

# **Social Inclusion and Minority Rights: Analyzing North African Constitutions**

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## **Introduction**

Do *de jure* constitutional rights impact *de facto* protection of those rights? Under immense pressure to democratize as a result of the Arab Spring, several Arab countries including the North African nations of Algeria, Egypt, Morocco, and Tunisia have recently adopted formal constitutions employing a broad spectrum of human rights language. However, it remains a question whether these constitutional reforms actually lead to more protection of human rights or whether they are merely for window dressing. Egypt's 2019 constitution, for example, seems to proclaim numerous human rights provisions, including freedoms of religion, speech, press, and organizational rights. Yet, a closer examination of the Egyptian constitutional reform shows that the inclusion of these rights was part of President El-Sisi's strategy to conceal the true purpose of the new constitution: extending his own grip over power. Nonetheless, it is empirically interesting to study whether the inclusion of such human rights have unintended consequences for these nations. The goal of this research is to answer the question do constitutional human rights provisions lead to the practice of said rights or are they merely for show.

It is not perfectly clear whether or not constitutional content is an accurate reflection of a regime's practices and intentions. There are valid arguments pertaining to both government's compliance and circumvention of constitutional human rights provisions. There are also many ways in which this question can be addressed. Including examining constitutional threats vs constitutional promises, individual vs organizational rights, judicial independence and the adoption of human rights treaties. On one hand, some scholars argue that constitutional language

expresses a commitment to the wellbeing of citizens. While others suggest that it can be used as a means to manipulate citizens. The likely outcome is that authoritarian regimes employ human rights language as a coverup and not with the sincere intention of practicing the rights. Human rights look good on paper and give leaders the opportunity to convince outsiders that they are committed to the wellbeing of citizens. However, it is easy to pen a phony document for the optics and disregard its meaning in practice.

This paper seeks to evaluate the arguments pertaining to constitutional noncompliance, focusing on North Africa. I will first examine relevant literature focusing on the difference between constitutional threats vs constitutional promises, individual vs organizational rights, judicial independence, and human rights treaties. Next, I will provide an overview of the Arab Spring and its relevance to the topic. Finally, I will provide an empirical analysis discussing specific constitutional human rights provisions along with specific accounts of noncompliance. In conclusion I will offer my perspective on whether *de jure* constitutional rights impact *de facto* protections of those rights.

## **Literature Review**

### **Constitutions and Human Rights Practices**

There is a rich literature on the importance of constitutional rights for human rights protections and practices. While most scholars agree on the importance of institutionalizing human rights through formal laws and informal practices, it remains a question whether constitutional text matters for the protection of these rights. On the one hand, without formal constitutional provisions, governments will not be obliged to protect human rights. On the other hand, sham constitutions in many authoritarian regimes are full of human rights provisions

without necessarily limiting the autocrats' ability or willingness to violate those rights. i.e. in many cases constitutions are not ratified to be utilized in practice, but as a means to appear sympathetic in the international community. What can then determine whether a constitution can bind the government into protection of human rights? First, the type of rights in the constitution matter, with institutionalized group rights being more consequential than individual rights. Second, judicial independence seems to determine whether governments respect constitutional rights. If a constitution guarantees the independence of the judiciary, it will also protect human rights. Whereas if the judiciary is in line with the regime there is a greater chance of oppression. Third, constitutional threats and/or constitutional promises in a document can help gauge whether or not a government is serious about upholding human rights. Lastly, governments that are serious about constitutional rights, usually ratify human rights treaties. However, the question remains whether said treaties are an aid in human rights practices or another strategic coverup to conceal true practices. As such, if a constitution provides for international human rights treaties, what is the likelihood that they will guarantee the protection of those rights. Below, I will discuss each of these four conditions.

