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2019

### Women's Rights in Tunisia Before and After the 2011 Revolution : Progress When It Helps the People in Power

Erica Mail

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Women's Rights in Tunisia Before and After the 2011 Revolution: Progress When it Helps the People in Power

Since its independence in 1956, Tunisia has had a reputation as the most progressive Arab state in promoting women's rights. For the first five decades, advances in gender equality came from a state-imposed policy of secular feminism. The political incentives of the elite aligned well with creating greater equality for women and expanding their access to educational and economic opportunities. Sustained commitment to a policy of greater gender equality dramatically changed the roles available to Tunisian women. While advances were significant, the authoritarian regimes expanded women's rights as it was politically advantageous to do so and promoted only the secular version of women's rights. After the 2011 Jasmine Revolution removed the authoritarian regime, the status of Tunisian women's rights could be tested by a more democratic process. While the gains made prior to 2011 have proved durable, the political alignment that made much of the progress in expanding women's rights may not extend them further, particularly in the area of inheritance equality.

I. Women's Rights Prior to the 2011 Revolution

a. Under Habib Bourguiba

Within months of independence from France, Habib Bourguiba, then Prime Minister and President of the Constituent Assembly, promulgated the Code of Personal Status (Le Code du Statut Personnel or CSP) to replace the religious law system governing family matters.<sup>1</sup> The CSP

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<sup>1</sup> Jane D. Tchaïcha & Khediha Arfaoui, *The Tunisian Women's Rights Movement From Nascent Activism to Influential Power-broking* 41 (Routledge 2017).

prescribed rules relating to marriage, divorce, inheritance, and guardianship that extended protections to Tunisian women that were previously unavailable to them.<sup>2</sup> The CSP gave Tunisian women formal equality in many areas of law, though it did not explicitly grant equality between men and women. It banned the practice of polygamy, set a minimum age for women to marry, and required both spouses to consent to marriage. Civil registration, rather than religious law alone, became a requirement for a marriage as well. In the area of divorce, the CSP required that divorces take place in secular courts rather than the traditional religious ones. The CSP allowed women to initiate divorce proceedings, a right that women had not had before, and it abolished talaq, a practice that allowed men to immediately declare a divorce.

Bourguiba, as president of the Republic of Tunisia, oversaw the implementation of the CSP, and used it as a mechanism to shift decisions regarding marriage, divorce, and other family law matters from religious courts, which upheld the lower position of women, to secular civil courts. This change effectively eliminated the powers of the religious courts and gave the state greater control over matters that had previously been under only religious authority.

Under the 1959 constitution, women in Tunisia gained the right to vote and seek elected office. Importantly, it explicitly stated that “All citizens hold the same rights, and have the same duties. They are all equal before the law.”<sup>3</sup> The 1959 constitution extended important rights regarding education and work to all Tunisians, and these were particularly instrumental in improving the social and economic situation of women.<sup>4</sup>

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<sup>2</sup> *Id.* At 42.

<sup>3</sup> La République tunisienne ([1959] 2004) Constitution de la République tunisienne.

<sup>4</sup> Victoria Chambers & Clare Cummings, *Building Momentum Women’s empowerment in Tunisia* 14 (Overseas Development Institute 2014) <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10319.pdf>

Other changes shortly after independence improved the status of women in Tunisian society. A 1958 law gave girls the right to receive an education, and the Tunisian government invested heavily in public education. Charitable foundations were abolished, which ended the practice of leaving land to religious institutions (which held about 25% of Tunisia's land at independence) and permitted women to inherit a greater portion of property.<sup>5</sup> This change also weakened the financial support of religious institutions that were likely to disagree with Bourguiba's agenda to secularize Tunisia and particularly with his decision to significantly expand women's rights.<sup>6</sup>

Bourguiba unilaterally implemented the CSP and many of the reforms that affected the status of women soon after independence. He did not promulgate the CSP in response to a grassroots movement demanding change for the status of Tunisian women and gave an interview in 1965 that indicated there was not a movement demanding such reforms.<sup>7</sup> Instead, Bourguiba's political support came primarily from labor unions and urban business elites, who supported a vision of a modernized nation-state.<sup>8</sup> A rival faction within the independence movement sought a stronger role for Islam in Tunisian politics and had the support of the more religious and conservative groups within Tunisian society.<sup>9</sup> By creating a secular justice system and removing collective tribal land ownership, Bourguiba significantly decreased the role that religious authorities had over the lives of Tunisians. This change both significantly limited the power of those who might have opposed Bourguiba's agenda of modernization and gave women greater freedoms to participate in society.

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<sup>5</sup> *Id.* at 16

<sup>6</sup> *Id.*

<sup>7</sup> Tchaïcha & Arfaoui at 49.

<sup>8</sup> Chambers & Cummings at 27-28.

<sup>9</sup> Safwan M. Masri, *Tunisia: An Arab Anomaly* 187 (Columbia University Press, 2017)

Bourguiba's agenda required a more educated and skilled labor force, which supported women gaining access to educational and economic opportunities.<sup>10</sup> In 1971, Tunisian girls spent on average just 4.9 years in school, but that average rose to 9.3 in 1990 and 15.1 by 2010, a considerable improvement over other countries in the region.<sup>11</sup> Legislative changes continued throughout Bourguiba's presidency continued to make educational and economic opportunities more widely available for women. Women working in the public sector could take paid maternity leave, thanks to a 1983 Labor Code.<sup>12</sup> Tunisia also ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 1985, though it made reservations to the treaty, regarding women's ability to pass citizenship to her children and what rights applied to men and women in matters of marriage, divorce, custody, and property ownership by spouses.<sup>13</sup>

Additionally, Bourguiba cultivated support from the United States and its allies starting immediately after independence. He aligned Tunisia against the Soviet Union during the Cold War.<sup>14</sup> He touted Tunisia's reputation for expanding women's rights to cultivate the support of Western powers, particularly in contrast to other Arab states that had more restrictive roles for women.

