

## WOMEN'S RIGHTS IN THE ARAB SPRING: A CHANCE TO FLOURISH, A RISK OF HIBERNATION

### DERECHOS DE LAS MUJERES EN LA PRIMAVERA ÁRABE: UNA OPORTUNIDAD PARA FLORECER, UN RIESGO DE HIBERNAR

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Summary: I. ENGENDERING TRANSITIONS: THE NEED TO INCLUDE WOMEN IN THE TRANSITIONAL AGENDAS. II. ADDRESSING GENDER ISSUES IN THE ARAB COUNTRIES' TRANSITIONAL AGENDAS. III. FINAL REMARKS.

Sumario: I. INTRODUCIENDO UNA PERSPECTIVA DE GÉNERO EN LAS TRANSICIONES: LA NECESIDAD DE INCLUIR A LAS MUJERES EN LA AGENDAS TRANSICIONALES. II. RESPONDIENDO A LOS ASUNTOS DE GÉNERO EN LA AGENDAS TRANSICIONALES EN LOS PAISES ÁRABES. III. CONSIDERACIONES FINALES.

#### I. ENGENDERING TRANSITIONS: THE NEED TO INCLUDE WOMEN IN THE TRANSITIONAL AGENDAS

The so-called “Arab Spring” is leaving behind a double transitional scenario, from non-democratic regimes to democracy (i.e. in Tunisia or Egypt) and from internal conflict to peace (i.e. in Libya). In both cases, though, the professed aim is to build a sustainable peace through the instauration of the rule of law and democracy. Transitions are times of political but also social transformation. Therefore, attention should be paid to their gender-reshaping potential and the capacity to transform gender relations in society, in order to achieve changes not only in the socio-political post-conflict arena, but also in the traditional configuration of gender relations within the society in transition<sup>3</sup>.

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<sup>3</sup> See C. BELL & C. O'ROURKE, “Does Feminism Need a Theory of Transitional Justice? An Introductory Essay”, *International Journal of Transitional Justice*, vol. 1, 2007, pp. 23-44; N. CAHN & F. NÍ AOLÁIN, “Gender, Masculinities, and Transition in Conflicted Societies”, *New England Law Review*, vol. 44 (1), 2009, pp. 1-23; S. HARRIS RIMMER, “Sexing the Subject of Transitional Justice”,

After years of global action to advance the protection of women's rights, the Arab Spring offers a great opportunity to assess whether gender issues are today properly taken into consideration in post-conflict periods and how peace processes and transitions in the countries involved can address women's needs and concerns. During the protests, women have been extremely active, have taken positions in the public arena and put forward their demands. But once the protests are over and transitions towards new regimes are starting, the big question is what role women will be allowed to play in building peace and democracy.

### 1. Women as peace-builders

In times of conflict, international law has traditionally considered women as a vulnerable group in need of protection. War was for men, while women were supposed to keep out of the conflict. Men should protect them from the attacks of the enemy in the same way they protected the properties and the territories belonging to the community. A failure to do so could lead to an attack on women's honour through some form of sexual aggression. As article 27 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War states, "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault".

Such approach to women as victims is too reductive. The more that is known about women's experiences in war, the more it becomes obvious that they are very far from being merely passive spectators suffering the negative effects of the conflict. Instead, as Pankhurst points out, they often adopt a wide range of active roles, from fighters to community leaders or workers, among many others<sup>4</sup>. From this standpoint, conflicts have sometimes been even experienced as a time of liberation from the patriarchal social order, as women have had the opportunity to assume roles traditionally kept for men<sup>5</sup>.

Often, women have also engaged in actions to find a solution to the conflict and bring peace. The question of women's participation and agency in peace-building was highlighted a decade ago in United Nations Security Council Resolution (UNSCR) 1325 (2000). The resolution calls for the inclusion of a gender approach to conflict prevention and resolution and in particular to UN peacekeeping operation. It urges both the United Nations and states to increase representation of women at all levels of decision making, including as UN key and field-based personnel. The resolution stressed "the importance of their equal participation and full involvement in all efforts for the maintenance and

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*Australian Feminist Law Journal*, vol. 32 (1), 2010, pp. 123-147; C. O'ROURKE, "The Shifting Signifier of "Community" in Transitional Justice: A Feminist Analysis", *Wisconsin Journal of Law, Gender and Society*, vol. 23 (2), 2008, pp. 269-291; E. M. GRINA, "Mainstreaming Gender in Rule of Law Initiatives in Post-Conflict Settings", *William & Mary Journal of Women and the Law*, vol. 17 (2), pp. 435-473.