### **Constitutional Threat and Constitutional Promise**

There are two categories experts use to gauge the likelihood of constitutional rights being upheld and used with the intention of benefitting society instead of a means of tyranny (Davenport 1996). These include constitutional promises (i.e. enabling rights) and constitutional threats (i.e. restrictions to those rights). An example of a constitutional threat is the state of emergency clauses found in many constitutions. This act of suspending democratic governance is a threat to human rights as it attempts to legitimize maltreatment. If a right is padded with extra

language as a sort of loophole to suspend the right than it is a threat.<sup>1</sup> A constitutional promise is a right such as freedom of speech that is upheld by the government and used as a protection. When a right such as freedom of speech, or freedom of expression is mentioned it is to be assumed that the government is sincere in their effort to protect that right. A common right that is suppressed despite being listed in a constitution is religious freedoms (Finke and Mataic 2021). “The divergence between promise and practice is especially striking in the area of religion. Past research has documented the vast chasm between constitutional promises of religious freedom in more than 90% of all countries, recent data collections have documented states routinely deny these freedoms” (Finke and Mataic 2021, 680). Contrary to the constitutional threat point of view, the promise argument states that when martial law and state of emergency clauses are mentioned it conveys a sincere desire to uphold the constitution. However, it is also probable that a regime might load their constitution with human rights provisions; specifically, rights that they have had trouble with in the past and use it as an opportunity to restrict that right. From this point of view if a right is mentioned it might be evidence of the administration’s threatened feelings toward that specific right. This causes the right to more likely be threatened and restricted than upheld. Detailed language pertaining to a certain right is a sign of a regimes’ vulnerability toward the right; i.e. the more likely it is they will restrict that right. “Contrary to what was expected, greater acknowledgement of rights in constitutions was found to result in lower actual enjoyment of those rights” (Davenport 1996, 663). On the other hand, if a right such as freedom of speech or the right to unionize is mentioned it is possible that it is a sincere promise; and it

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<sup>1</sup> Extra language creates a loophole for the government if they do not intend on actually using the right in practice. Example: Egypt’s Article 64 i.e. Freedom of belief which states “Freedom of belief is absolute.” But then goes on to state the prerequisites that are needed to qualify for this right. Specifically, this right is only for “...followers of revealed religions...”(Article 64). This grants the government the opportunity to decide what religions are sacred.

will be enforced and not restricted. Enjoyment of human rights is rooted in the intentions of the regimes, even if the language is in the constitution it is the sincerity that matters.

It is hard to say which of these arguments is correct as there is no exact formula for what causes regimes to circumvent human rights. Based on the research conducted by scholars Melton and Davenport, human rights depend largely on the regime's commitment and intentions. It is not simply about penning a document. Davenport suggests that governments use detailed language in their constitution if they are attempting to coverup unethical behavior, and/or want to appear democratic to their constituents. Especially if they have a history of neglecting those specific rights in the past. It is also possible that the language has the true and pure intention to protect the countries' citizens in every capacity. It is valid to conclude that a significant portion of this research requires understanding the governments' intentions behind their rights.

### **Individual vs Organizational Rights**

Chilton and Versteeg (2016) suggests that not all constitutional promises are equally effective. For instance, individual rights including the freedoms of speech and assembly are more likely to be taken seriously if they are written down. This stems from a notion that governments use constitutions to communicate a sincere desire to enforce human rights; as well as a roadmap and a means to communicate their relationship with society. According to this vantage point constitutions articulate a sincere desire to protect citizens. However, since most of these basic human rights are crucial to be accepted in the international community, it is possible that they are merely adopted for the optics. While it is thought that human rights automatically equal protections, it is more likely that these "...sets of constitutional protections are key elements in the internationally recognized minimum standards for human rights and are modeled after the

universally accepted International Bill of Rights...” (Keith 2002, 116). Thus, they are adopted to solely check a box and not with the intention of enforcement.

Not all rights are equally effective, Chilton and Versteeg (2016) propose that rights that are practiced in a group (i.e. organizational rights including the right to establish organizations, form political parties and unionize) are more likely to be effective than those practiced on an individual basis. The difference lies in the fact that a group is more likely to establish an organization and/or assemble in a way that is safeguarded against oppression. “To illustrate, government encroachments on the rights to form political parties and to unionize can be countered by political mobilization to safeguard against those rights, thereby rendering them self-enforcing” (Chilton and Versteeg 2016, 575). It is anticipated that even when there is no intention to enforce rights, if they are put into words on a document, and an organization is formed to protect it, the right is more likely to be enforced. This is what scholars refer to as the evolution of a “self-enforcing right.”<sup>2</sup> Where the adoption of a right such as the right to unionize is more likely to be practiced. The idea of a right evolving to become self-enforcing is that democracies survive if the constitution will not allow them to fail; i.e. will not allow for the dismantling of the constitution and/or human rights. This happens via promises such as free elections and checks and balances, as a leader tries to violate or dismantle the constitution but is unable because of the protections embedded in the document.

