

# The Arab Spring and Women's Rights in Tunisia

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MOUNIRA M. CHARRAD AND AMINA ZARRUGH, SEP 4 2013

Women have been central to the events that have shaken Tunisian politics since the Arab Spring in 2010-11. They have played roles as protesters and politicians, activists and academics, journalists and photographers, and whether poor or privileged, urban or rural. Tunisia has long occupied an important position in the Arab world since the historic promulgation of its progressive family law in 1956, which placed the country at the forefront of the Arab world in regard to women's rights (Charrad 2007). In an extensive comparative survey of Arab countries in 2009, Freedom House ranked Tunisia first in the major categories that concern women's rights, including "autonomy, security, and freedom of person," and "political and civic voice," (Kerry & Breslin 2010).

In this article, we address two related questions. In the first section, we consider how Tunisia came to occupy a premier position in regard to women's rights through the promulgation of its Code of Personal Status (CPS) in 1956, well known throughout the Arab world, and the continuous amendments to the CPS over a half-century since then. In the second section, we discuss some of the current debates on women's rights in Tunisia following the Arab Spring, including the mobilization of women around the controversial Article 28 in the draft of the new constitution. By "women's rights," we mean women's rights in the law as it concerns personal status and family law. We focus on this aspect of the law because family law is, as lawyer and human rights activist Asma Khadar (1996: 2) stated unambiguously, "*the gate of freedom and human rights for women*" in the Arab and broader Muslim worlds. Family law has significant implications for women's lives, including their ability to make life choices freely and to pursue educational and professional opportunities.

### Code of Personal Status: A Post-Colonial Expansion of Women's Rights

Family law, which encompasses rules and regulations concerning marriage, divorce, child custody, and inheritance, continues to be the site of some of the most fundamental differences in women's rights across the Middle East and North Africa. In Tunisia, the newly formed postcolonial state initiated reforms of family law following the country's independence from France in 1956. This was an action from above, or a top down policy, which occurred in the absence of an organized women's movement. As Charrad (2001: 219) has shown, the CPS was "*not* a response from the state to pressures from a women's mass protest movement." In promulgating the CPS, the government made decisions for the society as a whole without engaging the community or facilitating the perspectives of the citizenry through popular referendum or other channels of popular expression.

The reasons behind the promulgation of the Code in the 1950s are complex and a full analysis is beyond the scope of this paper. Charrad (2001: 201-232; 2007; 2011) has argued elsewhere that the CPS was part and parcel of an overall strategy of state building that targeted patriarchal networks, clans, and tribal groups. At the same time as they promulgated the CPS, members of the postcolonial leadership also abolished collective property that had been key to tribal networks, created a new form of administration throughout the territory by ignoring tribal allegiances, and advanced a discourse that was unabashedly anti-tribal. An inherent part of the project to create a national state that stood above local, kinship, sect or community loyalties, reforms of personal status law aimed to generate a new form of citizenship in which individual allegiances went to the nation-state. Women benefitted from this conception of citizenship in that they gained individual rights before the law and thus were less subordinated to the whims of husbands and kin.

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Tunisia's new CPS introduced significant changes in family law such as the abolition of polygamy, the end of men's privilege of unilateral repudiation as a way to terminate a marriage at will, the ability of a woman to file for divorce, and the enhancement of women's custodial rights over children. Inheritance laws, for which there are strict and clear provisions in the text of the Qur'an itself and thus constitute an especially sensitive issue, remained the least modified legislation. These reforms, mediated by nationwide institutions and a national court system rather than local authority structures, provided state protections for women. Even though educated women were in a better position to take advantage of the law, much knowledge about the CPS percolated through different strata of society, giving Tunisian women at large the possibility of utilizing what the new laws had to offer.

Reforms beneficial to women continued during the regime of Zine El Abedine Ben Ali who paraded women's rights as part of a general portrayal of Tunisia as embracing modernity on the international scene. The reforms again were largely a top down policy, although women's rights advocates started to make their collective voice heard in defense of women's issues in the 1980s. Their actions were severely restricted, however, as were those of other associations in the 1990s and 2000s. Furthermore, women's associations were composed of urban, elite women in Tunis whose interests were disproportionately represented in Ben Ali's policy formulations to the relative exclusion of poor women (Khalil, forthcoming). Nevertheless, meaningful reforms occurred during that period. For example, as recently as in 2007, the minimum age of marriage was raised to 18 for both men and women, who could marry as early as 15 under the prior legislation (Charrad and Ha, forthcoming). Other reforms initiated under Ben Ali in the 2000s expanded women's rights in regard to marriage contraction, alimony, and custodial rights over children.