<sup>4</sup> D. PANKHURST, *Women, Gender and Peacebuilding*, Centre for Conflict Resolution Working Paper 5, University of Bradford, Bradford, 2000, p. 5, available at: <http://www.brad.ac.uk/acad/confres/assets/CCR5.pdf>.

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

promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution". The resolution also contains provisions with regards to the need to protect the rights of women and girls both during and after conflict, with special focus on gender-based violence.

Although some advancement has been made in the last decade, studies show that women are still "underrepresented in peace negotiations both in numbers and in status, where they often constitute 'informal' participants"<sup>6</sup>. Research by Bell and O'Rourke on the impact of UNSCR 1325 (2000) on the inclusion of the gender dimension in peace agreements shows that, despite the fact that references to women in such agreements have increased, still only 16 per cent of them included specific references to women. Furthermore, the impact seems to be bigger among agreements in which UN has been involved as a third party<sup>7</sup>.

As the UN Secretary-General recommended in 2004, peace agreements must recognize "the need to ensure gender sensitivity in restoration of rule of law and transitional justice, as well as the need to ensure the full participation of women"<sup>8</sup>. Putting women's participation and agency centre stage is essential in the peacebuilding endeavour. Such processes should not only aim to build a sustainable peace, but as Björkdahl claims, a "gender just peace"<sup>9</sup>. In the last years, it is becoming increasingly obvious that most peace-building strategies are not proving the necessary tools to enhance women's role in post-conflict societies and address their post-conflict needs.

## **2. Engendering transitional justice**

Traditionally the relationship between peace and justice after conflict was understood in terms of peace vs. justice<sup>10</sup>. Only recently has the international community taken a firm approach towards the integration of justice procedures and initiatives to deal with violent past as part of the peace-building effort<sup>11</sup>. Such initiatives fall under the paradigm of transitional justice, which offers a further perspective from which to approach the role of women in transitions to democracy. That standpoint

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<sup>6</sup> UNDPKO, *Ten-year Impact Study on Implementation of the UN Security Council Resolution 1325 (2000) on Women, Peace and Security in Peacekeeping. Final Report to the United Nations Department of Peacekeeping Operations*, Department of Field Support United Nations, New York, 2010, p. 16, available at: [http://www.un.org/en/peacekeeping/documents/10year\\_impact\\_study\\_1325.pdf](http://www.un.org/en/peacekeeping/documents/10year_impact_study_1325.pdf).

<sup>7</sup> C. BELL and C. O'ROURKE, "Peace agreements or pieces of paper? The impact of UNSC Resolution 1325 on Peace Processes and their agreements", *International and Comparative Law Quarterly*, vol. 59, 2010, pp. 941-980, at 942.

<sup>8</sup> UN Doc. S/2004/616, *The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General*, 23 August 2004, § 64, par. g).

<sup>9</sup> A. BJORKDAHL, "A Gender-Just Peace? Exploring the Post-Dayton Peace Process in Bosnia", *Peace & Change: A Journal of Peace Research*, 2012 (forthcoming).

<sup>10</sup> C. SRIRAM, O. MARTIN-ORTEGA and J. HERMAN, J. "Beyond justice versus peace: transitional justice and peacebuilding strategies" in K. AGGESTAN and AN. BJORKDHAL (eds.), *The Study of Just and Durable Peace*, Routledge. London, 2012 (forthcoming).

<sup>11</sup> See i.e. UN Docs. S/2004/616, *cit.*, and A/62/296, *Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies. Report of the Secretary-General*, 23 August 2007.

involves an analysis of the gender-sensitivity of mechanisms used to deal with the past, such as accountability, truth commissions, reparations or institutional reforms.