### **Judicial Independence**

Another valid question is whether or not judicial independence plays a role in rights enforcement. It is suggested that there is a direct link between *de jure* judicial independence and

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<sup>2</sup> The idea of a self-enforcing right is akin checks and balances. When the regime contemplates circumventing the right but there are 1) so many protections that it is hard to dismantle and 2) there will be negative sanctions that deter the regime from acting in opposition to the right.

*de facto* human rights protections. This theory is magnified when the judiciary is an entirely separate body from the legislative and executive branches of government. The judiciary aids in cultivating self-enforcement, as an independent judiciary can diagnose constitutional violations without fear of facing the other branches of government. As well as publicly identify said violations as there is not a fear of remaining in good standing with the administration. The self-enforcement theory is more likely to take place if there are checks and balances within the constitution to allow the judiciary an opportunity to examine for violations.

However, the issue with the judicial branch is that judges can sway an opinion based on many unfair factors; including wealth and political affiliation. In addition, it is also unpredictable when a state controls the judicial branch as it is an unelected body of the government. Since they are appointed by the regime it is possible that they will side with oppressive behavior. Judicial independence itself is helpful; however, it is not often that judges take an opinion that contradicts the president. If/when nepotism ensues it is likely that human rights will not be taken into account. However, “a recent work differentiating judicial independence and empowerment illustrates even *de jure* guarantees of autonomy regularly fail to translate into *de facto* exercise of judicial power” (Schaaf 2021, 151). In authoritarian regimes such as the four case studies examined in this paper, the government often seeks to manipulate existing institutions. A prime example of this includes constitutional provisions pertaining to an independent judiciary.<sup>3</sup>

### **Treaty Adoption**

A reason to doubt the sincerity of governments to adhere to their constitutions, is that a substantial amount of governments with below par human rights records eagerly join human

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<sup>3</sup> For example: in Tunisia, Article 102 of the constitution establishes an independent judiciary. However, in 2021 President Kais Saied used his executive power to appoint judges to the Supreme judicial council. Saied’s actions are justified under Article 106 which gives the president the power to appointment judges. Articles 102 and 106 basically cancel each other out which allows the judiciary to experience a bias.

rights treaties. They merely endorse treaties for their symbolism and/or potential advantages, bypassing the will or desire to change their actual practices. Repressive or authoritarian regimes may be under the impression that they can benefit from the normative cover provided by treaty ratification. With several studies finding that countries that engage in more intense violations (including killings and torture) are just as likely to ratify the treaties as those with better records (Cope et al. 161, 2019).

However, it is also possible that treaties are used as an actual step toward a more democratic regime. For instance, newly democratic regimes and institutions that are unstable can use them to prevent stepping back on their road to democracy. This is especially helpful as signing a treaty makes it harder to turn a blind eye on rights violations in the event that the state experiences an autocratic backslide. To counter this however, authoritarian regimes are savvy and know how to manipulate the narrative for their benefit. It would be wrong to assume that they are not capable of signing the treaty with zero intention of actually following its provisions. Once again solidifying the notion that the deciding factor in implementation is the intentions behind adopting the treaty.

In sum, while constitutions loaded with democratic principles look good on paper, the reality is that it is not about the actual document but the people who are running the country and their vision for their people. Social rights "...we do not find shift government behavior" (Chilton and Versteeg 32, 2016). While individual rights are less likely to be enforced "the rights to establish political parties and unionize have a robust statically significant positive impact on government...and their respect for these rights" (Chilton and Versteeg 576, 2016). Judicial independence can impact the likelihood of rights enforcement, but there is not enough data to draw a precise conclusion and what that entails. As Melton finds, "*de facto* judicial independence

might be improved if countries adopt both selection and removal procedure that insulate judges from the other branches of government” (Melton 210, 2014). Finally, treaties are likely to result in oppressive behavior from the regime, in many ways they can be used to instill fear and manipulate citizens instead of protecting them.

### **Hypotheses**

Building on this literature, I raise the following four hypotheses:

H1: The more restrictions placed on a right the less likely it will be used to protect citizens.

That is, the more-strict a right appears the less likely it will be respected (i.e. the more detailed and/or language in a right). If a regime adds provisions that allow rights to be discontinued at their will, they are more reasonably a threat. A perfect example is the state of emergency clause which allows the government to suspend the use of the constitution and/or implementation of human rights. This permeates all of the factors discussed in the literature review; including individual rights and constitutional threats and promises.