A long history of top-down policy formulations concerning women's rights in Tunisia was abruptly interrupted in 2011 when Tunisia witnessed the collapse of the Ben Ali regime and the engagement of multiple sectors of society, including Tunisian women from diverse socioeconomic and political backgrounds.

## **The "Jasmine Revolution"**

On January 14, 2011, former President Ben Ali resigned from office following weeks of protest across Tunisia. The self-immolation of a twenty-six year old Tunisian vendor, Muhammad Bouazizi, on December 17, 2010, started the uprising in the rural district of Sidi Bouzid. Protests then engulfed larger cities in Tunisia, including the capital of Tunis. By early January 2011, mass demonstrations were being regularly held in the name of freedom, an end to corruption, and in demand of Ben Ali's immediate departure from office. Popular media dubbed the ousting of Ben Ali, and the protests that preceded it, the "Jasmine Revolution" (Arieff 2011).

A resounding feature of the protests was the presence of women who demonstrated as professionals, students, and citizens. Women participated as organizers and demonstrators and, consequently, gender equality has been central to discussions of Tunisian politics, most eminently as it relates to elections and the drafting of the constitution (Beardsley 2011). In the case of the former, a quota to include women on party lists for the October 2011 National Constituent Assembly (NCA) election was instituted into law by the transitional government (Dasgupta and Bangham 2012). This measure, drafted and supported by Tunisian women's civil society groups, attempted to enhance gender parity in representation though it was limited because the law did not specify how high on party lists women were to appear. Consequently, many parties ignored the spirit of the law by meeting the requirement to include women on party lists but offering them the lowest positions on the list (Associated Press 2011).

Regardless of their position on party lists, women were nevertheless successful candidates in elections and ascended to positions in the NCA in 2011. The Islamist party Ennahda acquired the largest number of seats in the assembly and boasted 42 female candidates of a total of 49 total women elected to the 217-member NCA (Byrne 2011). Ennahda Executive Council member Mounia Brahim emphasizes the mixed trajectories of Islamist women in politics by saying, "Look at us. We're doctors, teachers, wives, mothers – sometimes our husbands agree with our politics, sometimes they don't. But we're here and we're active" (Marks 2011). The election results and the Islamist women's leadership call our attention to the diversity of women's organizations, efforts, and affiliations. They should lead us to question the religion/secular binary as a lens by which to understand women's interests and movements in Tunisia. The involvement of Islamist women in politics in Tunisia resonates with studies that show how women who identify with Islam regard it as a significant source of their political engagement and subjectivity in other parts of the

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Arab world (Deeb 2011; Mahmood 2005; Salime 2011).

Following Ennahda's electoral victory in Tunisia, widespread concern was expressed about whether the power of parties not only sympathetic to but actively supportive of a more extensive role for religion in Tunisian jurisprudence might imperil the liberal legislation in place since the 1950s and enshrined in the CPS. There were tenable fears that Ennahda's success at the polls in 2011 heralded a broader influence of religion in the country to establish what Hamad (2013) called "Tunistan," or an Islamic state. The preeminent presence of women, particularly Islamist women, in the newly elected assembly profoundly shaped the tenor of debates about the constitution that was drafted over the course of the following 16 months. It has been in the context of the constitution drafting that we have witnessed a transformation of Tunisian politics from actions from above to a public debate about gender in which Tunisian women, Islamist and other, have been central figures.

## Debates about Gender in the Constitution: Article 28

Heated debates in Tunisia regarding gender have concerned political representation and, most recently, references to women in the newly drafted constitution. The popularly elected NCA had as one of its mandates to draft a new constitution, drawing on elements from the preexisting 1959 constitution. The draft of the constitution became the site of struggle, popular outcry, and national dialogue in a way that signifies a restructuring of Tunisian politics and illustrates the significance of a burgeoning civil society. Article 28 entitled "Women's Rights," constituted one of the most debated and disputed articles in the first draft of the constitution, which was released on August 13, 2012. The article was generally translated as deeming women's roles in the family as "complementary" to that of men (Draft Constitution of the Republic of Tunisia 2012; emphasis added).