The first gender-oriented steps in this field were focused on accountability for sexual crimes and gender-based crimes, when in the 1990s the *ad hoc* international criminal tribunals for Yugoslavia and Rwanda started dealing with such crimes, which were later included in the Statute of the International Criminal Court<sup>12</sup>. Positive as these steps towards criminalization are, in recent years scholars and activists are widening the scope of women's rights and needs and departing from the narrow focus on sexual violence in their analysis and demands. Violence against women whether in conflict or under a dictatorship is not limited to the public arena, but it also impacts on their private sphere. Structural violence affecting women, which may manifest itself in social, economic and political processes as well as in domestic violence, is deep-rooted in patriarchal social relations that these contexts aggravate. Therefore, there is a need for a comprehensive agenda of transitional justice that deals with this broader harm affecting women<sup>13</sup>.

More recently, scholars are exploring the gender-based approach in other transitional justice mechanisms, including truth commissions<sup>14</sup>, reparations<sup>15</sup>, traditional forms of justice<sup>16</sup> and legislative reforms<sup>17</sup>. The assessment of how gender-sensitive

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<sup>12</sup> See i.e. T. MERON, "Rape as Crime under International Humanitarian Law", *American Journal of International Law*, vol. 87 (3), 1993, pp. 424-428; C. CHINKIN, "Rape and Sexual Abuse of Women in International Law", *European Journal of International Law*, vol. 5 (1), 1994, pp. 326-341; C. A. MACKINNON, "Rape, Genocide and Women's Human Rights", *Harvard Women's Law Journal*, vol. 17, 1994, pp. 5-16; S. K. FISHER, "Occupation of the Womb: Forced Impregnation as Genocide", *Duke Law Journal*, vol. 46 (1), 1996, pp. 91-133; R. COPELON, "Gender Crimes as War Crimes: Integrating Crimes Against Women into International Criminal Law", *McGill Law Journal*, vol. 46 (1), 2000, pp. 217-240.

<sup>13</sup> See i.e. N. REILLY, "Seeking Gender Justice in Post-Conflict Transitions: Toward a Transformative Human Rights Approach", *International Journal of Law in Context*, vol. 3 (2), 2007, pp. 155-172; F. NÍ AOLÁIN, "Exploring a Feminist Theory of Harm in the Context of Conflicted and Post-Conflict Societies", *Queen's Law Journal*, vol. 35 (1), 2009, pp. 219-244.

<sup>14</sup> See i.e. P. GOBODO-MADIKIZELA, *Women's Contributions to South Africa's Truth and Reconciliation Commission*, Women Waging Peace / The Policy Commission, Washington DC, 2005; D. L. DELAET, "Gender Justice: A Gendered Assessment of Truth-Telling Mechanisms", in T. A. BORER (ed.), *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, University of Notre Dame Press, Notre Dame, 2006, pp. 151-180; F. NÍ AOLÁIN & C. TURNER, C., "Gender, Truth & Transition", *UCLA Women's Law Journal*, vol. 16 (2), 2007, pp. 229-279; A. PILLAY, "Truth Seeking and Gender: The Liberian Experience", *African Journal on Conflict Resolution*, vol. 9 (2), 2009, pp. 91-99; S. MEINTJES, "'Gendered Truth'? Legacies of the South African Truth and Reconciliation Commission", *African Journal on Conflict Resolution*, vol. 9 (2), 2009, pp. 100-112.

<sup>15</sup> See i.e. R. RUBIO-MARÍN (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations*, Social Science Research Council, New York, 2006; R. RUBIO-MARÍN & P. DE GREIFF, "Women and Reparations", *International Journal of Transitional Justice*, vol. 1 (3), 2007, pp. 318-337; A. BERNSTEIN & H. D. SEIBEL, "Reparations, Microfinance, and Gender: A Plan, with Strategies for Implementation", *Cornell International Law Journal*, vol. 44 (1), 2011, pp. 75-113.

<sup>16</sup> See i.e. S. WELLS, "Gender, Sexual Violence and Prospects for Justice at the Gacaca Courts in Rwanda", *Southern California Review of Law and Women's Studies*, vol. 14 (2), 2005, pp. 167-196.