H2: Organizational and group constitutional rights are more likely to be enforced than individual rights.

Citizens are more apt to practice their rights in a group setting as they are less likely to be persecuted. Groups rights have a higher success rate as people feel as if there are less risks if they are not the only person questioning the injustice. i.e. instead of a single person using freedom of speech to speak out, a group of citizens capitalize on their right to unionize and assemble; making it harder for the government to punish these people.

H3: The more independent the judiciary is, the more likely constitutional rights to be enforced.

An independent judiciary plays a pivotal role in rights enforcement. An independent judiciary can detect constitutional violations. When the judiciary is not installed via the regime, they are less likely to turn a blind eye on human rights violations.

H4: Adoption of international human rights treaties facilitates the protection of those rights.

International human rights treaties adoption is a sign of governments' intentions. If a treaty is adopted it can be a symbolic gesture to convey to the people that they are serious about human rights. It will also put pressure on the regime and remind them that they are under a microscope; if they fail to comply there will be repercussions.

### **The Arab Spring**

In December 2010, citizens in the Middle East and North Africa began standing up against repressive regimes and poor human rights records. The protests began after a 26-year old man set himself on fire in protest of Tunisia's lack of concern for citizens. He was protesting police interference and a lack of economic opportunities. Tunisia's revolution, labeled as "The Jasmine Revolution," sparked uprisings across the region. Prior to the uprisings, political demonstrations and disobedience was rare in the Middle East as often it was met with repressive behavior i.e. any sign of dissatisfaction toward the regime were met with consequences. Following the chaos, some Arab leaders were forced to cede power, leaving the door open for possible political and social reforms. The demonstrations became violent in many places and resulted in the arrest of protestors, police interference, and the torture of detainees.

One area of question that still remains is how word traveled so quickly in a somewhat underdeveloped and/or disadvantaged part of the world. The nature of such a question led to investigations pertaining to social media usage pre-Arab Spring in the Middle East; with a particular interest in regions with lesser access to technology. For instance, McGarty and

Thomas (2014) speculate that the uprisings spread quickly upon compiling numerous accounts of basic rights violations including poor economic conditions, political censorship, and religious suppression. Each of these characteristics likely played a role in the revolts. The four case studies examined in this paper include unique attributes and handled the Arab Spring in different ways. Algeria, Egypt, Morocco, and Tunisia all succumbed to the unrest and demand for democracy in some capacity. However, each of these countries are in a unique place post-Arab Spring, ranging from an ongoing fight for democracy to backsliding into repressive regimes.<sup>4</sup> Something that is clear upon examining each of these countries is that democracy is fragile. For instance, Tunisia, which was considered the only country that truly embraced democratic norms post-Arab Spring is now backsliding into authoritarianism.

## **Tunisia**

The Jasmine Revolution began in late 2010 in Tunisia. On December 18, 2010 Sidi Bouzid set himself on fire to protest corruption and mistreatment, which galvanized the revolution across the Middle East. Almost three weeks later, Bouzid died in the hospital. Tunisia is considered one of the biggest success stories post-Arab Spring; however, it is also still evolving. Like in most other places in the region, Tunisia's history is one of repression, the government held elections to maintain a legitimate external appearance (i.e. appear sympathetic to human rights and citizens feelings) but did not plan to uphold human rights and "seemingly representative institutions, in spite of their different forms of workings, were empty shells" (Kienle 553, 2012). In 2014, Tunisia ratified a new constitution embedded with many rights provisions; including the right to assemble, free elections and many other modern/Western principles. However, Tunisia has hit a few bumps on its path toward democracy. Recently, the

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<sup>4</sup> Raising the question of whether or not these changes were made out of sincere concern for human rights. Or as a means for better acceptance in the international community.

Tunisian President Kais Saied dismissed the prime minister and suspended the parliament and the constitution, prompting the opposition to accuse him of a soft coup and authoritarian grab of power. This goes to show that even over ten years after the initial uprisings there is still much work to be done in the fight for human rights and democratic rule. Most importantly, that democracy and freedom are not principles that are constant but must be upheld by leaders.

