WORKING PAPERS: WOMEN’S LEADERSHIP AND CONSTITUTIONAL RIGHTS IN TUNISIA: LESSONS FOR AND FROM THE REGION
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These papers are works in progress and were prepared as background information for an informal working group created to examine the issues discussed in the papers.
About the Women in Public Service Project:

The Women in Public Service Project was incubated by the U.S. Department of State in partnership with the leading United States women’s colleges, the Seven Sisters (Barnard, Bryn Mawr, Mt. Holyoke, Smith, Wellesley Colleges) to inspire a new generation of women leaders to lead their communities and countries so as to forge new solutions to the intractable challenges of our times. The WPSP has now grown to be a premier global platform around the world with women’s colleges and academic institutions globally rededicating their commitment to the 50x50 movement: fifty percent women in leadership and decision-making in public service by 2050. What started as an effort by academic institutions in the United States has now grown to include over 80 academic institutions and government entities, and our delegates come from every region of the world and from over 90 countries. Through the WPSP, academic institutions play a critical role in nation-building. In countries that are in transition, academic institutions have the legitimacy to convene disparate groups from the private, public, and non-government sectors. For more information about the WPSP, please visit http://www.womeninpublicservice.wilsoncenter.org

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IMPLEMENTING THE CONSTITUTION: THE WAY FORWARD
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Introduction:

The promulgation of constitutions in Tunisia and Egypt and the revision of the constitution in Morocco and the ongoing reformist processes in Yemen and Libya have sparked robust debate on the process of constitution making and the enforcement of the constitution. The three critical pillars of constitution making include: the constitution making process; the substantive provisions of the constitution; and the enforcement of constitutional guarantees. This brief outline examines the importance of a process-driven constitution and the implementation and the enforcement of a constitution.

International Framework for a Participatory Constitutional Process

Every individual has a right to participate in constitution-making processes. International law guarantees on participation in public life apply to constitution-building processes. The International Convention on Civil and Political Rights requires that “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives…”

The General Comment 25 of the UN Human Rights Committee, paragraph 6, defines the conduct of public affairs to encompass constitution-making processes. The UN Human Rights Committee has also recommended that Bosnia “should reopen talks on the constitutional reform in a transparent process and on a wide participatory basis”.

The Constitution-making Process as a Precursor to the Implementation of the Constitution

International focus is now on the importance of the processes by which constitutions are made. The cornerstones of participatory constitution-making include the participation of women and the inclusion of gender equality in the substantive provisions of the constitution.

The South African process of constitution-making is regarded as a good practice example of a participatory constitution making process. In April 1994 the South African Constituent Assembly incubated an expansive participatory process for the drafting of the constitution built on three major pillars of inclusivity, accessibility and transparency. The first building block was an educational campaign (using newspapers, billboards, radio and TV and a hotline) to educate the public about cardinal constitutional issues and their right to participate. More than 1,000 educational workshops were held over a period of a year and more than 600 civil society organizations took part in them. Public consultations gave members of the Constituent
Assembly the opportunity to meet with members of the community and all recommendations were transcribed and collated. Public consultations were also held on specific subjects, such as the bill of rights, the judiciary and the administration.

The use of social media to foster transparency and participation is a novel and exciting mechanism that might work in a relatively small state. In Iceland, social media has been deployed to draft a constitution. Through media advertisements and social media, the public is requested to send messages using social media. These messages are posted after review and clearance by the council’s staff. Daily posts by the council staff include interviews with council members on social media and live broadcasts of weekly meetings of the council appear on the council’s website and on Facebook.

Towards a Living Constitution: The Implementation of a Constitution

The state has institutional responsibility for implementation of the constitution. Implementation of a constitution is predicated upon strengthening or setting up new institutions provided for by the constitution, allocating powers and responsibilities, jurisdiction, resources including finances and staff and monitoring mechanisms.

It is important to mandate a specific time period for the promulgation of institutions and policies. Independent bodies for the enforcement and oversight of constitutional rights such as commissions and ombudsperson bodies should be passed within a certain time period. For example, the 1992 constitution of Ghana called for laws establishing nine institutions within six months of the first meeting of the parliament after constitution came into effect. The 2010 Constitution of Kenya included a time schedule from six months to three years within which laws on more than sixty subjects were to be passed, and provided a cause of action if a law listed in the schedule was not promulgated within the time specified.

Secondly, there must be a constitutional review of the legal system to ensure that all laws are in compliance with constitutional guarantees and if necessary the repeal of laws that are inconsistent with the constitution.

Thirdly, steps should be taken to monitor the implementation of the constitution. It is important to carry out a regular evaluation of institutions established under the constitutions to ensure that they resources including financial and human resources to implement the constitutional guarantees. For example, section 5 of the sixth schedule of the 2010 Kenyan constitution calls for a commission on the implementation of the constitution to “monitor, facilitate and oversee the development of legislation and administrative procedures as required to implement the Constitution.”
Advancing a Culture of Constitutional Rights

Strengthening a culture of constitutional rights involves ensuring that institutions are governed according to the constitution and the independence of the judiciary safeguarded to adjudicate constitutional rights claims and to hold state and non-state actors compliant with the constitution. This involves providing access to justice and strengthening the rule of law so that all persons, including women, can access courts and other adjudicatory mechanisms to enforce the constitution and the laws made to implement it. Protecting the integrity of the constitution involves limiting the erosion of constitutional guarantees including the narrow interpretation of the constitution in a way that undermines human rights and women’s human rights guarantees.
LEBANON IN COMPARATIVE PERSPECTIVE
Fatima Sbaity-Kassem
Former Director, UN-ESCWA Centre for Women; Regional Coordinator of Arab States for Beijing Conference & follow-up activities, 1995-2005

Lebanon stands to learn from other countries’ good, not-so-good, and poor practices. Despite the fact that the Lebanese Constitution stipulates equality among citizens in all walks of life, one finds that women’s rights are violated more often than not, gender imbalances especially in public and political life linger, and discrimination against women is rampant. This is most tangible and especially disempowering in (1) women’s inability to pass their nationality to their children and spouses; (2) an all-in-all discrimination among citizens not only between men and women but also among women in personal status and family laws, which fall under the jurisdiction of the leaders and courts of the 18 religious sects instead of an all-inclusive civil code; and (3) violence against women and children, with unfair penal codes, in all its forms and manifestations including marital rape, wife battering and killing, incest, early age marriage, child molestation, and pedophilia.