<sup>17</sup> See i.e. C. BELL, "Women Address the Problems of Peace Agreements", in R. COOMARASWAMY & D. FONSEKA (ed.), *Peace Work. Women, Armed Conflict and Negotiation*, Women Unlimited, New

these mechanisms are does not only involve an appraisal of whether women are allowed to participate in their implementation or whether their specific demands are taken into consideration. It also requires an analysis regarding whether they can grasp the victims' individual experience of the harm they have suffered and have a certain healing power or, on the contrary, they just appropriate of women's narratives (both as victims and as witnesses) for a general justice's sake, disregarding women's individual circumstances.

To change gender hierarchies and dynamics of gender relations in society calls for institutional and structural changes within society, as well as for transformations of dominant notions of gender and gender roles. Transitions have a great potential to reshape gender relations, and advantage should be taken of the transitional process to make a change not only in the socio-political post-conflict/post-dictatorship arena, but also in the traditional configuration of gender relations within the society in transition. As will be analysed, the steps taken so far in the context of the Arab Spring raise doubts on whether such transformation could take place in these countries.

## **II. ADDRESSING GENDER ISSUES IN THE ARAB COUNTRIES' TRANSITIONAL AGENDAS**

The uprisings in Tunisia in the beginning of 2011 had a domino effect, inspiring popular demonstrations for democracy in other Arab countries: Jordan, Egypt, Yemen, Libya, Morocco, Oman, Bahrain and Syria. Women's strong commitment in the cause against dictatorships has been a common feature of the protests in these countries, sharing similar demands in all of them –basically democracy, respect for human rights and social equality. However, a number of factors might cause their fight for their rights to have different results in each country. The impact of gender-equality requests on the transitional process might vary depending, among others, on the status women had under the previous regime and on how domestically driven the transitional process remains.

To date, women's status in Arab countries is far from being uniform, ranging from a broad acknowledgement of rights to a negligible legal capacity. That situation has a dual consequence. On the one hand, demands concerning women's rights and efforts to guarantee them will obviously have a different intensity in each country, and therefore the transitional process will serve either to achieve rights or to consolidate them –or both-, depending on the particular domestic circumstances and backgrounds. On the other hand, women's role in the transition may vary depending on the level of freedom and rights they had under the previous regime: if they already enjoyed to some extent the right to participate in public issues, they expectably will be able to channel their demands in a fruitful way; if they didn't, the fight will need to focus in becoming visible and heard in the public arena.

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Delhi, 2004; D. HAYNES, F. NÍ AOLÁIN & N. CAHN, "Gendering Constitutional Design in Post-Conflict Societies", *William & Mary Journal of Women and the Law*, vol. 17 (3), 2011, pp. 509-545.

The level of internal control over the transitional process and the more or less intense international involvement in and monitoring of the transition might also have a determining effect in the inclusion of gender as an integral component of the transition to democracy. As mentioned above some studies have focused on the role of United Nations in facilitating the insertion of gender-sensitiveness in peace agreements<sup>18</sup>, however, there is a lack of studies concerning the indirect impact of international monitoring of transitional processes to democracy on the advancement of women. The Arab Spring presents itself as a suitable case study to do so.

These factors can be critical to design gender-sensitive transitional processes that can lead to better gender equality in the new democratic regimes. An overview of the transitional agendas in three different countries –Tunisia, Egypt and Libya- will serve as illustration.

### 1. Gender-dimension of transitional justice in Tunisia

Women's legal status in the first Arab country where popular uprisings overthrew the dictatorial government, Tunisia, is considered to be a model in the Arab world<sup>19</sup>. Equality of all citizens before the law is guaranteed by its Constitution (Article 6)<sup>20</sup>. In practice, though, patriarchal attitudes and deep-rooted stereotypes persist<sup>21</sup>, as well as high rates of violence against women and domestic abuse<sup>22</sup>. They also suffer from socioeconomic inequality and are underrepresented in public life<sup>23</sup>. Indeed, their active participation in early 2011 demonstrations is just a continuation of their struggle and resistance against oppression under Ben Ali's regime.

Initiatives to guarantee a transition with justice, a solid rule of law and respect for human rights were on the agenda from the outset. They enjoyed remarkable support from the international community. The Office of the UN High Commissioner of Human Rights (OHCHR) soon started supporting the efforts to build the rule of law and strengthen human rights in the country, through i.e. providing advice and capacity-building concerning areas such as the reform of the national human rights institution (the former High Human Rights and Fundamental Liberties Committee) to adapt it to international standards: strengthening judicial independence; reforming of the security sector, and providing advice and technical support to the Tunisian independent commission investigating human rights violations from the recent past<sup>24</sup>. National and

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<sup>18</sup> See *supra* I.1.