## **Algeria**

Algeria's path to the Arab Spring is unique compared to the other North African states evaluated in this paper. Algeria's political history is rocky at best, as the country experienced many repressive rulers spanning from the period of French colonization to the present day. A few years before the Arab Spring, news outlets began reporting protests and rioting in Algeria (a highly unusual occurrence in the region), as citizens were tired of poor treatment. However, when it came to actually enacting change post-Arab Spring, Algeria experienced little genuine alteration. Immediately following the protests, the Algerian government "...repealed the 19-year state of emergency on February 12 2011, and reduced food prices by cutting taxes" (Sinha 145, 2012). At the moment this appeared a positive step forward, however as time unfolded it became clear that this was merely a ploy to quietly de-escalate the riots. It is suggested that Algeria's regime survived the immediate aftermath of the Arab Spring for a few reasons including the institutions in place in case of such an event, and the countries frontage to appear democratic. Algeria became independent from the French in 1962 and under the rule of president Ben Bella the country relatively respected human rights. This included women's rights "...women had gained civil and political rights. The right to vote and the right to stand for political office was granted during this period" (Sinha 148, 2012). However, this went downhill during the twentieth century as Islamic fundamentalism became a means of rule in the Middle East. The Family Code

of 1984 legislated strict conservative laws including making women second class citizens. The Algerian constitution proclaims that all citizens have the right to freedom. For instance, the Algerian constitution states that citizens have the right to choose their leaders and states that fundamental rights are guaranteed by the state.

## **Egypt**

The pleas for change in Egypt led to a formal constitutional reform process. Similar to the one in the Algerian case, Egypt presented a unique style of government as it is/was not fully autocratic or democratic. Citizens were eager for greater protections of human rights. Protesters in Egypt were relentless; during the period from late 2010 to summer 2011 they continued fighting for rights such as free elections. Despite their removal by military forces, they continued taking to the streets. Among several positive achievements of the Arab Spring, long service authoritarian president Hosni Mubarak was removed from power. Allowing for a true chance to improve human rights and democratize Egypt. Early in the post-revolution climate Egypt appeared to be taking a serious approach toward human rights implementation. There was an increased sense of dignity of the person, people felt like citizens of a country and not like puppets of the government. They began seeing relatively democratic practices, which sparked a notion of hope. However, this appears to no longer be the case in Egypt. Egypt's human rights history is tied to its nationalism and the integration of Islam in governing. In the past Egypt often cited Islam as reason for their abuse of human rights. Egypt is notorious for implementing Islamic Sharia law as a means of justifying noncompliance in the international arena. Over the past century Egypt has adopted three new constitutions, most recently in 2014 where the relatively lengthy document provides considerable language in favor of human rights.<sup>5</sup>The 2014

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<sup>5</sup> Egypt's post-Arab Spring constitutions: 2013, 2014, and 2019.

constitution lays out a system of government akin to what is seen in the West including executive, legislative, and judicial branches of government as well as lengthy promises pertaining to human rights and individual freedoms.

### **Morocco**

In Morocco, the Arab Spring led to changes in favor of human rights. “On 1 July 2011, voters in Morocco cast ballots in a constitutional reform referendum...” (Benchemsi 57, 2012). However, the near-unanimous results and quick timeframe lead to the belief that the results were rigged. This helped the Moroccan government shape an international persona that they are committed to human rights. “One might call this something the ”relativity effect.” Since the beginning of the year, all the news from Arab world has been about revolutions, strife in the streets, and bloody police or military onslaughts against peaceful protesters” (Benchemsi 57, 2012). Compared to how the Arab Spring was handled in other countries, Morocco’s process was quiet and comparatively peaceful. This is not to say that they did not experience violence, as protesters were killed and citizens beaten, but within a few weeks King Mohammed went on record calling for constitutional reform. Specifically employing the rule of law and an independent judiciary as well as free elections (Benchemsi 2012).

### **Empirical Analysis**

This section examines the hypothesis discussed above with empirical evidence from four post-Arab Spring states. Specifically, I examine evidence pertaining to the likelihood of constitutional compliance based on human rights language, and other visible efforts. All four states studied here adopted new constitutions with extensive human rights language which was unprecedented in their history. The question remains whether these new documents actually implement change or are merely a façade for the regimes.