There is a huge mismatch between women’s high socio-economic profile in educational attainment and economic contributions in the private sector and their low political representation in public office. The Government pays lip service to gender equality and the society remains patriarchal: Only 3% of parliamentary seats are occupied by women, who are mostly “garbed-in-black” for the loss or assassination of a father, brother, or a male dynastic family-member. There is only one woman in the current government. The exception is in the judiciary corps, where women represent around 40%, probably due to gender-blind exams and other circumstances of corruption which led male judges to resign and female judges to replace them during the civil war. Notwithstanding this, very few women are in top-level decision-making positions and as members in supreme courts. Therefore, politics remains a man’s world and public office is male-dominated. However, we should recognize that this is not sui generis to Lebanon but is a global phenomenon.

Despite the pressure by and lobbying of the women’s movement (NGOs and civil society) and the National Commission for Lebanese Women (NCLW) the State-national machinery for women, the 128-member Parliament has repeatedly turned down demands for a constitutional or electoral quota for women. There is an ironic disconnect between members of parliament, who are the legislators representing the people, and the cabinet members, who are appointed to form the executive branch of government. Indeed, several times the government approved women-friendly laws but the parliament did not pass them, as for instance the 20% quota for women on the municipal nomination lists of political parties or the Violence against Women in its full women-friendly text, which is a far cry from what the Parliament finally passed. Another example is the civil marriage law which remains floating, although few couples were able to go
around this and register their marriage in a civil court by deleting their sect from their ID cards and civil registration. However, the most debilitating examples are the nationality law and the gender quotas. What remains supreme in Lebanon is the confessional quota which plays havoc with any meritorious system.

The percentage of women who belong to and are members of political parties remains low (around 10% of total membership in the 18 most relevant, active parties), but so is also men’s party membership. The share of women in internal leadership bodies of political parties is also minimal. Leadership bodies may carry different names like supreme councils or political bureaus, but they essentially perform similar legislative and executive function of decision-making and policy-making. However, studies have shown that there are different types of political parties some have religious goals while others have civil, secular, and/or national goals. These studies have shown that the degree of religiosity of these parties affects how women rise to leadership positions. Party religiosity is the extent to which religious goals penetrate parties’ political agendas and platforms. The findings of research on women in 26 countries and across 330 parties demonstrate that as religious extremism rises, women tend to be discouraged and to disappear from the political scene. In other words, as party religiosity rises, the chances for women to assume leadership positions in political parties fall. This is accentuated in a mosaic society as that of Lebanon marked by 18 religious sects with religious extremism thriving, and a 15-year civil war that accentuated social and conflict-bearing religious cleavages.

In comparative perspective to women in other Arab countries of comparable educational and economic profiles, the political profile of Lebanese women is dismal. Overcoming these hurdles is a long-term process since social change does not take place overnight. However, this may require the following suggestive road map that many countries may avail themselves with:

1) Raising gender-awareness in the society at large using campaigns, workshops, focused groups, multimedia channels and the more creative avenues of social media
2) Reviewing and amending or enacting national laws to eliminate gender discrimination
3) Matching national to international conventions, which have supremacy, especially CEDAW, MDGs, Beijing Platform for Action, UNSCR 1325, and other human rights and women’s rights declarations and instruments.
4) Withdrawing reservations on international conventions, particularly the CEDAW, which affects full implementation and inculcates discrimination against women.
5) Building alliances with members of parliament, political leaders and heads of political parties and blocs, as well as religious leaders in order to lobby for gender-sensitive laws and “women-friendly” interpretations of religious doctrines including Islam and Shari’a.
6) Encouraging women, who choose to take a political career path, to join political parties since these are the main vehicles for advancing women to leadership and decision-making positions. Political parties are the gatekeepers since they select, recruit, nominate, and promote women in politics to assume public office.
7) Emulating good practices (Mudawana in Maghreb, parity in nominations in Tunisia and Morocco, gender mainstreaming in South Africa) and learning from not-so-good ones in other countries.

8) Creating a critical mass of women for political leadership and public office by building their capacity to detect, amend, and/or propose gender-sensitive laws, legislation and public policies via pilot projects like WPSP

9) Building a database of practices for women’s leadership and decision-making, which WPSP may spearhead. Countries may avail themselves of such a database for good governance and gender mainstreaming for gender equality.

10) Strengthening national mechanisms/machineries for women to discharge their functions more effectively by allocating sufficient human and financial resources to monitor, evaluate, and follow-up implementation of national laws and international conventions, build sex-disaggregated databases on women for policy-making, and propose/lobby for gender-sensitive laws and legislation.
Parler aujourd’hui, des droits constitutionnels de la femme tunisienne en général et de la clause de représentativité égale des femmes en particulier, n’aurait pas le même rayonnement en Tunisie qu’il y a presque moins d’une année de cela, plus précisément avant le 26 janvier 2014, date de l’adoption par l’Assemblée Nationale Constituante (ANC) de la nouvelle constitution tunisienne puisque pour la première fois dans l’histoire constitutionnelle de la Tunisie, ce nouveau texte constitutionnel allait enfin contenir des clauses consacrant le principe de représentativité des femmes dans les assemblés élues et évoquant le principe de parité relatif à cette représentation.