<sup>19</sup> UN Doc. CEDAW/C/TUN/CO/6, *Concluding observations of the Committee on the Elimination of Discrimination against Women. Tunisia*, 22 October 2010, § 4.

<sup>20</sup> An English translation of the Constitution of Tunisia is available at: <http://confinder.richmond.edu/admin/docs/Tunisiaconstitution.pdf>.

<sup>21</sup> UN Doc. CEDAW/C/TUN/CO/6, *cit.*, §§ 24-25.

<sup>22</sup> *Id.*, §§ 26-31.

<sup>23</sup> OHCHR, *Report of the OHCHR Assessment Mission to Tunisia, 26 January – 2 February 2011*, § 47, available at: [http://www.ohchr.org/Documents/Countries/TN/OHCHR\\_Assessment\\_Mission\\_to\\_Tunisia.pdf](http://www.ohchr.org/Documents/Countries/TN/OHCHR_Assessment_Mission_to_Tunisia.pdf).

<sup>24</sup> OHCHR, *Statement by UN High Commissioner for Human Rights Navi Pillay to mark the opening of the UN Human Rights Office in Tunisia*, 14 July 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11239&LangID=E>; OHCHR,

international non-governmental organisations are also being extremely active to boost transitional justice after the “Jasmine Revolution”, as shown by the international conference on transitional justice *Addressing the Past, Building the Future* held in the country by mid-April 2011, where gender issues were specifically addressed<sup>25</sup>.

Two events can be pointed out as a sign of the new times. One was the accession to the Statute for the International Criminal Court (ICC) on June 24, 2011, Tunisia being the first North African country to do so. Although this decision will have no effect concerning accountability for the crimes committed during the previous regime, as the ICC’s jurisdiction is limited to crimes committed after its entry into force for the State, it is highly symbolic. Domestic proceedings against former President Ben Ali, the former Minister of Home Affairs, the former general director of national security, as well as other officers are already under way. They have been indicted under charges of abetting against the national security and premeditated murder as well as inciting people to arm themselves against one another. No reference is made to international crimes such as crimes against humanity or, more generally, to serious violations of human rights in the indictments. Furthermore, the cases have been deferred to the military justice<sup>26</sup>.

The second event was the opening of a United Nations Human Rights Office in Tunisia in July 2011. As UN High Commissioner for Human Rights Navi Pillay pointed out, that shows a radical change in the priorities of the State<sup>27</sup>, putting human rights in the forefront. The ratification of the first Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against Torture, and the Convention on Enforced Disappearances on June 29, 2011, goes in the same direction. Instead, no action has been taken concerning the reservation to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>28</sup>. The reservation declares that the Tunisian Government “shall not take any organizational or legislative decision in conformity with the requirements of this Convention where such a decision would conflict with the provisions of chapter I of the Tunisian Constitution”, namely the chapter that, among other general provisions, refers to fundamental rights. Nevertheless, article 8 of the Constitution (which states, among other, that “no political party may take religion, language, race, sex or region as the foundation for its principles, objectives, activity or programs”), has been left without effect through the recognition of all political parties<sup>29</sup>.

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*Winds of Change in Tunisia*, 3 June 2011, available at <http://www.ohchr.org/EN/NewsEvents/Pages/WindsofChangeinTunisia.aspx>.

<sup>25</sup> ICTJ, *Addressing the Past, Building the Future: Justice in Times of Transition*. Conference Report. Tunis, April 14-15, 2011, p. 3, available at: <http://ictj.org/sites/default/files/ICTJ-Tunis-Conference-Report-2011-English.pdf>.

<sup>26</sup> See Press release “Les juges d’instruction clôturent les enquêtes dans 26 affaires pénales où sont incriminés notamment Ben Ali et Rafik Belhaj Kacem”, available at the Tunisian Ministry of Justice and Human Rights’ webpage: <http://www.e-justice.tn/index.php?id=893>.