#### b. Women's Rights Under Ben Ali's Presidency

Authoritarian structures that started under Bourguiba only escalated under the presidency of Ben Ali, but political incentives still favored greater expansion of women's rights throughout Ben Ali's presidency. Tunisia continued to pass legislation that expanded the role of women in

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<sup>10</sup> Chambers & Cummings at 30

<sup>11</sup> *Id.* at 19-20.

<sup>12</sup> *Id.* at 17.

<sup>13</sup> Balitmore 330

<sup>14</sup> Masri at 200

Tunisian society, both intentionally and through policy initiatives that required gave women greater opportunities.

The two primary threats to Ben Ali's power were growing Islamic fundamentalism and the state of the Tunisian economy. Promoting gender equality served to counter both of these. Extending greater rights to gained support of middle class and moderate Tunisians who were concerned about the rise of Islamic fundamentalism. Like Bourguiba, Ben Ali used Tunisia's more progressive stance on women's rights to curry favor with Western powers outside of Tunisia, particularly the United States, the United Kingdom, and France. Tunisia received political and support as a fellow fighter against Islamic fundamentalism. The international support these measures also increased his domestic support within Tunisia. As to the concerns about the Tunisian economy, Tunisia saw a large increase in women who were in the workforce from 1994 to 2002.<sup>15</sup>

An electoral law in 1988 required that parties respect non-discrimination, though it did not require that women be included on parliamentary lists.<sup>16</sup> Starting in 1991, all children under 16 were required to attend school. While not specifically aimed at improving the status of women, this reform, combined with efforts to extend the length of primary education, employ better teachers, and give women access to educational funding, continued to improve the educational opportunities women in Tunisia had.

These legislative changes were supported by governmental institutions and support. Several different agencies were created to support the agenda of gender equality. The Center for Research, Documentation and Information on Women (CR-EDIF) was founded in 1990 to

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<sup>15</sup> Chambers & Cummings at 20.

<sup>16</sup> *Id.* at 17.

document and study women's issues in Tunisia, and it followed quickly by the creation of the Ministry of Women, Family, Childhood and the Elderly (MAFFEPA) in 1992.<sup>17</sup> The domains of childhood and the elderly have been added to its scope, but originally MAFFEPA was set up to oversee and coordinate the implementation of many of the different reforms and programs that promoted women. MAFFEPA, which eventually became a ministry, had not just a national presence but functioned at the local government level. The government funded and regularly increased the budget of MAFFEPA in order to support women's participation in all parts of Tunisian life. The National Commission for Rural Women was created to support the effort for gender equality in rural areas.<sup>18</sup>

Alterations to the CSP in 1993 continued to expand women's rights, including rights to the custody of children after divorce and the removal of a clause requiring a woman to obey her husband.<sup>19</sup> After 1993, citizenship could pass matrilineally, allowing the children of Tunisian mothers and foreign fathers to gain citizenship.<sup>20</sup> In 1997, changes to the constitution required that political parties not discriminate on the basis of gender.<sup>21</sup> Beginning in 1999, Ben Ali's party outlined a program to increase the number of women in politics and implemented internal quotas. Their initial goal was to have women make up 20% of electoral positions by 2004 and later increased that number to 30%.<sup>22</sup> In 2005, women made up 15.8% of the House of councilors and 26% of the municipal councils.<sup>23</sup>

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<sup>17</sup> *Id.* at 24-25.

<sup>18</sup> *Id.* at 26.

<sup>19</sup> *Id.*

<sup>20</sup> Amnesty International, *Assaulted and Accused: Sexual and Gender-Based Violence in Tunisia*, 12 (Amnesty International 2015) <https://www.amnestyusa.org/files/tunisia-assaulted-and-accused-report.pdf>

<sup>21</sup> Chambers & Cummings at 27.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 23-24.

Even under Ben Ali's authoritarian government, a variety of women's groups grew up during the 1980s and 1990s, through professional networks and other political organizing. Ben Ali had continued Bourguiba's secular feminist approach to women's rights, and women's organizations that promoted this version of feminism got the government's approval. Other perspectives on promoting women's rights were generally limited under Ben Ali's approach. In advance of the United Nations Conference on Women in 1995, Ben Ali controlled the way women's organizations portrayed Tunisia by requiring participating groups to be a part of a state-sponsored network. Organizations could only access the important gathering with the approval of Ben Ali's government, which limited the dissent.<sup>24</sup>

c. Effects of pre-2011 changes

Both Bourguiba and Ben Ali contributed to the expansion of women's rights in Tunisia, but these methods were enforced by a rigid, at times authoritarian rule. Government policies and legislation that supported the expansion of women's rights were not necessarily enacted as a response to popular will but rather as the official policy of the state.

Both Bourguiba and Ben Ali increased their political power by diminishing the role of more conservative Islamic groups throughout Tunisian society. The CSP reduced the authority that the religious courts and structures had in the lives and Tunisians and created a stronger civil state. Ben Ali courted the support of Western powers through his opposition to Islamic fundamentalism, in part through Tunisia's progressivism on women's rights, relative to other Arab states.