Comment est intervenu ce nouvel acquis législatif pour les femmes tunisiennes ? En quoi l’invocation des principes de représentativité et de parité tels que affirmés dans la nouvelle constitution tunisienne marquerait-il une évolution pour les droits des femmes ? Quel effet aurait-il sur l’accès des femmes à la prise de décision ? Quelle est leur teneur et sa portée sur les autres droits ? Quelles seraient les mesures ou garanties nécessaires pour rendre effectif ces principes ? Qui serait responsable de rendre effectif ce principe ?

A travers les paragraphes suivants, j’essaierai d’apporter quelques éléments de réponse à certaines de ces questions en laissant le soin à l’avenir proche de la Tunisie et aux tunisiennes et aux tunisiens de répondre aux autres interrogations.

Il sied de rappeler de prime abord, que la première Constitution promulguée le 1er juin 1959, soit trois ans aussi après la proclamation de l’indépendance de la Tunisie, ne contenait pas de clause spécifique concernant la représentation de la femme dans les assemblés élues. Elle renfermait par contre, une expression égalitaire affirmant dans son article 6 que : « tous les citoyens ont les mêmes droits et devoirs. Ils sont égaux devant la loi ».

Cependant, il serait indéniable de négliger ou de méconnaître, encore aujourd’hui, l’impact positif de cette tendance égalitaire, expression de la politique volontariste-féministe du feu leader Habib Bourguiba qui a fait du statut de la femme tunisienne un statut unique et prépondérant dans toute la région. L’impact positif de cette tendance égalitaire était, effectivement, certain et

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2 - Un statut qui trouve sa consécration la plus loquace à travers l’adoption du Code du Statut Personnel en 1956 et de la loi électorale de 1957
tangible sur tout le processus d’adoption de la nouvelle constitution et sur toutes les discussions qu’a connues l’ANC notamment celles relatives aux droits et conditions de la femme tunisienne.

L’esprit Bourguibien régnait aussi bien au sein de l’ANC qu’en dehors de celle-ci. Le débat étant transformé parfois, en duel assez vigoureux opposant Bourguibiens et défenseurs de la cause féminine à d’autres mouvances islamistes plutôt assez réservées sur ces questions. Pour les enfants de Bourguiba et surtout pour ses filles engagées, mobilisées en masse, déterminées et infaillibles, il n’était pas question de permettre l’adoption d’un texte en deçà des acquis déjà consacrés dans l’ancienne constitution de 1959 ni encore des aspirations des tunisiennes et des tunisiens soucieux de faire de cette Constitution une expression rigoureuse de leurs attentes de plus de liberté, d’égalité et de droits humains pour tous sans aucune forme de discrimination. Une Constitution qui s’inscrirait, comme l’affirme son préambule, dans « les objectifs de la révolution, de la liberté et de la dignité ».

Ainsi, grâce à une pression incessante de la part de la société civile, féminine dans une large mesure, digne et résolue et grâce aussi à l’apport indéniable des experts et experts spécialistes en la matière, les longs débats et le retard qui ont caractérisé l’adoption de la nouvelle Constitution vont se révéler fructueux puisqu’ils vont conduire à l’introduction, pour la première fois, du principe de représentativité des femmes dans les assemblées élues (article 34) ainsi que l’objectif de parité hommes-femmes dans les assemblées élues consacré en vertu de l’article 46 de la Constitution.

Concernant le premier principe de représentativité des femmes dans les assemblées élues, en vertu de l’alinéa 2 de l’article 34, l’Etat s’engage à garantir la représentativité des femmes dans les assemblées élues. La consécration dans un texte constitutionnel de ce principe, non étrange pourtant, à la vie politique des tunisiens, s’inscrirait en fait dans un processus évolutif normal qui a connu déjà ses débuts avant la révolution grâce à des initiatives politiques prises par le parti au pouvoir en adoptant des quotas pour garantir la représentativité des femmes au sein du Conseil des députés mais aussi grâce à des mesures réglementaires permettant une représentativité minimale de 20% femmes au sein des Conseil Municipaux.

Il s’agit ensuite et surtout de la confirmation d’une volonté exprimée auparavant au sein de l’Instance Supérieure pour la réalisation des objectifs de la révolution, mise en place en 2011 tout de suite après la chute du pouvoir de Ben Ali. Laquelle Instance à réussi surtout à asseoir à l’occasion de l’adoption de la loi électoral, le mécanisme de listes mixtes zébrées

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3 - Révolution du 17 décembre 2010-14 janvier 2011
4 Article 34 : Les droits d’élection, de vote et de se porter candidat sont garantis, conformément aux dispositions de la loi. L’Etat veille à garantir la représentativité des femmes dans les assemblées élues.
hommes/femmes dans la loi électorale de 2011, et ce, afin de garantir la représentativité des femmes au sein de l’ANC.

Finalement, bien que le principe de représentativité des femmes qui s’est révélé pas si nouveau que ça, il reste néanmoins un nouveau acquis pour la femme tunisienne puisque c’est pour la première fois qu’il est érigé en un principe constitutionnel.

Peut-on dès lors dire la même chose pour ce qui est du principe de parité consacré en vertu de l’article 46 ?

