;
- Citizenship and Development Association in El-Kef City;
- Tunisian League for Human Rights;
- Tunisian General Union of Workers;
- Tunisian Branch of Amnesty International;
- A Group of our Constitution;
- Initiative of Professor Sadiq Belaid;
- The Committee of Experts at the Supreme Authority to achieve the goals of the revolution and political reform and democratic transition;
- Coalition of Tunisian Women for Equality and Citizenship.

Our choice of these groups and organizations is not in any way arbitrary but is based on mature consideration and objective assessment.



All these associations and societies have studied the issue of equality and the constitutionalization of the rights of women. They have linked the concept of equality to the analysis of social differences. Some of the above associations have a lot of experience whereas the rest are recently established. All share a concern with human rights, though, and understand the need to preserve what has already been achieved. All are unanimous in their determination to fight all forms of discrimination against women and to achieve full, functional citizenship.

### **Human Rights Approach to Non-Discrimination**

#### **A reading between the lines**

After showing the most important statements in the comparative constitutions, we initially offer in a second stage the most significant projects. Some have been provided to the National Constituent Assembly and others remain inside the social activity as a result of varied and rich discussions in the form of partial proposals that do not rise to the level of full and comprehensive Constitutional documents.

However, most important is the extent of compatibility and consolidation of the basic principles agreed upon locally and internationally, according to the multiple and interconnected policies that have been adopted previously in the first stage upon studying the comparative constitutions. Therefore, we adopted the same consistency to display the most important points in this area.

**First**, the public constitutional requirements

**Second**, the international reference of human rights

**Third**, the requirements relating to civil and political rights

**Fourth**, requirements relating to economic, social and cultural rights

**Fifth**, requirements relating to the gazette of personal status

**Sixth**, practical proposals

#### **First, in relation to the public constitutional requirements**

All studied projects agree on the public constitutional principles and, here, we are aware whatsoever with respect to the announcement of the rights and freedoms whether it is in the form of a draft constitution or in the form of written proposals concerning the status of women in the new constitution.

### **Coalition of Tunisian Women for Equality and Citizenship**

"This Coalition brings together more than 25 Associations have worked continuously and consistently to write down the most important lessons learned from discussions and legal debate about the constitutionalization of women's rights, which is a collective effort brought together the recent associations (1) and other associations have relevant experience with trade union and human rights organizations that have sought to find common and consultative ground in a coordinating and coalition form.

The document contained the claiming of consolidating the human rights and public and individual freedoms without discrimination, and emphasizing on full citizenship in accordance with the universal humanity principles in a clear human right orientation.

**As stated in the third chapter of the document,**

" Citizens (women and men) are equal in the rights and duties without discrimination because of race, color, religion, gender, regional affiliation, political opinion, language, wealth, disability or civil status, and the state shall ensure this equality through putting legislations guarantee theses right and duties".

It is obvious through this article that the principle of equality covers all categories, without exception, ignored categories for many reasons and different.

**The committee of experts at the supreme authority to achieve the goals of the revolution and political reform and democratic transition**

The constitution draft, of The Committee of Experts at the Supreme Authority to achieve the goals of the revolution and political reform and democratic transition, contained implications for the principles of human rights under their coordinated and integrated form, which is a comprehensive project, addresses directly the issue of equality in the basic and public principles. The fourth chapter of the draft talks about equality between the two gender, with an emphasis on the need to take necessary measures to ensure the activation of equality recognition, the article was not limited to this, but went past to prevent violence against women, and this is an addition that it is not less important in its content and in form.

"Women and men are equal in rights and duties, thus the state shall make this equality real by issuing laws and necessary measures to punish violence against women"

Another method adopted by the former Dean of the Faculty of Law in Tunisia, Professor Sadiq Belaid concerning the formulation of the constitution's draft, whereas he assumed the stipulation of women's rights in connection with the Personal Status gazette and international treaties adhered by Tunisia without having a clear and explicit formulation indicates to feminine form (the letter T) in the language- but it is a way we consider to be

inconsistent with the requirements of this stage as the sufficiency with stipulation on the provisions of the Personal Status gazette is necessary but inadequate on the grounds that the Personal Status gazette also needs to be developed, even if it included new and advanced provisions but it remains in the foundational stage, deals with a radical remedy for the concept of equality.

### **Second: Concerning the requirements relating to international reference of human rights**

The ambition of women in establishing a constitutional system which ensures their rights, remains an urgent requirement does not wait for any delay, as we get used in other situations to delay the rights of women because of national priorities and public interest.

The international reference of human rights, sometimes presents in the side related to women, universal, specific and cultural problem, basically in the field of family whereas the core of the problem was and probably is still about the concept of equality between men and women by a traditional background which is no longer goes along with the recent social and political development. Whereas keeping women in a position of inferiority based on the cultural specificity is one of flimsy justifications and vacuum pretexts because the culture is not kept in traditions and customs that rip off the freedom of women through dominance and control relationships, since the culture is that changeable and developed acquired, and the education on the culture of human rights is one of the priorities offered for activation.