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<sup>24</sup> John Hursh, *The Tunisian Spring: Women's Rights in Tunisia and Broader Implications for Feminism in North Africa and the Middle East*, 46 U. Balt. L. Rev 277, 307-08 (2017).

Still, the expansion of Tunisian women's rights, even when politically expedient for those in power, was not mere lip service. The state apparatus gave sustained political support for women's rights under both Bourguiba and Ben Ali. Governmental organizations like MAFFEPA coordinated the implementation of legislative changes and promoted the statewide policy of greater gender equality throughout the country. The Constitutional Democratic Rally (RCD), the party of Ben Ali, voluntarily sought to increase the political participation of women and imposed quotas for women on its parliamentary lists on itself leading to more women in elected positions of authority. As a result, the party relied upon Tunisian women's groups to get candidates, forging stronger connections with these groups, and the practice continued the process of making women in leadership a normal and expected part of Tunisian political life.

Significant legislative change combined with sustained support for its implementation achieved a great deal of progress for the status of women within Tunisia in its post-independence era, even as these changes were imposed from the top down rather than the bottom up. Prior to 2011, there were strong gains in economic and political participation, particularly in comparison with the status of women in other countries in the region. However, the approach to women's rights was imposed by an increasingly authoritarian state apparatus that had one secularist approach to the role of women in Tunisian society and silenced other perspectives on women's rights.

## II. The Effect of the 2011 Revolution on Women's Rights

### a. New Forms of Political Expression

The Jasmine Revolution of 2011 and Ben Ali's departure from Tunisia constituted an important inflection point for women's rights in Tunisia. After over fifty years of a policy of top-

down implementation of women's right, there was no guarantee that Tunisia would continue on the same rights-expanding trajectory. Women's rights had been extended without testing the majoritarian support for those changes, and removing the authoritarian definition of feminism

After the Jasmine Revolution, Tunisians could suddenly use forms of political and social expression banned under Ben Ali, including more religiously and politically conservative movements. This opening of Tunisian society revealed fault lines previous hidden by the repressive state. For example, after the 2011 revolution, some Tunisian women began wearing the hijab. Bouguiba banned wearing the hijab in any state institution in 1981 and any educational institution in 1985, so once that ban was lifted, wearing the hijab was a sign of expression unavailable under the regime.<sup>25</sup> However, for those who did not want to cover their hair or face, they feared that an emphasis on religious and cultural expression may curtail the rights they were afforded under the Ben Ali regime.<sup>26</sup>

#### b. Resurgence of Ennahda

The post-revolution debates about the role of women's rights in Tunisian society are closely connected to the resurgence of Ennahda, the predominant Islamist party in Tunisia. Under both Bourguiba and Ben Ali, Islamist political groups, whether conservative or moderate, had been strictly limited. From its founding in 1981, Ennahda has emphasized pluralism and democracy, making it one of the most moderate Islamist parties in the Arab world.<sup>27</sup> Still, Ennahda was banned under Bourguiba. While initially Ben Ali permitted Ennahda to participate in Tunisian politics, by 1989, Rachid Ghannouchi, Ennahda's founder and leader, had to flee.

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<sup>25</sup> Rangita de Silva de Alwis, Anware Mnasri & Estee Ward, *Women and the Making of the Tunisian Constitution* 35 Berkeley K. Int'l L. 90, 125 (2017)

<sup>26</sup> *Id.*

<sup>27</sup> Hursh at 297.

Ben Ali characterized Ennahda not just as opposition but as a threat to society.<sup>28</sup> Despite its repression at the hands of the state, Ennahda continued to gain support particularly for providing needed social services to those the government did not effectively serve.<sup>29</sup> Political Islam generally gained support in more underdeveloped regions of Tunisia under both Bourguiba and Ben Ali.<sup>30</sup> While it is an Islamist party, Ennahda's platform continues to emphasize human rights, pluralism, and community development, and it emerged after the 2011 revolution as an incredibly well-organized force in Tunisian political life.

Ennahda won the largest share of seats in the National Constituent Assembly (NCA) after elections in the fall of 2011, though not enough for a majority by winning the 37% of the votes.<sup>31</sup> Of the 217 seats in the Assembly, Ennahda won 89 and formed a ruling coalition with the liberal Congress for the Republic and the leftist Ettakatol party.<sup>32</sup> Ennahda is the most popular Islamist party in Tunisia, but without state repression of Islamist views, a small minority of Salafists introduced very conservative interpretations of Islamic law into the dialogue around the role of women and conveyed that they would not guarantee the rights already afforded to Tunisian women.<sup>33</sup> Ennahda did not espouse Salafist policies, but moderate Tunisians believed Ennahda should have more clearly denounced Salafists.<sup>34</sup>

### c. Securing Women's Rights after the 2011 Revolution

#### i. Retaining the Personal Status Code

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 311-12.

<sup>31</sup> Chambers & Cummings at 42.

<sup>32</sup> Hursh at 298.

<sup>33</sup> *Id.* at 290.

<sup>34</sup> Carlotta Gall, *Islamist Party in Tunisia to Step Down*, New York Times (September 28, 2013) <http://www.nytimes.com/2013/09/29/world/africa/islamist-party-in-tunisia-to-step-down.html>.