In 2016, Algeria adopted their first post-Arab Spring constitution. The document featured nearly 220 articles, and numerous human rights provisions. Including Article 38 which explicitly states “fundamental freedoms, human rights, and rights of the citizen shall be guaranteed” (Article 38). In 2020, Algeria revised their constitution and added a few more provisions. The new constitution featuring 240 articles. Embedded in these articles are numerous human rights and provisions to encourage checks and balances within government. The provisions range from education (Article 68), the removal of elected officials (Article 105), cultural rights (Article 51), and human dignity (Articles 47, 42, and 39 to name a few). What is not clear is the government’s commitment to enforcing these rights. While the constitution does guarantee the right to practice all religions, including non-Islamic faiths, the country still has a record of discriminating against Christians. Specifically, the small Protestant minority. (Goldstein, 2021).

Religion is an especially pertinent issue pertaining to restrictive language. Specifically, the Algerian constitution mentions religion in several articles, but it does not grant the explicit freedom of religion. It cites the “freedom of worship” and “the protection of all places of worship” (Article 51). It does not grant the precise freedom to practice a religion and/or worshipping a religion/God of one’s choosing. Leaving out the explicit freedom of religion acts as a loophole. For instance, it allows the protestant minority mentioned above to be persecuted as there is no language that talks about freedom of religion verbatim. This is an example of vague language that seeks to pad the constitution with the appearance of rights, i.e., “window-dressing.” While also possessing enough ambiguity to allow the government significant wiggle room in the realm of interpretation and compliance.

The Algerian constitution substantively uses language that appears citizen oriented on paper but leaves room for officials to skew the meaning. In the new constitution, this includes the

use of constitutional threats, such as a clause entitled “restriction of voting” which states “Every citizen meeting the legal requirements shall have the right to vote and to be elected” (Article 56). However, the language in this provision leaves the said “legal requirements” open for debate. The vague language used in Article 56 has the potential to be used as a “constitutional threat” instead of actually leading to voting rights. Since the “legal requirements” are ambiguous and can be decided by the regime, this extra language acts as a way for the government to restrict the right. Thus, rendering it a threat and not a protection of the right.

Egypt has cycled through several constitutions since the Arab Spring including 2013, 2014, and 2019. The 2019 document, much like Algeria’s 2020 constitution has several articles and is padded with ambiguous language. For instance, Article 218 states, “competent oversight bodies and organizations commit to coordinate with combating corruption...” (Article 218). While this appears to be a step in the right direction, the document does not explicitly state what qualifies as “a competent body.” An example of the misuse of Egyptian constitutional provisions is President Abdel-Fattah El-Sisi continually abuses the state of emergency clause. President El-Sisi finds ways to convince the House of Representatives that he is within his rights to use Article 154 to keep his grip on power.

In a recent example, President El-Sisi invoked Article 154 in 2017 in what he claims is an effort to fight terrorism. The state of emergency ending four years later in late 2021. However, there are numerous claims that the rule of law was completely disregarded during these four years. Authorities did not comply with human rights laws, and citizens were silenced as arrests, torture, and abuse peaked. Article 154, i.e. the state of emergency clause, is a lengthy article in the constitution. While the president does not have control over this provision, it does grant him several rights including ‘...powers of the president to monitoring and intercepting all forms of

communication and correspondence.” However, this contradicts Article 57 which grants citizens the right to privacy: “private life is inviolable, safeguarded and may not be infringed upon” (Article 57). Yet this right is easily ignored upon the implementation of Article 154. Leading to a notion that the number of provisions in a constitution matters as much as the length of a provision i.e. the longer the document the more opportunity for certain provisions to conceivably cancel out human rights at the discretion of the regime.

The Egyptian constitution imposes some limits on the President’s powers to declare an infinite state of emergency (Al Jazeera 2017). However, it does not limit the number or concurrence of declaring a state of emergency. As most recently happened with President El-Sisi’s 2017-2021 state of emergency. These are prime examples of how excess language leads to oppression instead of freedom. Article 57 lists specific areas of private life that are to be protected, including telegraph, postal, and electronic correspondence. Yet when such specific promises are made it often means either only those rights will be respected, or these are areas of vulnerability within governance and the state is looking for a distraction.

The Moroccan constitution promises freedom of the press. Article 28 states, “All have the right to express and to disseminate freely and within the sole limits expressly provided by the law, information, ideas, and opinions” (Article 28). This freedom is in question in an article written by Amnesty International that discusses several Moroccan journalists who were charged with “undermining state security” (Amnesty International 2016). This report came as the Middle East is increasingly advancing in technology and gaining access to social media. As Boumendouha (2016) noted helping bring smartphone and modern technology to the Middle East is not unlawful and it is outrageous that it is being treated as such.