### **International conventions on human rights can be classified as general agreements and other special agreements for women**

Most Important: - the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in December 10, 1943

- The International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations on December 16, 1966
- Optional Protocol to the International Covenant on Civil and Political Rights, dated December 16, 1966  
Agreements, which concern directly with women
- Convention on the Political Rights of Women - a convention on the nationality of married women - the Convention on Consent of Marriage, Minimum Age for Marriage on November 5, 1962
- And one of the most important agreements, which focused on all aspects of women's rights in the private and public sectors, the Convention on the

Elimination of All Forms of Discrimination against Women, issued on December 18, 1979, which stipulates measures and mechanisms to protect the rights of women

Whether public or private, the international conventions, declarations, and resolutions issued by the General Assembly of the United Nations in the field of human rights have focused on the issue of equality in all its aspects, which is a prominent position that has a direct effect on the rights arena. Associations and civil society organizations have dealt with such references and literature in the adoption of the legal system to promote and respect the rights of all men and women without discrimination due to gender, color, or affiliation.

### **Constitution of citizenship and equality through the eyes of women**

This project represents a document of human values which is an outcome of an agreement between the representatives-men and representatives-women of the civil society in the framework of the formal Constituent Assembly, since this document has depended on the universal values of human, which are respectively, the principle of full and actual equality between women and men, the implementation of citizenship, the respect the public and individual freedoms, the achievement of social justice, and providing the physical, moral and sexual safety.

Sixth Chapter of this project stipulates that: "Constitution guarantees fundamental freedoms and human rights of women in their universality, comprehensiveness and indivisibility".

The project also considers the adhering to the universal values of human is one of the constants, based on the content of the Universal Declaration of Human Rights and all the texts and documents complement it and subsequent

The Constitution of the Republic of Tunisia of 1959 did not ignore the value of international conventions ratified by the state, but acknowledged the higher position of conventions of their national legislation, while treaties on women's rights remained ineffective and were rarely adopted in the courts, or even used for the benefit of women.

### **Project of the Arab Institute for Human Rights**

The Arab Institute for Human Rights initiated by drafting a document with the participation of the national entity of lawyers in Tunisia, the Tunisian League for Human Rights, the Tunisian Association of Democratic Women, the national Tunisian Journalists Syndicate, and the Tunisian General Union of Workers, whereas named this document " the era of Tunisia for rights and freedoms". This document contained common humanity principles, which are the dignity, social justice, freedom and equality, and has been announced on the

celebration of Independence Day, a special event in the history of Tunisia. The document contains eight chapters in addition to a preface talks about the legality of the human right in constitutional guarantees capable of providing the right of a decent life and ensuring the freedom and non-discrimination and the implementation of citizenship and the right of human Development, also the initiators ( women and men) of this initiative confirmed on the moral impress of this document and it's establishing of fundamental principles of human rights and the rights of women as an integral part of the overall and universal system for rights and freedoms.

### **Third: The requirements relating to civil and political rights**

The recognition and guarantee of political and civil rights constitutes a basic foundation for democratic reform, as the freedom of organizing and expression and the right to vote and of nomination are necessary elements and without them democratic reform loses its meaning. Because the experience of Tunisia in the field of freedoms was painful, the Constitution of 1959 was satisfied to recognize a set of rights that were not implemented at the time.

And in order to avoid this, the constitution draft of Professor Sadiq Belaid states in Article 9, "it is not permissible, under any circumstances, to alter substantially any fundamental right".

The Sixth Chapter: Everyone has freedom of opinion and expression and regulation of peaceful organization and assembly in all its forms, no person shall be harmed because of his ideas, his views or his trends, only in the manners defined by the law

No restrictions shall be put on the formation of organizations and civil, political and trade union associations, nor on the media and publishing."

This emphasis on the need of no affect shall be done on the essence of the right or limit it, has justifications and background, and there is no way for re-following, this is what the civil society was keen to overcome upon diagnosing, to set freedoms pre-revolution. In this diagnosis we draw conclusions and propose alternatives for remedy and reform.

We note through all the documents and proposals that they had adopted in evaluate the situation, the historical and cash dimension, and using other similar and different experiences, which making it deep in being a good alternative.

As the debate continues, at the level of the components of civil society, in relation to the political and civil rights, concerning the way of drafting the constitution between a defender

on the limitation as being one of the most important principles, or vice versa, the need of stipulation in detail for all rights, a reading has justifications (1) and criticisms.