Retaining the CSP was an important victory for women's rights after the 2011 revolution. Without the state enforced version of women's rights that Bourguiba and Ben Ali's regimes created, Tunisia could have reverted to pre-independence forms of family law. Instead, women's rights groups treated the changes already achieved as precedent that was no longer up for debate.<sup>35</sup>

As a part of the ruling coalition, Ennahda stated that it was committed to upholding the rights women had secured under Bourguiba and Ben Ali. However, many Tunisians were skeptical of this assertion, since Ennahda's position regarding the CSP has changed over time. When Bourguiba expanded the CSP in 1985, Ennahda opposed the measure and characterized the expansion as against principles of Islamic law.<sup>36</sup> By 1990, Ennahda supported the CSP and other measures, such as eliminating workplace harassment. Many women's rights activists feared (and still do) that Ennahda's commitment to women's rights was lip service only, and the party would seek to curtail the rights of women if they were in power. Still, Ennahda proposed no alterations to the CSP while it governed.<sup>37</sup> The retention of the CSP was likely the result of women's presence in the National Constituent Assembly and well-organized women's rights groups willing to defend it. Tunisia's post-2011 discourse is open to more views about the role women should have in society, and it is no small victory that the gains achieved prior to the revolution were maintained and protected.

## ii. Constitutional Drafting Process

The constitutional drafting process demonstrated that the gains in women's rights made under Bourguiba and Ben Ali are resilient when subjected to a more democratic, majoritarian

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<sup>35</sup> Chambers & Cummings at 42.

<sup>36</sup> Hursh at 320.

<sup>37</sup> *Id.* at 321.

process. At the end of the process, the 2014 Tunisian constitution enshrined the rights that women had been already been afforded in Tunisia through several specific provisions and increased the scope of state protection for Tunisian women, though the drafting process demonstrated emerging fault lines regarding the role of women in Tunisian society.

Women in the NCA reached a consensus on their commitment to draft a constitution that would uphold women's rights. However, disagreement and the divergent views of how exactly that should be achieved prevented them from forming a women's caucus in the NCA.<sup>38</sup> The general positions taken were either a moderate Islamist view, espoused by members of Ennahda, or a more modern secularist view. While women did not caucus as bloc throughout the drafting process, women in the NCA were willing to work across these differences at several crucial moments in the process. As a result of this collaboration, they ensured that measures granting women state protection for violence against women and abusive working conditions would be included in the constitution, making many of these changes in the final weeks prior to the ratification of the 2014 constitution.<sup>39</sup>

Several articles of the 2014 constitution have been particularly important in securing the rights of Tunisian women after the 2011 revolution. Article 1 of the Tunisian Constitution makes no reference to women, but it represents an important victory for Tunisian women. Initially, Ennahda sought to have a reference to shari'a law in this article of the constitution. A long debate followed. Many secular politicians were very much against including any such provision and wanted to preserve the language of the 1959 constitution. Ultimately, Ennahda conceded on this point, and shari'a is not mentioned. However, there are contradictions within the constitution

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<sup>38</sup> de Silva de Alwis, Mnasri & Ward at 98.

<sup>39</sup> *Id.* at 102.

on the role of religion in the state. The language of Article I includes reference to Islam as the religion of Tunisia, and Article 2 declares that Tunisia is a “civil state.” Article 1 could be interpreted to mean that Islam is the religion of the Tunisian state, rather than the society as a whole.<sup>40</sup> Still, the exclusion of shari’a as a source of Tunisian law limits the influence of interpretations of Islamic law that have more restrictive roles for women within the family.

The first proposed draft of the constitution provoked a vigorous debate about how to articulate women’s rights. Article 28 stated “ The State assures the protection of women’s rights and gains, following the principle of complementarity with the man within the family and as partners with him in the development of the homeland.”<sup>41</sup> While the article went on to obligate the state to provide equality of opportunity and combat violence, many criticized the use of complementarity rather than equality. A week later, ten thousand people marched in opposition to this provision. This word choice in particular gave credence to some of the fears that Ennahda would seek to limit the rights afforded to women in the constitution. Civil society organizations organized quickly and ardently to oppose the language of complementarity in Article 28. Prominent women’s rights organization, including the Tunisian Women’s Association for Research and Development (AFTURD), the Tunisian Association of Women Democrats (ATFD), and the Tunisian League of Human Rights, led a campaign against Article 28. Over 30,000 signed an online petition requesting the Article 28 be retracted, and ultimately, the 2014 enshrined the language of equality between men and women in Article 22.

Article 46 creates a state obligation to regarding gender equality. The article requires that the state protect the rights that have been accrued, while working to strengthen them, guarantees

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<sup>40</sup> *Id.* at 126.

<sup>41</sup> Tchaïcha & Arfaoui at 116.

equality of opportunities between men and women at all levels of responsibility, and obligates the state to work towards gender parity in elected bodies and eradicate violence against women.<sup>42</sup> This article in particular has the power to offer Tunisian women strong protections for gains in equality already made and require state action to continue further.

The state has obligations to made gains towards electoral parity, and Tunisia made great strides in empowering women in the political realm through under this provision. Prior to the passage of the constitution and Article 46, Tunisia passed an electoral parity law that the required parties to use parliamentary lists that alternated male and female candidates in 2011.<sup>43</sup> As a result, after the 2014 parliamentary elections, women hold 31% of the seats in the parliament, which is a greater percentage than in the United States Congress and similar to the portion in European countries.<sup>44</sup> The passage of a 2016 electoral law went even further to implement and required horizontal parity, which required alternating lists to be headed by women. The first election under this law was the 2018 municipal election, and women were elected to 48% of the positions available.<sup>45</sup>

The protections available to Tunisian women under the 2014 constitution will not be fully realized while Tunisia still lacks a Constitutional Court to interpret the scope of these provisions.<sup>46</sup> Article 46 creates a state obligation to counter violence against women, but further

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<sup>42</sup> Tunisia's Constitution of 2014, [https://www.constituteproject.org/constitution/Tunisia\\_2014.pdf](https://www.constituteproject.org/constitution/Tunisia_2014.pdf).