In the case of Tunisia, the country's constitution has 149 articles. Despite employing numerous human rights provisions, the United States Department of State reports that Tunisia is the only success story post-Arab Spring, as it appears to be the country that was most positively impacted by the Arab uprisings (Saral 2019). However, it appears that Tunisia was forced to change too quickly, before political infrastructure was ready.<sup>6</sup> This is because post-Arab Spring Tunisia began implementing human rights. The notion of human rights, equality, and humane treatment became highly popular after the uprisings (Saral 2019). The political climate post-revolution forced political actors to act as if they cared about human rights and made them appear legitimate. Yet in 2020, parliament made little to no progress in changing the laws that notoriously breach and/or threaten human rights (Human Rights watch 2020).

Article 31 of the Tunisian constitution states that citizens have the "Freedom of opinion, thought, expression, information and publication shall be granted. These freedoms shall not be subject to prior censorship" (Article 31). However, there are several accounts of Moroccan leaders blatantly disregarding these provisions. For instance, authorities in Morocco opt for repressive provisions of the penal code as well as misusing laws to sanction free speech. This includes speaking out against public officials. This is merely another example of constitutional language being used for the benefit of the regime and not for protecting the people.

Algeria's constitution has several articles pertaining to organizational rights. Article 57 of the Algerian constitution establishes the right to form political parties. Hypothesis 2 of this research suggests that the state is more likely to enforce a group right, however this is not the case in Algeria. In 2014, the Algerian government was accused of "trampling" worker's rights. This claim believes that while Algerians are constitutionally permitted to form labor unions, they

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<sup>6</sup> As of July 2021, Tunisia is experiencing a democratic backslide as President Saied tries to keep his grip on power.

are barred from doing so in actual practice. Specifically, leaders in Algeria use administrative tactics and suspend legal status from those labor unions that wish to break away from the General Union of Algerian Workers and form an independent union (Human Rights Watch 2014). If Algeria actually respected worker's rights they would allow their citizens to form unions and conduct meetings without government oversight (Human Rights Watch 2014).

Similarly, earlier this year the Algerian government arrested protestors who were demanding political reform. Article 52 of the Algerian constitution states, "Freedom of expression shall be guaranteed. Freedom of association and public assembly shall be guaranteed upon obtaining a permit. The law shall determine the modalities for exercising these freedoms" (Article 52). Yet earlier in 2021, many protestors were arrested in Algeria, this comes on the heels of a year-long protest movement that demanded political change, needless to say the movement is not popular with authorities (Al Jazeera 2021). A similar case was reported in 2019, specifically, that repression of protestors and those seeking to criticize the government is prevalent. Algeria also targets journalists who cover political discontent, and protests, further strengthening the argument that they do not practice free speech other than when it works for Algeria's leaders (Human Rights Watch 2019).

Egypt's constitution (2019) has a long provision relating to the right to protest. Article 73 stating, "Citizens have the right to organize public meetings, marches, demonstrations, and all forms of peaceful protest..." (Article 73). However, the compliance of this provision by the government was questioned in 2019 when the government swept up protestors in the country. According to several Egyptian human rights groups, in the course of this protest alone authorities arrested at least 3,000 people, which was a major escalation, even for a regime with a long legacy of targeting dissenting voices (NPR 2019).

Article 10 in Egypt's constitution states "The state protects its cohesion and stability, and the consolidation of its values" (Article 10). However, Egypt appears to circumvent this law in practice. Egypt's protest laws have been invoked against peaceful assemblies and protests. The judiciary and legislature have both attempted to liberalize Article 10 in an attempt to delineate the government's ability to stop and/or prevent protests (Institute for Middle East Policy 2017). This is corroborated by another accusation put forth in 2019. The accusation pertains to Egypt "cracking down" on peaceful and nonviolent protests, which directly contradicts Article 73. One author claiming, "Egypt appears to be stable on the surface...but right under its skin, it is boiling up" (New York Times 2019). This article was published on the heels of Egypt arresting so called "political violators" after their public display of dissatisfaction with their government. Another claim is that protestors are relentlessly interviewed by prosecutors, and these interviews resulted in nothing. This only further deepens the notion that this is a violation of human rights.