<sup>27</sup> OHCHR, *Statement by UN High Commissioner for Human Rights Navi Pillay*, *cit.*

<sup>28</sup> Tunisia is also party to the Optional Protocol to the CEDAW which allows for individual complaints.

<sup>29</sup> OHCHR, *Report of the OHCHR Assessment Mission to Tunisia*, *cit.*, § 23.

Among the main beneficiaries of that measure is Ennahda, the moderate Islamist party that was legalised in March 2011 and later won the elections in October. Islamism is seen as the biggest threat for the advance of women in Tunisia in these times of change. However, such fear should be qualified by the fact that Ennahda had more women in its lists than any other party, women who are well educated and have broad activist experience as a result of their resistance against oppression under Ben Ali's regime<sup>30</sup>.

In this scenario, future measures impacting on women's rights cannot be categorically excluded. Tunisian women's main concern has to do with how to take advantage of the transformative potential of transitional justice in order to raise the veil of silence regarding gender violence and get full respect for their rights and dignity<sup>31</sup>. In order to achieve a gender just transition, they claim for more representation of women in the post-revolution investigative bodies, an improvement of the capacity of these bodies to adequately address sexual violence, and freedom to speak about the violence women suffered<sup>32</sup>.

## 2. Gender-dimension of transitional justice in Egypt

The transitional process in Egypt, now under the rule of the Supreme Council of the Armed Forces (SCAF), is mainly focusing on undertaking constitutional reforms as well as celebrating trials against the former authorities for violence against protesters and corruption. While the trial against Hosni Mubarak and his two sons getting particular attention, there are also ongoing investigations against several officials and several high-ranking officials of Mubarak's former government as well as a prominent businessman are also awaiting trial. Other relevant measures refer to the dismantling of the State Security Intelligence, freedom of association and the press<sup>33</sup>. The state of emergency has however yet to be lifted.

Women's demands seem to face a less optimistic situation in Egypt than in Tunisia when it comes to participation in the transitional process. A constitutional referendum was held on 19 March 2011. By that time, women had already denounced that they had been excluded from the Constitutional Committee<sup>34</sup>. Parliamentary elections are scheduled in November 2011. A new law governing the formation of political parties had been adopted and, as a result, new parties have been created, such as the Freedom and Justice Party, founded by the Muslim Brotherhood.

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<sup>30</sup> On this particular, see the analysis by M. MARKS, "Can Islamism and Feminism Mix?", *The New York Times*, 26 October 2011.

<sup>31</sup> See *Violence Against Women: Invisible Victims*, at: <http://tjtunis.blogspot.com/2011/04/violence-against-women-invisible.html>.

<sup>32</sup> ICTJ, *cit.*, p. 3.

<sup>33</sup> OHCHR, *Report of the OHCHR Mission to Egypt, 27 March – 4 April 2011*, § 15, available at: [http://www.ohchr.org/Documents/Countries/EG/OHCHR\\_MissiontoEgypt27March\\_4April.pdf](http://www.ohchr.org/Documents/Countries/EG/OHCHR_MissiontoEgypt27March_4April.pdf).

<sup>34</sup> "Egypt: Women excluded from constitutional committee", *Pambazuka News*, Issue 517, 21 February 2011, available at: <http://www.pambazuka.org/en/category/wgender/71060>.



Concerning the electoral law and women representation, the only requirement seems to be the inclusion of at least one woman in every list<sup>35</sup>. However, many parties are preventing women from heading their lists, whilst others have not put them at the end or even failed to include them<sup>36</sup>. Moreover, the attitude of some Islamist parties regarding the participation of women in the elections and their sitting in the parliament is much more worrying than in Tunisia. For instance, the Salafist Al-Nour Party publicly declared that they will have women in their list just because they are forced to do so by law, but they perceive having women in Parliament as something very negative<sup>37</sup>.

Political participation is not the only concern regarding gender discrimination. Socioeconomic inequalities, i.e. in labour rights, as well as violence against women – including sexual violence following their participation in the protests – are also in the list of issues that should be addressed in the transition<sup>38</sup>. It should be pointed out that, although a party to the CEDAW, Egypt has not so far ratified its Optional Protocol, neither the Optional Protocols to the International Covenant on Political and Civil Rights nor to the International Covenant on Economic, Social and Cultural Rights, although the possibility to do so is currently being considered<sup>39</sup>.