<sup>43</sup> *Id.* at 322.

<sup>44</sup> Lindsey.

<sup>45</sup> Sarah Yerkes and Zeineb Ben Yahmed, *Tunisia's Political System: From Stagnation to Competition*, 14 (Carnegie Endowment for International Peace 2019)

[https://carnegieendowment.org/files/Yerkes\\_Yahmed\\_Tunisia\\_Stalemate\\_final.pdf](https://carnegieendowment.org/files/Yerkes_Yahmed_Tunisia_Stalemate_final.pdf).

<sup>46</sup> Sharan Grewal, *Tunisia Needs a constitutional court*, Brookings Institution (November 20, 2018) <https://www.brookings.edu/blog/order-from-chaos/2018/11/20/tunisia-needs-a-constitutional-court/>

interpretation is needed to articulate the extent of it. Without a Constitutional Court, a temporary body reviews draft laws but does not have adjudicatory authority.<sup>47</sup>

Ennahda leaders explained the compromises the party made on matters of gender equality in the drafting process on interpretations of Islamic law. Some of the concessions Ennahda made were politically expedient, though they were justified to supporters on religious grounds.<sup>48</sup> Ennahda's members represent a variety of positions on the proper role for women in Tunisian society. Some believed that traditional roles for women were a product of patriarchal culture rather than prescriptions of religious doctrine, while others advocated for more conservative interpretations of Islamic family law. Since the party had strong interests in cultivating long-term stability through drafting a functional constitution, Ennahda was perhaps more willing to concede to the secular forces on matters of gender equality, even as it justified these positions as interpretations of religious doctrine.

### iii. Withdrawal of CEDAW Reservations

Another expansion of women's rights post-Jasmine Revolution came when Tunisia withdrew its reservations to the CEDAW treaty in April of 2014. When it signed the treaty in 1985, Tunisia had made reservations regarding matters of family law, and the withdrawal of those reservations affirmed the rights of men and women as equal in matters of marriage, divorce, custody of children, and ownership of property.<sup>49</sup> The status of CEDAW is also increased by Article 20 of the 2014 Constitution, which places international treaties greater authority than national laws, though they are in a position inferior to the Constitution.<sup>50</sup> Tunisia could further strengthen the provisions of CEDAW by signing on to protocol of the African

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<sup>47</sup> *Id.*

<sup>48</sup> Hursh at 324.

<sup>49</sup> *Id.* at 330.

<sup>50</sup> de Silva de Alwis, Mnasri & Ward at 134.

Charter on Human and People’s Rights on the Rights of Women in Africa, known as the Maputo Protocol.<sup>51</sup> At this point, Tunisia is one of only a few African Union countries who are not Maputo Protocol signatories. Still, CEDAW has been an effective tool for women’s rights movements to pressure governments throughout the Middle East and North Africa region.<sup>52</sup>

#### iv. Legislation to Counter Violence Against Women

Tunisia achieved another significant legislative victory when parliament passed the Law on Eliminating Violence Against Women in 2017. Prior to this, Tunisia did not have legislation that addressed domestic violence specifically, and women’s rights groups campaigned extensively for such legislation, given the wide prevalence of many forms of violence against women.<sup>53</sup> A national study of violence against women conducted in 2010 found that nearly 50% of all Tunisian women reported that they had experienced some form of violence.<sup>54</sup> Much of that violence is perpetrated either by family members or intimate partners.<sup>55</sup>

In order to address the pervasive issue, women’s rights advocates were able to pass legislation that covered the many forms of violence by including an expansive definition of violence against women that includes:

“any physical, moral, sexual or economic aggression against women based on discrimination between the two sexes and resulting in damage or physical, sexual, psychological suffering to the woman. Including threats of such aggression, pressure or deprivation of rights and freedoms, both in public and private life.”<sup>56</sup>

In addition to this broad definition, the law penalized many forms of domestic violence as well as harassment in public. Employers are now subject to fines for any intentional pay

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<sup>51</sup> Hursh at 331.

<sup>52</sup> *Id.* at 329.

<sup>53</sup> Human Rights Watch, *Tunisia: Landmark Step to Shield Women from Violence*, Human Rights Watch (July 27, 2017) <https://www.hrw.org/news/2017/07/27/tunisia-landmark-step-shield-women-violence>.

<sup>54</sup> Amnesty International at 10-11.

<sup>55</sup> Amnesty International at 11.

<sup>56</sup> *Id.*

discrimination. For women who have faced domestic violence, the law requires that the government provide a variety of legal, medical and psychological services. Restraining orders against abusers without initiating a criminal case or divorce are also now an available remedy. To address the pressure that women can face from law enforcement to drop allegations of domestic violence, agents of the Security Forces are criminally liable should they try to pressure women to drop charges.<sup>57</sup> The law also repealed a provision of the Criminal Code that had previously allowed a man to avoid punishment for rape through marrying his victim.<sup>58</sup>

These legislative changes provide important mechanisms for women to address domestic violence. However, the implementation of the law reveals that these protections are insufficient to address the scope of violence against women in Tunisia. For any woman who reports domestic violence, the law requires that women be referred to shelters, should they need them. However, there is no mechanism within the legislation to fund such shelters.

Furthermore, in discussing the implementation of this legislation with Mr. Fahdel Ben Omrane, a member of the Tunisian parliament and the leader of the Nidaa Tounes party, he indicated that a campaign to explain the provisions of the law would be sufficient. Once that was complete, he believed that it would be the responsibility of the women to use the tribunals to prevent violence.<sup>59</sup> While the legal mechanisms created by this legislation are necessary and important to addressing violence against women, merely creating them may not address the causes of violence against women in Tunisia.

