

Human Rights in the Constitution: A Survey of the Arab Uprisings

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When Arab citizens took to the streets in peaceful uprisings throughout 2011, their demands included “freedom,” “justice,” and “dignity.” Their governments reacted in varied ways, with some heads of state ultimately resigning their positions and others intensifying a brutal crackdown. There is one development that Tunisiaⁱ, Egyptⁱⁱ, Yemenⁱⁱⁱ, Bahrain^{iv}, Libya^v, and Syria^{vi} – the six nations of the “Arab uprisings” – have in common: each witnessed either an attempted or successful amending or drafting of a constitution in the wake of popular protests.

In light of the fact that many of the people’s demands in 2011 called for the respect of human rights – whether social, political, economic, or cultural – and that many of the countries in question continue to depict problematic human rights records six years later, it becomes a useful exercise to survey the status of human rights in the six countries’ constitutions. It is only by doing so that one can identify problems within the countries’ legal schemes, propose amendments, and guarantee institutions the fixes for human rights deficiencies across the region.

Equality and Discrimination

All of the countries surveyed have provisions in their constitutions that set forth the equality of all citizens with regards to their rights and duties. The constitutions of Egypt, Libya, Bahrain, and Syria iterate a list of bases under which discrimination would be explicitly prohibited; religion, belief, sex, origin, and

language are the bases that these four countries’ sets of discrimination provisions have in common. When listing bases for discrimination, Egypt is the only country that additionally included the phrase “for any other reason,” presumably encompassing forms of discrimination not explicitly listed in the constitution. Tunisia iterates the equality of all citizens before the law without any discrimination, but does not provide a list of bases. None of the countries explicitly includes “sexual orientation” as a basis for discrimination.

The Status and Rights of Women

Although each country surveyed establishes the equality of all citizens – most of them explicitly mentioning sex – the constitutional provisions that directly mention women in each of the countries vary greatly.

In Tunisia, Article 46 guarantees the equality of opportunities between men and women in all domains, emphasizing the state’s role in working to attain parity between men and women in elected assemblies. In Egypt, Article 11 commits the state to achieving equality in all civil, political, economic, social, and cultural rights. It also ensures appropriate representation of women in the houses of parliament – without specifying what this means in practice – and reconciles the duties of a woman toward her family and her work requirements – a phrase that furthers a traditional definition of family for the Egyptian woman while it marginalizes the role of men.

This phrase has existed in comparable language in Egypt's two previous full constitutions (1971^{vii} and 2012^{viii}) as well. Similarly, in Bahrain, Article 5 guarantees "reconciling the duties of women towards the family with their work in society"; it also includes language that makes the equality of women and men in political, social, cultural, and economic spheres subject to the provisions of Shari'a. Article 31 of Yemen's constitution additionally references Shari'a, to which it subjects the rights and duties of women; it further refers to women as "the sisters of men" – a phrase that has unclear legal implications.

In Syria, Article 23 mandates that the state provide women with the opportunities to fully contribute to "political, economic, social, and cultural life" and that it remove "restrictions that prevent their development and participation in building society." Libya's Constitutional Declaration, which is a temporary and brief document that remains in force today despite attempts to approve two subsequent drafts of full constitutions since its promulgation, does not have separate provisions on women.

The Right to Freedom of Belief

Each of the countries surveyed, except Yemen, explicitly guarantees freedom of belief. However, the five countries that did discuss the practice of religion dealt with the issue of freedom of worship in varied manners.

Libya and Tunisia had the broadest of allowances: in Libya, Article 1 guarantees the freedom for non-Muslims to practice their religious rituals, and in Tunisia, Article 6 guarantees the free exercise of religious practices. Article 22 of Bahrain's constitution guarantees all individuals the freedom to perform religious rites and hold religious parades and meetings "in accordance with the customs observed in the country"; it is unclear what types of practices this phrase may include or exclude. In Syria, while Article 3 mentions respect for all religions, it makes the freedom to perform rituals subject to a determination that they "do not prejudice public order." Finally, in Egypt, the constraint is arguably the greatest; Article 64 of the constitution allows only the followers of "revealed religions" (Judaism, Christianity, and Islam) the right to practice religious rituals and establish places of worship.