Il faut reconnaître de prime abord, que l’article 46 constitue l’une des pierres angulaires des droits constitutionnels des femmes tunisiennes consacrés par la nouvelle constitution de 2014. A ce titre, il suscite plus d’intérêt du fait qu’il va plus loin que l’article 34 dans la représentativité des femmes dans les assemblées élues en appelant l’Etat à veiller à ce que cette représentativité soit égalitaire. Il invoque, ainsi, pour la première fois, aussi clairement, le principe de parité entre la femme et l’homme dans les assemblées élues.

Par ailleurs son intérêt vient aussi du fait qu’il insère ce principe dans le cadre de toute une armada de mesures contenues dans un seul article appelant l’Etat à protéger tous les droits acquis de la femme, à œuvrer à les renforcer et à les développer, consacrant ainsi l’approche globale des droits des femmes considérant à juste titre, que ces droits sont indivisibles et interdépendants.

L’intérêt de l’article 46 découle également, du fait qu’il engage l’Etat, pour la première fois dans l’histoire de la Tunisie, à garantir l’égalité des chances entre femme et homme quant à l’accès à toutes les responsabilités dans tous les domaines.

C’est là, de plus, tout l’intérêt de cet article qui vient toucher à l’une des plus sensibles déficiences en matière de consécration des droits des femmes tunisiennes du fait du faible taux de présence de la femme dans les postes de décision malgré tout le long parcourt accompli depuis 1956 et malgré l’engagement et le dévouement au travail dont a fait preuve la femme tunisienne tout au long de ces années et malgré toutes les avancées réalisées dans d’autres domaines. Une faiblesse dont les répercussions risquent, si elles ne sont pas prises en charge, à temps, de perpétuer les inégalités entre homme et femme et toutes les autres manifestations de discrimination à son égard. Le faible accès des femmes à des postes de responsabilité et par conséquent à la prise de décision est de nature à ralentir davantage toutes les réformes et les mesures devant être prises pour asseoir réellement et efficacement les droits des femmes longtemps bafoués et méconnus par une société patriarcale.

L’innovation de l’article 46 de la constitution réside enfin dans la confirmation indirecte de la relation, presque dialectique, entre discrimination et violence. La violence étant toujours l’émotion de la discrimination et la discrimination engendre inéluctablement la violence.
Combattre et éradiquer la violence à l’égard des femmes passe hypothétiquement par la jouissance des femmes de tous ses droits et par conséquent l’éradication de toutes les formes de discrimination à leurs égards. Par cette conjonction égalité de droits et éradication de violence, l’article 46 a marqué un point très important dans la conscience générale humanitaire et le diagnostic du problème de la violence à l’égard des femmes. Dorénavant, la relation est claire et l’État est constitutionnellement responsable de prendre les mesures nécessaires en vue de remédier à ces problèmes.

Outre l’introduction de ces principes de représentation égale de la femme, de celui de l’égalité des chances d’accès aux postes de décisions, de l’adoption d’une approche holistique des droits des femmes et de la conjonction entre égalité et violence ; plusieurs autres amendements progressistes aux droits de l’Homme en général et aux droits des femmes en particulier ont été également introduits dans cette nouvelle Constitution marquant ainsi une évolution notable non seulement par rapport à la constitution de 1959 mais aussi par rapport aux quatre projets antérieurs qui ont été soumis devant l’ANC par les uns et les autres et ce, surtout en matière de droits des femmes offrant ainsi à la femme tunisienne un cadre légal couvrant tous les aspects de ses droits lui permettant d’acquérir la place qu’elle lui revient dans sa famille, dans la société et dans toutes les représentations de la vie publique en général.

Peut-on après cette lecture rapprochée et séduisante de ces deux nouveaux articles constitutionnels annoncer que l’œuvre est achevée ou presque et qu’il ne reste à la femme tunisienne qu’attendre la mise en place des institutions permanentes de l’État, pour cueillir les fruits tant attendus d’une émancipation sans égale dans la région, au moins sur le plan légal ? Faut-il au contraire maintenant que les bases égalitaires et fondamentales ont été implantées à un niveau suprême rehausser les manches et travailler davantage afin que ces avancées soient traduites en lois applicables et en mesures palpables dans tous les domaines afin de rendre effectifs les droits des femmes ? Faut-il avant tout s’enquérir du fait que ces droits et avancées ne soient pas en déphasage par rapport aux mentalités des Tunisiens et par rapport aux politiques quelles soient les tendances et quelques soient les appartenances idéologiques et politiques des uns et des autres acteurs dans la société tunisienne ?

C’est là tout l’enjeu. Les prémices ne semblent pas si prometteuses malheureusement. En effet, à l’occasion des premières élections législatives et présidentielles intervenues après l’adoption de la nouvelle constitution en Janvier 2014, le verdict a été sans appel. En effet, il y a quelques mois de cela, les femmes ayant cru à l’idéal de parité aux postes élus inscrit à l’article 46 de la nouvelle Constitution, se trouve à la clôture des listes électorales législatives, fin septembre 2014, minoritaires. En effet, peu de femmes sont en tête des listes présentées dans les 27 circonscriptions du pays. Quant aux présidentielles de fin novembre, on y compte pour l’instant 2 femmes sur les 24 candidats confirmés. Ces chiffres laissent transparaître une situation des plus bizarres caractérisée par une hésitation manifeste surtout de la part des partis soit- disant libéraux et plutôt féministes et à tendance bourguibienne dans son approche en affichant une faible
présence féminine face à certains partis pourtant connus pour être rétrogrades qui ont respecté plus au moins la parité dans leurs têtes de liste.