### III. Current Debate on Inheritance Laws

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<sup>57</sup> Human Rights Watch, *Tunisia: Landmark Step to Shield Women from Violence*, Human Rights Watch (July 27, 2017) <https://www.hrw.org/news/2017/07/27/tunisia-landmark-step-shield-women-violence>.

<sup>58</sup> *Id.*

<sup>59</sup> Meeting with Mr. Fahdel Ben Omrane, March 26, 2019.

The women's rights movement in Tunisia successfully preserved the gains made under Bourguiba and Ben Ali in a more ideologically diverse environment and secured even greater protections in the years since, through the 2014 constitution and additional legislation. Women in Tunisia have benefitted where

However, there are currently vigorous debates surrounding the provisions for the distribution of inheritance between men and women, and proposed legislation that would diminish gender inequality in this area may be a step too far both for popular opinion and for the political climate that Tunisia currently faces.

a. Current Inheritance Law in Tunisia

The CSP, as altered throughout Tunisia's post-independence history, continues to govern matters of family law and has a variety of provisions that discriminate between men and women, some with explicit distinction and others with discriminatory impact. Inheritance is one area governed by the CSP, and the current inheritance laws significantly disadvantage women in favor of men. Tunisia's CSP uses the same shari'a law that other Arab countries have, and no other Arab country has laws that promote equality between men and women in inheritance. When Bourguiba implemented the CSP, he codified the traditional rules of inheritance according to shari'a, which generally grants that women receive half the inheritance that men do.<sup>60</sup> This division of inheritance comes from Qur'anic texts.

The CSP does include some measures that are incrementally more favorable for women than those of other Arab countries, such as preferring daughters and granddaughters over uncles or brothers.<sup>61</sup> Still, women receive only about half of the share of inheritance that men can

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<sup>60</sup> Masri at 230.

<sup>61</sup> Masri at 231.

receive under the provisions of the CSP.<sup>62</sup> Men who are more distantly related can even inherit more than closely related women.<sup>63</sup> Tunisian law does not permit someone use a will to more evenly allocate their estate. Only one third of someone's property can be willed, and that third cannot go to a legally defined heir unless all the others agree to that provision.<sup>64</sup> In order to distribute property to daughters or other female heirs more equitably, a Tunisian would have to grant that property prior to death.

These rules regarding inheritance are particularly entrenched in Islamic law. Since texts within the Quran proscribe the shares of inheritance between men and women, there is less room for a variety of interpretations, unlike other areas of family law where feminist interpretations can challenge social practices that are not as clearly rooted in Qur'anic texts.

#### b. COLIBE Recommendations

President Essebsi created the Individual Freedoms and Equality Commission (COLIBE) on August 13, 2017.<sup>65</sup> The committee's mandate was to determine what legislative changes are needed in order to more fully implement the 2014 constitution and the freedoms that it guarantees. On June 12, 2018, COLIBE published its report, which was over 200 pages long, which included draft legislation for the President and members of parliament in order to implement COLIBE's recommendations.

The recommended changes covered many different areas of legislation. Several would affect criminal procedures, such as repealing the death penalty and limiting the amount of time

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<sup>62</sup> Chambers & Cummings at 40.

<sup>63</sup> *Id.*

<sup>64</sup> Sharan Grewal, *Can Tunisia find a compromise on equal inheritance?*, Brookings Institution (September 25, 2018) <https://www.brookings.edu/blog/order-from-chaos/2018/09/25/can-tunisia-find-a-compromise-on-equal-inheritance/>

<sup>65</sup> Human Rights Watch, *Tunisia: Landmark Proposal on Gender Bias, Privacy*, Human Rights Watch (July 26, 2018) <https://www.hrw.org/news/2018/07/26/tunisia-landmark-proposals-gender-bias-privacy>.

that the police can hold a detainee before charging them with a crime, also known as the garde à vue.<sup>66</sup> COLIBE also recommended changes that would increase the rights of the gay community, by decriminalizing homosexuality and ending the practice of anal examinations as a means of proving that someone has committed sodomy. Should the homosexuality not be decriminalized in its entirety, COLIBE recommended reducing the punishment from up to three years in prison to a fine of no more than 500 dinars (approximately 165 US dollars).<sup>67</sup>

COLIBE also had significant recommendations in the area of gender equality, to harmonize Tunisia's laws with its constitutional obligations of equality between men and women. Regarding inheritance, COLIBE recommended requiring equality of shares between men and women. COLIBE also recommended ending gender discrimination in other matters of family law. The CSP still defines the husband as the head of the family, requires a dowry (even if only a symbolic one), and limits marriage-based access to Tunisian citizenship. Women who marry Tunisian men can become Tunisian citizens, but this is not available to men who marry Tunisian women.

Many women's rights activists in Tunisia stress the importance of equalizing the inheritance laws. The current inequity between men and women is limiting both as a symbol of gender inequality and a limit on the economic power of Tunisian women.<sup>68</sup> Bochra Bel Haj Hmida, who lead the Commission, characterizes inequality in inheritance as a particularly invidious source of gender inequality: "it's at the center of all discrimination cultural, economic,

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<sup>66</sup> Ursula Lindsey, *Is Tunisia Ready for Gender Equality?*, N.Y. Review of Books (April 4, 2019, <https://www.nybooks.com/articles/2019/04/04/tunisia-ready-gender-equality/>).