#### **Fourth: Requirements relating to economic, social and cultural rights**

The state has the responsibility to ensure for citizens (men and women) the rights of: decent life, work, education, right of assembly, fair trial, accountability and monitoring.

These requirements are supportive elements of change; without them, it would be difficult to talk about democratic transition and a break with the past. Also, it must be remembered at each stage that the Tunisian people protested and rebelled for a number of weighty reasons. Economic conditions, the phenomenon of unemployment, and widespread poverty clearly led to the recent social and political explosion as a number of studies have demonstrated. According to the figures and statistics, women are particularly vulnerable to poverty, unemployment and other forms of deprivation. However, few of them participate in decision-making processes or parliamentary structures and they are excluded from participation in many forms of economic, social, and cultural development. The Tunisian Association of Democratic Women has mentioned all this in the document that it submitted to the National Constituent Assembly.

The Seventh Chapter includes: **"The Constitution guarantees economic, social, trade union, cultural and environmental rights on the basis of equality between women and men, accordingly, the State shall adopt the guarantees, measures and mechanisms to close the gaps between men and women in the planning of national and local budgets and the adoption of equality within the constants of the Basic Law of Finance"**

Human history shows that cognitive gains illuminate the way to change, and culture plays a central role in stimulating enlightened thought and providing possibilities for reform and development. The establishment of a culture of equality involves both knowledge and political will. The status of women requires immediate intervention and exclusive special measures to accelerate the reduction of social discrimination and disparities based on gender. Women suffer as a result of socially controlled phenomena characterized by vestiges from the past such as the principle of guardianship and various forms of violence against women, which not only affect the physical sanctity of women, but limit their human presence. The Coalition of Tunisian Women for equality and citizenship (1) stresses the need to change established attitudes in order to achieve community development through raising awareness and enhancing knowledge of women's rights.

#### **Fifth: Requirements relating to the Gazette of Personal Status**

Our concept of the family has been improved and approached from different perspectives as confirmed by anthropological studies focusing on the importance of family as the main pillar of the community. This leads us to the way relationships are organized within the family, and the more the relationship is governed by unequal powers the more unsettled becomes the balance.

The Tunisian model of the family in the field of legislation is considered an important example compared with Arab legislations through the Personal Status gazette. The possibility or the need to include the principles of personal status in the Constitution is still debated in the aftermath of the Constitution's amendments in 1959 and on October 27th, 1997.

**Proposals: criminalization of violence**

**Radhia Bin Haj ZEKRY, Tunisia**

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## **WOMEN'S STRUGGLE FOR EQUALITY AND CITIZENSHIP IN THE NEW TUNISIAN CONSTITUTION**

Three years separate us from the events that led to the departure of the former dictator and the fall of his regime. On January 26, 2014, the Tunisian National Constituent society voted for the country's third constitution (The fourth, if counted, is the Constitution of Carthage in the Carthaginian era) where the country was awarded legal framework for the coming years. Apart from the progressive and harmonic content of this legal text, the results of this process are the fruits of the struggle in which women played a major role.

The writing of such founding text has spread over a period of constitutional emptiness, which was disturbing enough and relatively long-term through which the country experienced instability and violence as well as multiple religious threats, yet also this period showed non-violent conflicts and promises for a bright future.

After the fall of the former regime, and after months of instability because of public revolution across the country, Tunisians carried out difficult and dangerous tasks to remove all that was left of the old regime and start anew. They declared the constitution of 1957 null and void, and embarked on another path for the election of the national constituent society elected by public ballot and preventing the country's fate be left to the results of opinion polls. The result: the National Constituent society, which is dominated by Islamists.

It is difficult taking into consideration for this period of struggle for civil constitution that urges equality without falling either in the perfect vision as spread in some cases in the



foreign media of the so-called " Arab Spring ", or fearful vision where we were talking about the final victory of the reactionary political Islam and the failure of the progressive movements. In fact the situation is more complicated in Tunisia. We have witnessed the spread of many Islamic societies as a front for the Ennahda party in power, but we have also witnessed an abundance of new societies, particularly women's societies across the country and even in remote areas of the country. Tunisia has witnessed mobilization of civil society never known before, regarding freedom of expression and the actual exercise of citizenship.

Since history and collective preserved memory on the new constitution , from behind the content of this text is that within two years the fever has swept people that have long been excluded from public affairs, and suddenly pushed automatically in front of the scene, armed with the vigilance of all times to write the founding text : men and women, experts and laymen, elected officials and citizens, political parties, non-governmental organizations, junior or senior, secular and religious, obscurantism and informed figures and masters of everyone, artists and representatives of the media, everyone fought for the development of speech and add, omit, amend or propose and finally to correct the constitution so that everyone is proud and inside him the strong desire for success with blaming others for the responsibility of some gaps and contradictions. For the three drafts that preceded the final text of the constitution proposed by the elected members of the constituent, they have been scrutinized by civil society, especially women and protest movements, which has doubled in all parts of the country.