En conclusion, le constat général fait état d’un faible taux de femmes, candidates têtes de liste, ainsi qu’un très faible nombre de femmes concourant pour la magistrature suprême. Cette étape des élections est déjà la preuve que le chemin à parcourir reste encore assez long et que les obstacles sont loin d’être dépassés par le seul fait de l’adoption de cette nouvelle Constitution. La persistance de la mouvance rétrograde et réformiste qui continue de sévir dans les fin fonds de la Tunisie profitant d’un climat social démuni et en désarroi caractérisé en plus par un fort sentiment de marginalisation de la part des politiques.

Faut-il douter de l’importance de ces acquis constitutionnels ?

Non, loin de là. Ces acquis marqueront une nouvelle étape dans le renforcement et la réalisation effective des droits des femmes.

Faut-il, dès lors reconnaître que cette attitude de non encouragement de la participation de la femme à la vie politique et à la gouvernance dans tout le pays dénote, malgré ce nouveau cadre juridique, d’un manque de conscience et de maturité chez la population tunisienne, toutes souches et toute mouvances confondues y compris, celles qui se prétendent progressistes, y compris chez la femme libérale qui n’a pas vraiment contesté cette attitude de marginalisation à son égard ?

Oui, il faut l’admettre, les tunisiens et tunisiennes se sont révélés, encore aujourd’hui à cheval entre leurs idéaux affichés d’égalité pour tous, de non-discrimination et de parité qui passent par le renforcement des acquis des femmes et leur concrétisation effective d’un côté et entre le réel socio-politique qui a tendance, encore aujourd’hui, à utiliser la femme pour redorer son image de marque plutôt qu’à la considérer comme partenaire à part égale.

L’œuvre semble loin d’être accomplie sur plusieurs niveaux puisque déjà au niveau du texte constitutionnel même, ses rédacteurs ne sont pas allés jusqu’à bout pour bousculer des pratiques ou coutumes d’origines musulmanes discriminatoires bien ancrées dans la société ; touchant par exemple le droit à l’héritage source de discrimination économique manifeste à l’égard des femmes. De plus, cet article fait mention des acquis mais sans mention claire du Code du Statut Personnel qui reste le texte le plus important par rapport à la femme tunisienne dans sa quête d’égalité vis-à-vis de l’homme dans la sphère privée et familiale.

Aussi, et bien que le nouveau cadre juridique constitutionnel ait réussi à constitutionnaliser le principe de la parité entre hommes et femmes dans les instances élues, il n’empêche que cette parité n’a pas été formulée en tant que garantie que l’Etat doit respecter et mettre en œuvre. Elle l’a été seulement, en tant qu’obligation de moyen et non de résultats. Il s’agit uniquement d’un objectif à atteindre par l’Etat. En outre, cette obligation n’a pas été étendue aux autres institutions non représentatives de l’Etat ni encore aux secteurs de la vie publique.
Que peut-on faire de plus pour pallier à ces manquements?

Il reste, bien évidemment, beaucoup à faire en commençant surtout par ancrer la culture des droits de l’Homme dans leur dimension universelle et de leurs principes fondamentaux d’égalité et de non-discrimination à tous les niveau et dès le bas âge. Il s’agit là d’une condition sine quo non pour espérer un jour avoir affaire à une génération de tunisiennes et de tunisiens qui croient ardemment à l’être humain libre et à ses droits universels, inaliénables et indivisibles et qui agiraient en conséquence.

Que pouvons-nous attendre maintenant de notre futur nouveau gouvernement ? Beaucoup de choses en fait. En commençant donc par nommer autant de femmes que d’hommes aux postes ministériels et à tous les autres postes de prise de décision à l’occasion de la mise en place du nouveau gouvernement. En lançant une large et courageuse réforme législative en vue d’harmoniser notre législation nationale avec les normes internationales notamment celles du CEDEF dont les réserves ont été retirées et en vue d’épurer tout le corpus législatif tunisien des lois recensées comme discriminatoires à l’encontre des femmes. En adoptant de nouvelles lois pour combattre toutes les formes de discrimination et toutes les formes de violence à l’égard des femmes qui doit être également parmi les priorités que le nouveau gouvernement doit prendre en compte.

L’éducation en général et l’éducation aux droits de l’Homme comme sus-indiqué, devrait également faire partie intégrante de toute vision stratégique de réforme de ce nouveau gouvernement.

Il est certain qu’il a tellement de choses à faire en même temps. C’est là juste, quelques substances qui, sans l’engagement continu de toute la société et surtout de la gente féminine qui doit rester vigilante face aux menaces auxquels font face les femmes dans le monde arabe, n’auront pas d’écho et resteront éphémères et tributaires de la bonne volonté des uns et des autres des politiciens en place. Il y va de l’avenir de toute la Tunisie qui doit compter sur l’engagement total de ses enfants femmes et hommes, sans discriminations aucune lesquels enfants ne pourront le faire si chacun n’aura pas sa chance égale de pouvoir jouir de tous ses droits et assumer ses devoirs sans aucune discrimination et dans un climat d’Etat de droit et de justice sociale là où la compétence, la valeur du travail loyal et le respect de l’être humain primeront sur toute autres considération contraire aux principes des droits humains.
**THE NEED FOR A NEW AND INTEGRATED VISION TO PROMOTE WOMEN’S CONDITION IN MOROCCO**

Dr. Najat Zarrouk  
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**Introduction: The Promotion of Women’s Condition, a Global Matter**

The promotion of women’s condition is a matter concerning and affecting the international community as a whole. It’s a decisive issue in the life and destiny of all nations, developed or underdeveloped. It derives its basis, its legitimacy, and its roots in the principles of human rights as universally recognized. Democracy and the rule of law cannot be completed without recognition by law and in fact. Additionally, it requires the concrete and active participation and involvement of women in the development, the progress, and the evolution of society, especially given that women represent more than half of the population (50.9% in Morocco in 2011). Women are also the pillar for education, instruction, and success of the life of the other half. It’s a sine qua non condition for the preservation of the values, the anchor of ethics and good governance (in particular at the local level), and a powerful catalyst for change, progress, innovation, and creativity. It’s a question that embodies a struggle during so many centuries for dignity, equality, freedom, and the elimination of all forms of discrimination. It tends to make progress, evolve or change customs, habits, traditions, practices, words, attitudes, behaviors, and legal norms — all of which still victimize women every day and everywhere in the world.