<sup>67</sup> Human Rights Watch, *Tunisia: Landmark Proposal on Gender Bias, Privacy*, Human Rights Watch (July 26, 2018) <https://www.hrw.org/news/2018/07/26/tunisia-landmark-proposals-gender-bias-privacy>.

<sup>68</sup> Human Rights Watch, *Tunisia: Ennahda Rejects Inheritance Equality*, Human Rights Watch (September 6, 2018)m <https://www.hrw.org/news/2018/09/06/tunisia-ennahda-rejects-inheritance-equality>.

social—it's about power.”<sup>69</sup> These can be seen in the economic limitations on Tunisian women. Only 12% of Tunisian women own a house, and women make up only about 20% of business owners in Tunisia.<sup>70</sup> Equal inheritance laws would create an important financial opportunity for Tunisian women that is currently inaccessible.

The COLIBE report was met with resistance from conservative groups, who marched against the recommendations in the report on August 11, 2018, alleging that the provisions would be anti-Muslim.<sup>71</sup> While the march was not organized by the Ennahda party, the leader previously served as Ennahda's minister of religious affairs.<sup>72</sup> Still, President Essebsi announced on August 13, 2018 on National Women's Day that he would submit a proposal to parliament to grant equal inheritance shares to men and women. The proposed bill would not grant equal inheritance to men and women in all cases. Rather, it would permit those who would follow the Qur'anic distributions to use those, but the default would be equal shares for male and female heirs.<sup>73</sup>

### c. Political Calculations on Inheritance Equality

Ennahda initially indicated the COLIBE report would start a dialogue and indicated its continued commitment to women's rights.<sup>74</sup> However, by late August, Ennahda came out in opposition to the inheritance equality bill. In their press release communicating their position on

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<sup>69</sup> Lindsey.

<sup>70</sup> <https://www.forbes.com/sites/brennancusack/2018/08/22/tunisia-equal-inheritance-law-could-boost-female-entrepreneurship/#5be077cc155a>

<sup>71</sup> Brennan Cusack, *Tunisia's Equal Inheritance Law Could Boost Female Entrepreneurship*, Forbes (August 22, 2018) <https://www.aljazeera.com/news/2018/08/tunisia-president-vows-give-women-equal-inheritance-rights-180813172138132.html>.

<sup>72</sup> Joseph Daher, *Tunisia: the long march of the feminists for the full equality in the law*, Committee for the Abolition of Illegitimate Debt (August 23, 2018) <http://www.cadtm.org/Tunisia-the-long-march-of-the-feminists-for-full-equality-in-the-law>.

<sup>73</sup> Lindsey.

<sup>74</sup> Human Rights Watch, *Tunisia: Ennahda Rejects Inheritance Equality*, Human Rights Watch (September 6, 2018)m <https://www.hrw.org/news/2018/09/06/tunisia-annahda-rejects-inheritance-equality>.

the matter, Ennahda announced that the Shura Council, the representative body within the party that debates and decides on policy matters,<sup>75</sup> had concluded that the proposal would go against “peremptory texts in the Quran and Sunna.”<sup>76</sup> It also stated that “not only does the initiative calling for equality in inheritance contradict the religious teachings and the texts of the constitution and the personal status code, but also invokes fear related to the stability of the Tunisian family and the customs of society.”<sup>77</sup> Ennahda was able to justify making compromises during the constitutional drafting process on the basis of differing interpretations of Islamic law provisions. However, on the issue of inheritance equality, Ennahda seems unwilling to compromise.

Popular opinion seems to run counter to the inheritance equality proposal. An opinion poll conducted in 2017 indicated that a majority of Tunisians oppose gender equality in matters of inheritance. This opinion poll was conducted prior to the publication of the COLIBE report and Essebsi’s proposal of the legislation, but Essebsi had recently called for legislation that would guarantee inheritance equality in a speech on National Women’s Day in 2017. The survey found that 63% of Tunisians “strongly opposed” such a proposal.<sup>78</sup> While the proportion of men who opposed the proposal was higher (75%), even a majority of women (53%) opposed the proposal.<sup>79</sup> The unpopularity of the measure to divide inheritances equally far exceeds the

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<sup>75</sup> Monica Marks, *Tunisia’s Ennahda: Rethinking Islam in the context of ISIS and the Egyptian Coup* (Brookings Institution 2015) [https://www.brookings.edu/wp-content/uploads/2016/07/Tunisia\\_Marks-FINAL\\_2.pdf](https://www.brookings.edu/wp-content/uploads/2016/07/Tunisia_Marks-FINAL_2.pdf)

<sup>76</sup> Sharan Grewal, *Can Tunisia find a compromise on equal inheritance?*, Brookings Institution (September 25, 2018) <https://www.brookings.edu/blog/order-from-chaos/2018/09/25/can-tunisia-find-a-compromise-on-equal-inheritance/>

<sup>77</sup> Human Rights Watch, *Tunisia: Ennahda Rejects Inheritance Equality*, Human Rights Watch (September 6, 2018) <https://www.hrw.org/news/2018/09/06/tunisia-ennahda-rejects-inheritance-equality>.

<sup>78</sup> Center for Insights in Survey Research, *Public Opinion Survey of Tunisians: November 23-December 3, 2017*, 44 (International Republican Institute 2018) [http://www.iri.org/sites/default/files/2018-01-10\\_tunisia\\_poll\\_presentation.pdf](http://www.iri.org/sites/default/files/2018-01-10_tunisia_poll_presentation.pdf).