The Rights to Freedom of Expression, Opinion, and the Press

All of the countries surveyed have constitutions that guarantee the freedoms of expression, opinion, and the press; however, some of the guarantees are conditional. In Tunisia, these freedoms are "not subject to prior censorship." In Egypt, freedom of the press is made subject to possible "limited censorship in time of war or general mobilization" – a provision that came into existence with the 2012 constitution and remains in the current document in force. Finally, in Bahrain, freedom of opinion and publishing is subject to the following conditions: "provided that the fundamental beliefs of Islamic doctrine are not infringed, the

unity of the people is not prejudiced, and discord or sectarianism is not aroused.”

The Rights to Freedom of Assembly and Association

All of the countries surveyed have constitutions that guarantee the freedoms of assembly and association, with some restrictions. In Egypt, the constitution guarantees the right to organize peaceful protest upon providing notification; this is a post-Arab uprising addition, as notice had not been required in the 1971 constitution. The current Egyptian constitution also guarantees the right to form nongovernmental organizations and institutions on a democratic basis; those whose structures and activities are conducted in secret and those that possess a military or quasi-military character are expressly forbidden. This restriction marks an improvement from the 2012 constitution, which broadly prohibited “societies whose activities are hostile to the social system.” In Libya, comparable language can be found; Article 15 reads: “Secret or armed associations or societies in conflict with public order or public morals or threatening in other ways the State or the integrity of the national territory shall be prohibited.” Finally, in Bahrain, the right to association is guaranteed “provided that the fundamentals of the religion and public order are not infringed” and the right to assembly is guaranteed “but the purposes and means of the meeting...must not be prejudicial to public decency.”

Social, Cultural, and Economic Rights

Each of the countries surveyed sets forth many of the social, cultural, and economic rights enshrined in international treaties, including but not limited to the rights to health, education, and work. The countries surveyed all guarantee education but make it compulsory to varied degrees. In Tunisia, education is required up to the age of 16 years; in Egypt, it is obligatory until the end of secondary schooling; in Bahrain, the phrase “compulsory...in the early stages” is used; and in Syria and Yemen, basic education is made obligatory.

On the issue of work, “fair wage” is a phrase that appears in the constitutions of Yemen, Syria, Egypt, and Tunisia. No constitution surveyed explicitly guarantees “equal pay for equal work,” though, as mentioned earlier, provisions about equality appear in other sections of the documents. In Egypt, a worker’s right to strike is explicitly detailed for the first time in the country’s constitutional history. In Tunisia, the right to strike is guaranteed, save for an exception prohibiting strikes by forces of internal security and customs officers. In Syria, citizens enjoy “the right...to strike from work within the framework of the Constitution principles.”

The Incorporation of International Law

Only the constitutions of Tunisia and Egypt address the explicit role and interaction that international law should have with domestic law. Article 20 of Tunisia’s constitution makes international agreements superior to domestic

law, but inferior to the constitution. Article 93 of Egypt's constitution commits the state to international human rights conventions ratified by Egypt, according them the force of law. Bahrain's constitution states that the application of the constitution "does not breach the treaties and agreements which Bahrain has concluded with states and international organizations"; however, it is unclear whether this is a matter-of-fact statement or a suggestion, and ultimately, how lawmakers are to proceed in cases of breach. Libya's Constitutional Declaration iterates an endeavor to join international declarations that protect human rights. Yemen's constitution confirms adherence to "the UN Charter, the International Declaration of Human Rights, the Charter of the Arab League, and principles of international law which are generally recognized," without, however, addressing treaties that the country has already ratified. Finally, Syria's constitution makes no mention of international law save for a technical provision regarding the role of the president in concluding international agreements.

Irrespective of the aforementioned, all of the countries surveyed have either ratified or acceded to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. These treaties create an obligation for the states to protect the rights detailed within them, even if these rights may or may not be incorporated or properly protected in their constitutions.

Limitations on Human Rights: Vague Language and Additional Legislation

This survey thus points to a set of constitutions which, although imperfect in some of the particular details regarding the rights in question, and lacking in proper clarity on issues of international law, for example, are not nearly as problematic as the actual human rights records of each of the countries in practice.

A country's human rights record is largely the result of two principles, both of which are necessary but neither of which is sufficient alone. First is a strong rule of law (both in the constitution and accompanying domestic legislation) that prohibits human rights violations and prevents a culture of impunity from becoming normalized. Second is the implementation of this rule of law—in essence, the practice.