However, any changes, any progress, and any developments in this area require the existence of the following pillars:

1) a “positive pressure” at the international level from the international community;
2) the existence of an *enabling environment* at the national level with all conditions to promote women’s status and condition as well as the need to take into account the time factor, the favorable and appropriate context, and the socio-cultural evolution of each country.

Based on this, what is the situation in Morocco — especially after the adoption of the new Constitution of 2011 — in term of achievements, best practices, and lessons learned?

I. A Quiet and Serene “Revolution”
Moroccan Women live a real and quiet revolution, which is determined and serene from the access to the throne by His Majesty the King MOHAMMED VI in the context of the construction of a democratic and modern Morocco. The deep roots of this revolution emerged since H.M. the King MOHAMMED V¹ and was continued and confirmed by H.M. HASSAN II.²

Since 1999, there has been significant progress and promotion of women’s condition and status. Hereafter, details some of the steps forward:

- The participation, support, and respect of international commitments related to women’s status and condition. The State of Morocco takes part in all the international events on women’s condition and has signed and ratified all the international conventions related to this matter, including the CEDAW;
- The existence of a strong, clear, and irreversible vision at the highest level of the State;
- The existence of a gender mainstreaming approach, through the national strategy to promote women’s condition; the harmonization of the national laws regarding international conventions and commitments, including the Penal Law and Penal Procedure Law (2003), legal identity and civil status (2003), Labor Law (2003), Family Law (2004), Nationality Law (2007),³ Law on Political Parties (2011), and the Constitution (2011);
- Adoption of affirmative action to promote the political participation of women to access to Parliament and to local collectivities (system of quota);
- Adoption of a four-year governmental plan (2012-2016) called “IKRAM,” covering eight topics and aiming to empower women and to promote their active participation in the national effort for a sustainable development, both in urban and rural areas and in all relevant fields (political, social, economic, cultural, and environmental);

Moroccan public institutions were among the winners of the United Nations Public Service Award (UNPSA) in 2013 and 2014 – First Place in Africa for integrating the gender approach in the National Strategy of Training at the local level and in the budget.

“How could we hope to achieve progress and prosperity while women, who constitute half of society, see their interests violated, without taking account of the rights by which our holy religion has put on an equal footing with men, rights which correspond to their noble mission, their rendering justice against any unfairness or violence that they could be victims, even though they have reached a level that allows them to compete with men, whether in the field of science or employment?”

- Extract of the Speech of H.M. King MOHAMMED VI

¹ Essentially access to education since the 1950s.
² Access to Civil Service (1958), to the right of vote (1959), to decision making (1990s), abolition of the husband’s permission to allow travel abroad for women, etc…
³ On July 2005, following the wide variety of legal and social reforms in Morocco, H.M. King Mohammed VI, in a Speech given at the occasion of His Sixth Enthronement Anniversary, declared that Moroccan women will be able to transmit their nationality to children born of non-Moroccan father.
Adoption of many policies sensitive to the gender approach (the budget, the National Initiative for Human Development, local government, data bases at the local level, advanced regionalization, reform of the health system and care);

The evolution and modernization of the Moroccan society as well as of mentalities and traditions;

Access to education for girls who are also graduated from high schools;\(^4\)

The personal efforts of women;

The access to decision making and leadership;

The role and action of civil society. More than 100,000 NGOs are active in the field of human rights and women’s rights, and a great number of them are led by women;

The good use of information and communication technology (ICT) and social medias;

The promotion of networks at local, regional, national, and global levels.

II. Gender at the Heart of the New Moroccan Constitution (2011)\(^5\)

In the Preamble of the Constitution – which was drafted, voted and adopted in the context of the “Arab Spring” – we can read: “With fidelity to its irreversible choice to construct a democratic State of Law, the Kingdom of Morocco resolutely pursues the process of consolidation and of reinforcement of the institutions of a modern State, having as its bases the principles of participation, of pluralism and of good governance. It develops a society of solidarity where all enjoy security, liberty, equality of opportunities, of respect for their dignity and for social justice, within the framework of the principle of correlation between the rights and the duties of the citizenry.”

So many innovations are included in this fundamental text and all of them are concerning or impacting women’s condition and status, such as:

Consolidation of the principles of democracy, good governance, participatory governance (rule of law, separation and collaboration of powers, independence of justice, recognition of human rights as they are universally recognized, the will of Morocco to continue to work to preserve peace and security in the world, recognition of Morocco’s multicultural roots, and the correlation between the responsibility for and the rendering of accounts);

Promotion of local government based on gender approach, especially in the Advanced Regionalization Project;

Morocco is committed to ban and combat all discrimination whenever it encounters it for reasons of sex, color, beliefs, culture, social or regional origin, language, handicap, or whatever personal circumstance;

In Article 6: “The Public Powers work for the creation of the conditions permitting the effectiveness of liberty and of the equality of men and women citizens [féminines] and citizens [masculins] to be made general [généraliser], as well as their participation in political, economic, cultural and social life”;

\(^4\) For example, 60% graduated from Al Akhawayn University of Morocco, are girls (2013).