<sup>79</sup> *Id.* at 45.

popularity of Ennahda, who received about 29% of the votes in the most recent 2018 municipal elections.<sup>80</sup>

Essebsi's timing and motivation for championing inheritance equality have engendered suspicion about his motivations in proposing inheritance equality. While the COLIBE report had many different recommendations on needed legislative change, Essebsi has only submitted the inheritance equality to parliament. Other measures, like repealing the death penalty, may have wider support but are not submitted to parliament. As for this particular timing, several different explanations have been suggested. One is that Essebsi wants a legacy in line with Bourguiba and Ben Ali on matters of gender equality, though the democratic process makes it harder to secure. Others believe that Essebsi is using inheritance equality as a wedge issue leading up to elections in the fall of 2019.<sup>81</sup> Debate on the issue of inheritance equality could diminish the attention on the Tunisian economy, which is currently deteriorating.<sup>82</sup> This may conceal how Essebsi's own party has fractured since his election in 2014, but he may not have the support of fellow party members on the proposed inheritance equality legislation, given the low approval of the measure.<sup>83</sup> Regarding Ennahda's position, Essebsi will likely use Ennahda's opposition to the measure as a symbol of the party's opposition to greater gender equality in any form and paint the party as more regressive and conservative. Should Ennahda support or compromise regarding the measure, the conservative base may react against the party.

Essebsi has also used progressive action on women's rights to deflect attention government actions that are likely to be viewed less favorably. In 2017, the Ministry of Justice

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<sup>80</sup> Yerkes and Ben Yahmed at 11.

<sup>81</sup> Sharan Grewal, *Can Tunisia find a compromise on equal inheritance?*, Brookings Institution (September 25, 2018) <https://www.brookings.edu/blog/order-from-chaos/2018/09/25/can-tunisia-find-a-compromise-on-equal-inheritance/>

<sup>82</sup> *Id.*

<sup>83</sup> Lindsey.

removed a directive that prohibited the registration of marriages that took place abroad when Tunisian women married non-Muslim men. Such marriages could only be registered if the couple produced a certificate of the husband's conversion to Islam.<sup>84</sup> While women's rights groups had sought the repeal of this provision, it came one day after the Tunisian parliament passed legislation that Essebsi introduced that gave amnesty to civil servants facing corruption charges. This legislation, which ended any ongoing prosecutions and prevented any future ones for civil servants who did not personally benefit from embezzlement of state funds, stymied efforts to hold anyone accountable for corruption under the Ben Ali regime.<sup>85</sup> The pro-women's rights action the next day served to draw attention away from Essebsi's amnesty act. The inheritance equality proposal came just a few weeks after the passage of Law 30 of 2018, which creates a new National Registry of Institutions that all civil society organizations must register with.<sup>86</sup> Inaccuracies in registration information could result in fines or even prison time for staff of such organizations.<sup>87</sup> This law in particular gives the government information about civil society activities and the additional ways to censor civil society organizations, tactics that were rampantly used under the Ben Ali regime.

The inheritance equality measure remains in flux. On November 25, 2018, the cabinet approved the bill, which places the bill before the Tunisian parliament for voting and debate.<sup>88</sup>

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<sup>84</sup> Amna Guellali, *One Step Forward, One Step Back in Tunisia*, Human Rights Watch (September 15, 2017) <https://www.hrw.org/news/2017/09/15/one-step-forward-one-step-back-tunisia>.

<sup>85</sup> *Id.*

<sup>86</sup> Dokhi Fassihian, *Democratic Backsliding in Tunisia: The Case for Renewed International Attention*, Freedom House 2-3 (2018) [https://freedomhouse.org/sites/default/files/policybrief\\_democratic\\_backsliding\\_in\\_tunisia.pdf](https://freedomhouse.org/sites/default/files/policybrief_democratic_backsliding_in_tunisia.pdf)

<sup>87</sup> Maro Youssef, *A murky state-civil society relationship in Tunisia*, openDemocracy (November 2, 2018) <https://www.opendemocracy.net/en/north-africa-west-asia/murky-state-civil-society-relationship-in-tunisia/>

<sup>88</sup> Global Legal Monitor, *Tunisia: Cabinet Approves Bill Requiring Equal Inheritance Shares for Men and Women*, Library of Congress (December 4, 2018) <https://www.loc.gov/law/foreign-news/article/tunisia-cabinet-approves-bill-requiring-equal-inheritance-shares-for-men-and-women/>

Parliament has taken no further action on the proposed legislation, nor have any of the other COLIBE recommendations been submitted to parliament.

#### IV. Future of Women's Rights in Tunisia

Tunisia has consistently expanded women's rights throughout its post-independence history, both before and after the 2011 revolution, and has a reputation as the most progressive Arab state for women. Under both Bourguiba and Ben Ali, Tunisian expanded women's rights with a top-down implementation of a state policy of secularist feminism. Still, consistent state support converted these gains into much greater freedoms for Tunisian women.

Those gains have proved to be durable, even after the 2011 revolution permitted a wider range of perspectives on the role women should have in Tunisian society. Since that inflection point, Tunisian women's rights advocates have protected the rights already gained through the grass roots and democratic processes, including the drafting of the 2014 constitution and new legislative efforts since then.

While these periods represent vastly different models of expanding women's rights, the political incentives of the elite have aligned to benefit from expanding women's rights. However, the debate on inheritance equality demonstrates that that alignment may have ended. Ennahda, willing to compromise on constitutional provisions, has a less flexible approach to interpretations of inheritance law. Public opposition to the measure combined with the strides Tunisia has made towards being a majoritarian democracy suggests that this change may not be made until popular opinion shifts towards a stronger preference for inheritance equality.