The Constitution was at the forefront of the political scene. We must not forget that during this period. Tunisians continue to struggle on all fronts to create the other institutions of the Republic and to ensure true democracy: the judiciary, the media and the security institution.

The ruling party, which is not part of democracy, has doubled its attempts of intimidating the media into silence. It has tried for several months to stop journalists and there are many times this has failed. It also failed to confront the journalists' association. Despite attacks on individual freedoms against artists, women and free thought on the whole, and in spite of inflammatory statements and daily threats as well (they threaten to prevent adoption and return polygamy and prohibition of abortion), resistance has become more organized.

The judiciary associations are fighting for the independence of the judiciary, and we started to see results of the courts judgments, which have become very brave positions.

Tunisians have worked hard to earn citizenship and have adapted very quickly to the reaction of the citizen that include accounting of officials and elected people in terms of their income sources, their data and the way they operate. The concept of accountability of elected officials has finally taken its full meaning.

Journalists, media, and bloggers and all components of civil society are fighting relentlessly for transparency and to remind elected officials of their obligations and accountability requirements. In spite of all the violence, we are witnessing in Tunisia profound changes in behavior and we can see that, thanks to the vigilance of citizenship that no one in Tunisia is above the rule of the people.

In this confrontation between elected people, judges, and officials there are many deviations which we call "learning errors". However, there are also many successes; Journalists continue bravely in their duty to denounce violations of freedoms. The ruling party has retreated more than once on the "conditions" that he hopes to impose on the draft constitution.

Regarding women in this context, what is new and specific? The presence of women in power structures and decision-making is rare. They only constitute 30% of the National Constituent society and their presence is sparse in large government institutions and even associations. In the Executive Office of the General Union of Tunisian Workers there are no women. Despite this, females occupy a very important position in the forefront of the scene in the street. Indeed, Tunisian women have played a very significant role before the revolution. Since the national struggle, women were very active and continued to suffer during the years of dictatorship. Women have struggled as a group independent from the authority itself. Before, during, and after the revolution, women were present: in the demonstrations, in organizing and coordinating some of the major events. Women were present in all the movements of solidarity with the Tunisian people against oppression and in social networks, in the press and in electronic media for the purpose of disseminating information. They were also present to go to the field, to take photos, etc. It is quite different in the logic of things and traditions of Tunisian women.

It cannot be denied that the situation after the revolution has given old and modern active associations the possibility of proliferation and openness which had been demanded in the past.

We remember that associations such as ATFD and AFTURD had been prevented from organizing demonstrations in public places. They suffered financially and were closely monitored. Today context allows us to delve into the inner cities. In the past, the capital was cut off from the rest of the cities of Tunisia. There is interesting work being done today with rural women and women in the areas which are mostly still under the influence of the ruling party. Women's associations were born out of survival and passed to the construction phase, increasing the female voice on the scene and in marginalized areas.

After the revolution women have had to cope with a great deal of challenges, but have also been able to invest in many projects and interventions of high priority with each other. For

example, the women's movement in Tunisia has always linked the struggle for women's rights with the struggle for democracy. After the revolution, they found themselves as representatives for civil society in the streets and in national dialogues as well as in the positions taken in public places for all matters relating to the transition to democracy: judiciary independence, election, and media monitoring during elections. This movement also opposes attempts to postpone democracy and continue political marginalization of women and violence masterminded by Islamic groups and militias parallel to the early establishment of dictatorship.

These associations also continue to work against the economic and social marginalization of women, unemployment, the lack of regional balance, and discriminatory effects on women. We also fight against those who disparage the gains made by women under the pretext of religious and cultural particularities, against the escalation of religious extremism and violence against artists and activists of human rights, particularly against women. Violence against women on the streets of Tunisia has also become a new phenomenon after the revolution.

We fight against the exclusion of women from decision-making processes and political structures as well as key positions and against the negative image led by the media through social networks. Women are often underestimated in politics. We also run programs to raise awareness and encourage female political participation so that women are part of the electoral lists.

One of the biggest challenges facing women in this new context is the struggle for a constitution that enshrines the principles of equality and non-discrimination and the basic principles for the protection of women's gains. The issues surrounding the writing of the constitution are centred on the fundamental questions upon which the fate of women are dependent. A conflict exists between a draft text that dedicates the rule of law which refers to the international conventions and human rights and protects and develops the gains of woman. Another project threatens the rights of Tunisian women through the imposition of Islamic sharia law as the main source of legislation. In this confrontation, women remained waiting until the end and until the final victory, a relative victory, as some said, but considered a victory anyway. Considering previous projects, the final text is the achievement of a great breakthrough. This is the first step which penetrated the ended battle of the Constitution and many others began in Tunisia.