• In the entire text of the Constitution, we use the expression “citizen” insisting on citizen “men” and citizen “women”;
• Confirmation or creation of several institutions and bodies to promote human rights, sustainable development and good governance.

There are so many other innovations which will contribute certainly to promote more peace, development, and progress in Morocco, but Article 19 represents great advanced steps for women’s condition and gender equality through 3 provisions:

1) Affirmation and constitutionalization of the Principle of Equality between men and women in civil, political, economic, social, cultural and environmental fields;
2) The State commits to work on the principle of parity between men and women;
3) On the institutional level, an authority for parity and the struggle against all forms of discrimination is created.

III. Promotion of Women’s Leadership and access to decision making

Due to the different and important reforms mentioned above, the Moroccan women are today leaders in many sectors:

Women’s Leadership in Morocco

• Parliament: 167 MP and 6 Senators, or 17% women (There are 19 to 20% women at the global level);
• Government: 2 Ministers and 4 Deputy Ministers (Foreign Affairs, High Education, Energy, Environment, Family and Social Development);
• Local Level: 3,428 local elected officials (12.38%), among which 600 exercise functions inside the Local Councils, 1 Presidente of Prefectoral Council, 23 Mayors (in big cities like Marrakech and Al Hoceima), and 3 Presidents of Arrondissement Councils (Marrakech and Casablanca);
• Public Service: General Secretary-General Inspector – Ambassador, Director - Agent of Authority - Chiefs of Divisions or Services – Advisors (16%)
• Political Parties: 2 women are heads of political parties;
• Unions: 21% represent the employees of the private sector’s unions;
• Private Sector: 100,000 women are CEOs;
• Civil Society: Women create, lead, or are members of a great number of NGOs acting in the fields of human rights, women’s condition, human development, and sustainable development.

ARTICLE 19 OF THE CONSTITUTION

“The man and the women enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural and environmental character, announced in this Title and in the other provisions of the Constitution, as well as in the international conventions and pacts duly ratified by Morocco and this, with respect for the provisions of the Constitution, of the constants [constantes] and of the laws of the Kingdom. The State works for the realization of parity between men and women. An Authority for parity and the struggle against all forms of discrimination is created, to this effect.”
IV. Women Still Face Many Challenges and Obstacles

Many other efforts are still needed to respect equality between men and women as mentioned hereafter:

| Political and institutional challenges | • The implementation of the constitutional provisions, especially Articles 6 and 19  
• The existence of a national structure leading the issue of equality between men and women  
• The implementation of the National Strategy  
• The political leadership is still due to the quota system as affirmative action both at the national and local levels  
• Sufficient resources and means  
• Support from the international community and donors |
|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Legal challenges                       | • The effectiveness and the respect of the national laws  
• The ignorance of laws and rights par citizen  
• The absence of repressive and dissuasive laws, especially on violence and harassment |
| Social and cultural development challenges | • Poverty and vulnerability  
• Education (infrastructure, restrooms)  
• The schooling of girls, especially in rural areas  
• Maternal health and hygiene  
• Early marriage  
• Insufficient support from the family |
| Challenges linked to religion          | • The interpretation given to religion and different understandings of religion |
| Existence of generalizations, traditions and stereotypes | • Overburden with caregiving role  
• Lack of awareness on the important role that women can play to promote society  
• The negative perception (divorced women, women working in different Middle East countries) |
| Insecurity, violence, impact of conflicts on women | • Violence inside family, marriage, family-in-law, and in the streets  
• Violence in the public service, including in public transportation and the workplace  
• Sexual harassment  
• Women are the first victims of wars and conflicts (situation in some Arab countries) |
| Training, capacity building, development of skills | • Absence of a clear vision  
• Absence of participatory diagnosis  
• Absence of national strategies  
• Inadequate budgets or wastes of money |
| How to deal with information age and knowledge systems challenges | Lack of self-confidence or willingness to interact with the public sphere  
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<td>Insufficient affirmative action measures</td>
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<td>Resources challenges</td>
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|                      | Integration of ICT  
|                      | Insufficient networks |
| The persistence of the glass ceiling | Access to and management of patrimonial  
|                                | The issue of inheritance and the traditional laws |
|                                | Access to financial resources |
|                                | Lack of information on the financial opportunities |
|                                | Financial supports go more to civil society than to local government |
| The main challenge facing Moroccan women | Women, even the brightest women, are confined into subordinate positions (public sector and boards of private companies)  
|                                      | Difficulty to access decision making  
|                                      | Woman must face other challenges and barriers once in a decision-making position: discrimination of all kinds, including salaries, allowances, benefits, access to information, access to resources, schedules, meetings |

V. Creating an Environment that Catalyzes Women’s Condition and Leadership

Even the Moroccan Society is one of the more progressive and modern societies in the Arab and Muslim Region, and because we are never doing enough for women and girls, we still need to promote and set up an environment empowering and enabling Moroccan women at all levels and in all areas through a new Road Map based on the 20 following pillars:

1) Political will and vision at high level, following in the example given by H.M. the King MOHAMMED VI;
2) A daily respect of the referential and values respecting women’s rights and promoting women’s condition;
3) Respect of international commitments, especially the CEDAW;