The SCAF seems to be minimizing international participation in the transitional process. Unlike Tunisia, there will be no international monitoring of the parliamentary elections, as the SCAF ruled that possibility out in July<sup>40</sup>. The Government has shown good disposition to engage with UN OHCHR in technical cooperation activities, particularly programmes aimed at strengthening the rule of law, the independence of the judiciary and the media, as well as technical assistance to reform the security sector<sup>41</sup>. Moreover, the authorities have expressed willingness to host the OHCHR Regional Office for North Africa<sup>42</sup>. At the time of writing no further steps have been taken on this particular.

### **3. Gender-dimension of transitional justice in Libya**

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<sup>35</sup> See article 38 of the Supreme Council of the Armed Forces Constitutional Declaration, according to which “the law will govern the right of candidacy for the People’s Assembly and Shura Council according to the determined electoral system, *including at a minimum the participation of women in both assemblies*” (emphasis added). An English version of the declaration is available at: <http://egyptelections.carnegieendowment.org/2011/04/01/supreme-council-of-the-armed-forces-constitutional-announcement>.

<sup>36</sup> Y. FATHI, “Will women make it into Egypt's upcoming parliament?”, *Ahram*, 20 October 2011, available at: <http://english.ahram.org.eg/NewsContent/1/64/24583/Egypt/Politics-/Will-women-make-it-into-Egypt's-upcoming-parliament.aspx>.

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

<sup>38</sup> OHCHR, *Report of the OHCHR Mission to Egypt, 27 March – 4 April 2011, cit.*, § 32.

<sup>39</sup> *Id.*, § 34.

<sup>40</sup> See “Foreign monitors ban shows Egypt’s military ‘walking in former regime’s footsteps’?”, *Democracy Digest*, available at: <http://www.demdigest.net/blog/2011/07/foreign-monitors-ban-shows-egypts-military-walking-in-former-regimes-footsteps/>.

<sup>41</sup> OHCHR, *Report of the OHCHR Mission to Egypt, 27 March – 4 April 2011, cit.*, § 38.

<sup>42</sup> *Id.*, § 39.

The transition in Libya offers a rather different starting point than in Tunisia and Egypt. As uprisings and repression intensified, the situation in the country entered a new scenario, namely, an internal armed conflict. The shift is not from dictatorship to democracy, but from dictatorship, then to an armed conflict, and finally, expectedly, to democracy. Therefore, the situation will request not only for strengthening of the rule of law, but also for post-conflict reconstruction and peace-building.

Gaddafi's violent repression of the uprisings that started in February 2011 and threw the country into an internal armed conflict between the official troops and opposition forces organised as the National Transitional Council (NTC). The conflict was declared finished in October 2011, when Gaddafi was caught and killed by opposition forces. Women played an important role in the initial protests against Gaddafi's regime, as they did in Tunisia and Egypt, and later got fully involved in fighting, even mainly through indirect roles (such as helping smuggle weapons, cooking for the frontline units, and allegedly selling their possessions to buy combat jeeps)<sup>43</sup>. During the conflict, cases of rape were reported, in situations that seemed to suggest that gender-violence had been used as a weapon in a systematic way. The ICC Prosecutor investigated these allegations<sup>44</sup>, but no charge for rape either as a war crime or as a crime against humanity was included in the Pre-Trial Chamber decision confirming the arrest warrants against Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Alsenussi<sup>45</sup>.

The Draft Constitutional Charter for the Transitional Stage released by the NTC consecrates in its article 6 the equality of all Libyans, while stating that "the State shall guarantee for woman all opportunities which shall allow her to participate entirely and actively in political, economic and social spheres"<sup>46</sup>. However, the NTC has failed its promise to have women in a prominent role in government and in representation positions<sup>47</sup>, and currently has one women in post –as usual, the minister for women. Thus, women's demands both for an active participation in the decision-making roles related to peace and conflict resolution and a strong representation in the NTC and any future government persist<sup>48</sup>.

The need for such participation to achieve a gender just peace and real equality is evident. As stated in the Declaration from Libyan Women adopted at the Karama Libyan Women Conference in October 2011:

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<sup>43</sup> See, *Libyan women: it's our revolution too*, The Guardian, 16 September 2011, available at <http://www.guardian.co.uk/world/2011/sep/16/libyan-women-our-revolution-too>.