Although multiple translations may be offered to intimate the meaning of "yetekaamul," the Arabic term in contention, the term "complementary" (or "*complémentaires*" in French) has been the most frequent translation. In response to the first draft released in August 2012, thousands of women organized protests in the capital city of Tunis with a twofold purpose: to celebrate the 56<sup>th</sup> anniversary of the promulgation of the esteemed CPS and to sharply contest the vocabulary of Article 28 (Ghanmi 2012). Opponents of the "complementary" clause of Article 28 argued that the clause defined women only in relation to men and, in addition, only recognized women as married, further negating the multiple and diverse lifestyles of Tunisian women. The use of the term "complementary" inflamed many.

Women associated with organizations such as the Democratic Women's Association, La Ligue Tunisienne des Droits de l'Homme (LTDH), and L'Association des Femmes Tunisiennes pour la Recherche sur le Développement (AFTURD), among others, pursued a variety of avenues to express their grievances with the article and to advocate for alternatives (Karam 2012). From demonstrations with dynamic slogans to the circulation of an online petition that acquired more than 30,000 signatures, women openly critiqued the draft and called for revisions to protect what many regarded as gains acquired during the post-colonial period (Avaaz 2012). Rights enshrined in the CPS became a reference and symbol of what could be threatened by the terminology of "complementarity."

The range of Tunisian women's activism was exhibited in turn by women supportive of Article 28. Islamist women, particularly Ennahda members in the NCA, voiced their support for the article. Some women argued that misunderstandings of the article prevailed in part through misrepresentation of its contents by opposition parties (Babnet 2012). Among the staunchest defenders of the article, Ennahda Executive Council member Farida Labidi declared that "One cannot speak of equality between man and woman in the absolute" (Cavaillès 2012). The multiple positions advocated by supporters and opponents of Article 28, and the nuanced conversations that ensued about the specific meanings of terms like "complementary" and "equality," illustrate the ways in which women's organizations and activists asserted themselves in debates in Tunisia during the post-revolutionary period in a way that departed significantly from top-down gender policy promulgation that prevailed in earlier eras (Charrad and Zarrugh, forthcoming).

As a sign of the efficacy of women's organizing in Tunisia's emergent civil society at this time, the "complementary" clause of Article 28 was omitted from the second and third drafts of the constitution released on December 12, 2012 and April 30, 2013, respectively. Ennahda made another concession in these latter drafts by excluding specific

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references to Shari'a law as the official and primary source of legislation in the country (Hamad 2013). In discussions of the final draft of the constitution, ambivalence continues to be expressed among opposition political figures who claim that articles still contain references to Islam as the state religion and limit freedom of expression (Al-Jalassy 2013). Until a final constitution is adopted, the status of women remains unclear. Nevertheless, it is important to acknowledge that popular organizing, persistence, and an optimism about the possibilities for change encouraged both supporters and opponents of Article 28 to voice their positions not only to influence the reformulation of one of the country's most foundational texts but also to articulate a new women's status in contemporary Tunisia.

## Conclusion

At the heart of this burgeoning civil society and activism following the Jasmine Revolution is the historical status of Tunisia as the bulwark of women's rights in the region. Contemporary women's rights discussions in Tunisia and elsewhere in the Muslim world cannot be understood outside the context of family law and personal status codes. In Tunisia, the liberal legislation of the post-colonial CPS continues to structure the arguments around women's rights and status in the post-revolutionary constitution of Tunisia in 2013. A major shift has occurred, however, even though we do not know how long it will be felt. From the outset of the protests in Tunisia in December 2010, there has been a structural change in Tunisian politics, particularly as it relates to gender. The mass demonstrations that witnessed the extensive participation of Tunisian women were a preliminary sign of the transformations to come through their participation in popular elections, their ascension to political power, and the debates to which they contributed in regard to the drafting of the constitution and contentious discourse as reflected in Article 28.

Whether Tunisian women continue to participate in public debates and what will be the fate of women's rights in the country in the years to come remain as questions. Although the door appears open to the possibility of Tunisia retaining its prominent place in the Arab world in regard to women's rights, the opposite is also conceivable, depending on which political forces hold power in the state in the long run.

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