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4) Existence of a national strategy integrating the gender perspective transversely in all phases of planning, implementation, monitoring, and evaluation of public policies in order to ultimately eradicate gender inequalities and discrimination;
5) The national legal framework and harmonization effort with international commitments;
6) The implementation and respect of the law beside the existence of sanctions against the no respect of the law (prevention, sanction, awareness);
7) Social change and the evolution of attitudes (education for girls and boy and sharing household tasks)
8) Fight against all forms of violence against women, especially in public areas, domestic violence, and harassment in the workplace;
9) Role of a well-organized and structured civil society;
10) Adoption of tools and mechanisms to promote women’s condition in the public sector, including affirmative action, positive discrimination, quota systems, gender-sensitive budgeting, documentation, infrastructures (including toilets for men and for women). This is needed especially in rural and enclave areas;
11) A good and wise use of ICT and Social Medias;
12) Ambition, self-confidence, determination, persistence, and the personal effort of women;
13) The availability of information, statistics, and databases on women’s condition, decentralization, strategic planning, and budgeting;
14) Training, capacity building, skills development, mentoring, tutoring, and coaching, inside and outside the country;
15) Investing more in networking;
16) Inspirations from benchmarks, success stories, roles models;
17) Having diverse forms of supports from family, the friends, employees, the hierarchy at work, and sponsoring;
18) More support from donor countries or institutions;
19) Preparation of women in the political arena;
20) Training and capacity building of the political parties, the MP, the NGO, the universities, the private sector, and the media on the gender approach and the international commitments on women’s condition.
REFLECTIONS ON CONSTITUTIONS AND GENDER JUSTICE

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“The purpose of constitutional law is to convert misfortune to be endured into injustice to be remedied.” Judge Albie Sachs, The Strange Alchemy of Life and Law

Introduction

In the wake of the Arab spring, a critical need has arisen to address the rising concerns of women’s human rights and the framing and implementation of constitutions across the region. Around the world questions have arisen on this issue including challenges to the concept of equality, the public meaning of religion, the relationship between building positive peace and gender justice and the nature of human rights and women’s dignity. This reflection will provide a brief preface of each of these concepts to frame the reading and discussion in the subsequent papers which are the heart of this policy background report.

Equality

The advancement and achievement of women’s equality remains a central concern for the framing, development and implementation of constitutions in the Middle East. The long standing prejudice stemming from centuries of male domination has resulted in structural violence against women. As shown in Johan Galtung’s typology of violence (1996) women, as all human beings, have four basic needs: survival needs, identity needs, well-being needs and freedom needs. Overcoming male domination and moving towards an egalitarian society rests on recognition that equality means equal respect across differences. There is an acknowledgment of difference but not a hierarchical regimen. Difference therefore should not be the basis for marginalization and stigmatization. Nor should it be the rationale for any form of violence against women from the individual domestic context to systemic war crimes including mass rapes. The law, especially the constitution of a nation, needs to embrace the acceptance of difference and affirm equality for all men and women.

Public Meaning of Religion

As Judge Albie Sachs noted in construction of the notable South African constitution, the religious beliefs of the majority must be taken seriously at the same time as the rights of minority faiths and nonbelievers must be fully respected. Powerful traditions exist in the Middle East region (as in many regions of our globe), which have roots transcending particular times of history and specific national boundaries. And religious groups play a major role in both the
private and public sphere affecting women’s lives deeply in regard to reproductive rights and health, education, access to formal work, likelihood of poverty and community norms in general.

But there is a significant distinction between allowing for freedom to practice one’s faith and utilizing religious views to interpret a constitution to undermine the rights of others. For basic human rights for women to flourish, the constitution of a nation needs to ensure the respectful co-existence between the secular and the sacred: the objective of a constitution which holds up gender justice is to “allow different concepts about the nature of human existence to inhabit the same public realm… in a way that shows equal concern and respect for all” (2009).

Building Positive Peace

As noted in the Resolution of the 18th Session of the General Conference of UNESCO in 1974, “Peace cannot consist solely exist in the absence of armed conflict but implies principally a process of progress, justice and mutual respect among the people.” The concept of positive peace developed by Johan Galtung demonstrates that structural violence results in the deprivation of basic human needs. Coupled with cultural violence – the symbolic sphere of our existence which can be used to legitimate violence – nations have created a social fabric of exploitation and repression. To promote women’s rights, those involved with constitution framing and implementation must understand and have a vision for not only diminishing violence in society but also building towards a sustainable positive peace infrastructure.

According to the Institute for Economics and Positive Peace, there are eight pillars or domains of attitudes and institutions that can move a society away from violence towards peace: well-functioning government, sound business environment, equitable distribution of resources, acceptance of the rights of others, good relations with neighbors, free flow of information, high level of human capital and low level of corruption. These pillars remain difficult to achieve but as each one has a gender component, they remain significant in the movement to advance women’s lives. A legal system resting on a progressive constitution provides an essential element to reach the goal of bridging positive peace with gender justice.

Human Rights and Women’s Dignity

There is an African term, Umbutu, which conveys the essential knowledge necessary for the integrity of individuals, the well-being of communities and the viability of nations: my dignity rests upon yours. The Dali Lama, when asked by a young student about the ingredient most vital for happiness, replied “to understand that knowledge without compassion is worthless while knowledge with compassion is wisdom”. Indeed when we read the South African constitution it is the foremost example of putting into a working legal framework the term Umbuntu and the words of the Tibetan leader.

In 1948 the Declaration of Human Rights was adopted by the United Nations. Together with the later Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
an eloquent presentation has been made for the strong connection between basic human rights and the movement to assure that all women can live a life with dignity. Among the Articles spelling out basic human rights in the Declaration are those which refer to the right to have physical safety and collective security, the right to have a voice in public decision making and the right to have a place and not suffer being a displaced person.

For women to gain dignity in Middle East countries after the recent and current violent upheavals, constitutions must assure access to what international peace scholar John Paul Lederach terms the three vital components of individual and community resiliency: safety, voice and place. (2009) Women have too often lacked constitutional guarantees for all three. The challenge ahead is to mobilize movements for nonviolent change that will create legal means to transcend cycles of violence and develop a deep sense of belonging for all women and men of the region.

References