Thus, the human rights violations that occur on a regular basis in each of the countries surveyed arguably occur as a result of three primary factors: (1) vague language creating restrictions on the rights within the countries' constitutions; (2) additional legislation that complements the initially neutral language of the constitution and creates new constraints on these rights; and (3) actual practice—a non-rule-of-law element that will not be addressed in this paper.

Only three of the constitutions surveyed in this paper have stand-alone articles explicitly referencing restrictions on rights. Article 31 of Bahrain's constitution reads: "The public rights and freedoms stated in this Constitution may

only be regulated or limited by or in accordance with the law, and such regulation or limitation may not prejudice the essence of the right or freedom.” Article 92 of Egypt’s constitution reads: “Rights and freedoms of individual citizens may not be suspended or reduced. No law that regulates the exercise of rights and freedoms may restrict them in such a way as infringes upon their essence and foundation.” Finally, Article 49 of Tunisia’s constitution states: “The limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defence, public health or public morals, and provided there is proportionality between these restrictions and the objective sought....”

However, all of the constitutions surveyed contain vaguely worded provisions in the majority of the individual constitutional articles guaranteeing rights; examples include “in the manner organized by law,” “as regulated by the law,” “without breaching the provisions of the Shari’a,” or “provided that...the unity of the people is not prejudiced.” Although at face value they are not explicit restrictions, they effectively create a system of restrictions, contributing to a legal scheme that (1) allows for the interpretation of rights in a restrictive manner, and (2) provides governments room to issue follow-up legislation that clarifies the

extent of rights, thus placing constraints on the very rights that were seemingly and initially well-enshrined in the constitution.

For example, an Arab constitution could presumably guarantee the right to freedom of expression “as regulated by the law.” Such an article may seem neutral and in accordance with international law. Months later, however, the legislature in the country may issue a law under which social media statuses that “harm national unity” are prohibited. The increasingly politicized judiciary in this country could then presumably interpret a nonviolent Facebook post that calls for peaceful protests in rejection of a presidential decree as “harming national unity”; the social media user in question is then arrested, interrogated, charged, and sentenced in a manner that certainly exists in compliance with the law, and possibly—arguably—in compliance with the vaguely constructed, vaguely worded constitution.

This example, although a mere scenario, is in fact an illustration of what is actually occurring on the ground in many of these countries.

Concluding Thoughts

Going forward, it is clear that providing a remedy for the deteriorating human rights situation in the countries of the Arab uprisings will require many fixes, both those that strengthen the rule of law and those that reform practice.

On the narrow issue of constitutional reform—a matter that will not be sufficient alone in bringing human rights change, but will be necessary nonetheless—advocates would do well to begin by amending or deleting constitutional provisions that create vague constraints on human rights. These are the

questionable provisions that grant lawmakers the initial ammunition necessary to propose legislation that creates restrictions on these rights, and empower the judiciary with immense discretion to interpret rights in a manner that erodes the freedoms citizens took to the streets to demand six years ago.

ⁱ *Constitution of Tunisia* (2014), https://www.constituteproject.org/constitution/Tunisia_2014?lang=en.

ⁱⁱ *Constitution of Egypt* (2014), https://www.constituteproject.org/constitution/Egypt_2014?lang=en.

ⁱⁱⁱ *Constitution of Yemen* (1991, revised 2001), http://www.constitutionnet.org/sites/default/files/2001_constitution_of_the_republic_of_yemen.pdf. A 17-member Constitutional Drafting Committee was established in March 2014. Although a full draft constitution was produced by the Committee in January 2015, it was never voted on as the Houthi-Saleh takeover of Sanaa followed shortly afterwards.

^{iv} *Constitution of Bahrain* (2002, revised 2012), https://www.constituteproject.org/constitution/Bahrain_2012?lang=en.

^v *Constitutional Declaration of Libya* (2011, revised 2012), https://www.constituteproject.org/constitution/Libya_2012?lang=en. A Constitutional Drafting Assembly was elected in February 2014 to write a draft constitution to replace this Constitutional Declaration. The Assembly produced two drafts in October 2015 and February 2016. Despite this, no version of a full constitution has yet been finalized or voted on.

^{vi} *Constitution of Syria* (2012), https://www.constituteproject.org/constitution/Syria_2012?lang=en.

^{vii} *Constitution of Egypt* (1971, revised 2007), <http://www.constitutionnet.org/files/Egypt%20Constitution.pdf>.

^{viii} *Constitution of Egypt* (2012), <http://niviensaleh.info/constitution-egypt-2012-translation/>.