<sup>44</sup> ICC, *First Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1970 (2011)*, 5 May 2011, § 35.

<sup>45</sup> ICC Pre-Trial Chamber I, *Decision on the "Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah ALSENUSSI"*, situation n° ICC-01/11, 27 June 2011.

<sup>46</sup> *Draft Constitutional Charter for the Transitional Stage* [Libyan Arab Jamahiriya], September 2011, available at: <http://www.unhcr.org/refworld/docid/4e80475b2.html> [accessed 27/10/11].

<sup>47</sup> See, *Libyan women: it's our revolution too*, cit.

<sup>48</sup> *Declaration from Libyan Women*, Karama Libyan Women Conference, 7-9 October 2011, available at: [http://www.cda.nl/Upload/2011\\_docs/OSCE%20declaration%20from%20Arab%20women.pdf](http://www.cda.nl/Upload/2011_docs/OSCE%20declaration%20from%20Arab%20women.pdf).

“Women represent a near-majority constituency whose power has been suppressed during the last 42 years. The new Libya will fail to eradicate many of the abuses and discrimination perpetuated by the former regime without a strong commitment to responding to the legitimate demands of women”<sup>49</sup>.

Even if, as it now seems, there will be no peacekeeping force present during the transition, the international community will follow closely the peace-building process. The Special Representative of the Secretary General and head of the new political mission to Libya UN Support Mission in Libya (UNSMIL)<sup>50</sup> is tasked with assisting the election process, security sector reform and transitional justice, with the aid of the OHCHR. In his presentation briefing on September 22 he stressed that the UN would support women's agenda to play an important role in the transition and the new government<sup>51</sup>.

### **III. FINAL REMARKS**

Winds of change are blowing in the Arab world after popular uprisings against dictatorships. Transitions to democracy are also an opportunity to reverse patriarchal societies and advance towards gender equality. Women in the countries of the so-called Arab spring are well aware of the chance that democratic revolutions may bring to the effective recognition of their rights and therefore have been actively involved in the protests and –as far as Libya is concerned- even in the armed conflict.

However, there is still a long way to go. Although legal equality is being generally guaranteed as a constitutional principle, women are finding remarkable hurdles when it comes to political participation and involvement in the constitutional reforms. This will expectably be an obstacle to the full consideration of their demands. Furthermore, the strong position that Islamist political parties are achieving in all the countries involved is seen as a threat to improvements regarding the situation of women, if not as a potential risk of worsening.

International support may be needed to offset a perpetuation of structural violence against women in these countries. UN bodies working in the establishment of the rule of law and the transition to democracy in the area have put gender issues high up in their list of priorities. Nevertheless, their influence on the transitional processes is

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

<sup>50</sup> As provided by UNSCR 2009 (2011), of 16 September 2011, § 11, the UNSMIL's mandate includes: (a) restore public security and order and promote the rule of law; (b) undertake inclusive political dialogue, promote national reconciliation, and embark upon the constitution-making and electoral process; (c) extend state authority, including through strengthening emerging accountable institutions and the restoration of public services; (d) promote and protect human rights, particularly for those belonging to vulnerable groups, and support transitional justice; (e) take the immediate steps required to initiate economic recovery; and (f) coordinate support that may be requested from other multilateral and bilateral actors as appropriate.

<sup>51</sup> *Ian Martin, SRSG on Libya - Press Conference*, 22 September 2011, available at: <http://www.unmultimedia.org/tv/webcast/2011/09/press-conference-by-ian-martin.html>.

uneven, and that might result in a divide concerning women's status among the Arab countries. On the other hand, this can be an excellent opportunity to assess whether international transitional justice processes facilitate the participation of women and women's organisations or, on the contrary, locally driven processes enhance women's agency and promote a more gendered approach to transitional justice. From this standpoint, future developments in Tunisia and Egypt provide appropriate parameters to compare.

In any event, leaving women aside during this transitional period can only result in the new democracies emerging from the Arab Spring failing to guarantee meaningful advances on women's rights and on their active –equal- role in the future of their countries. It will also prove that the international community has failed to learn the lessons learnt in the last decades concerning its own role in advancing gender equality.