In a recent case in Morocco, the government tried to silence a group of teachers protesting (Scoop World 2021). This directly violates Article 10 of the Moroccan constitution that guarantees the freedom of assembly. Also, the past three leaders in Morocco have approached human rights with this same repressive attitude. A specific account claiming that the past several years in Morocco have seen the succession of three separate governments. Yet all of these governments have in common that they violet security dealings with peaceful protests, including the movement created by contractual teachers. This contradictions the constitution's promises pertaining to rights and freedoms (Scoop World 2021). The Moroccan constitution clearly grants citizens the right to peacefully protest but it is the government that suppresses these promised rights.

The independent judiciary is a post-Arab Spring gain that cannot be ignored. However, reforming the judiciary can only happen with the participation of officials along with the judges and both their representative and elected structures (Middle East Monitor 2021). This statement coming after Tunisia's government's blatant disregard to the independent judiciary clause in their constitution. Recently in Tunisia, military courts are increasingly targeting average citizens, in some cases for publicly condemning President Kais Saied since his power grab in July 2021. This development alluding to the notion that the judiciary is siding with President Saied for unethical reasons. Since Tunisia's constitution was ratified in 2014, it has done little to enact the judicial independence clauses put forth in the document. In 2015 Tunisia was accused of not embracing the independent judiciary set forth in its constitution. There has since been a proposal to implement amendments that would stop political interference from swaying the system. A main concern under the current structure of the Tunisian judicial system is that only a handful of judges are actually elected. Whereas the rest are appointment by the government. Thus, the judicial branch is largely not an independent body.<sup>7</sup>

In Algeria, the International Commission of Jurists stated in 2019 that despite Algeria's commitment, their judiciary is not fully independent of the rest of the government. In 2020, Algeria's judiciary was accused of favoring the Algerian president. The year 2019 brought about a strike that demanded a separation between the judiciary and the Ministry of Justice (The Arab Weekly 2020). Thus, strengthening the argument that an independent judiciary will help interpret the law outside of the realm of other governing bodies. The UN reports that Algeria has ratified several human rights treaties. Including a treaty against inhumane punishment and a treaty pertaining to civil and political rights. However, in 2012 the UN called on Algeria to review their

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<sup>7</sup> Tunisia's 2014 constitution, Article 106 "Judges shall be nominated by presidential decree on a concurrent proposal by the Supreme Judicial Council" (Article 106).

rights including the freedom of assembly. The United Nations in 2012 recognizing the lack of enthusiasm for the treaties signed by Algeria. Algeria has signed an agreement with the EU entitled “The EU-Algeria Association Agreement, where “...the EU and its member states are to place human rights, including respect for international human rights conventions, at the center of their collective and bilateral cooperation with Algeria” (Amnesty International 2020). This agreement contains many human rights agreements and cites the noncompliance by the Algerian government as a much-needed area of improvement. This negates the notion that those who sign onto human rights treaties are more likely to respect human rights.

Despite Egypt’s attempt to appear sympathetic toward human rights, a late 2021 report claims that the discriminatory system murdered a transgender man in Egypt. This exhibits blatant disregard to the human rights treaties Egypt has signed, specifically in the realm of torture and physical abuse. Morocco has ratified many similar treaties as Algeria. It is a member of the United Nations and has ratified many of their human rights treaties as well. However, this does not appear to impact their actual practices. The United Nations Human Rights Office of the High Commissioner reports that Morocco must step up to the plate when it comes to defending human rights. Specifically citing a case of journalists who are often targeted when speaking freely and openly.

Finally, Tunisia exhibits similar characteristics; with their treaties ranging from social and cultural rights, discrimination against women etc. Yet it does not appear that the ratification of a treaty pertaining to discrimination against women in 1985 has made much of a difference. In spring 2021, a woman went to the police to report her abusive husband. Her husband was not arrested, and the woman was shot. Her story is the epitome of the disconnect between law and implementation in Tunisia. In 2017 the Tunisian Parliament adopted the much-lauded law to

eliminate violence toward women, yet this law has done little in practice. Women continue to struggle and face an incredible battle to obtain justice and equality as well as safety (Amnesty International 2021). It is important to note that Tunisia is considered one of the most progressive countries in the Middle East in-regards-to women's rights. However, this does not equal humane treatment, it just means that for the region it technically could be worse. Tunisia (along with the other countries mentioned in this paper) still experiences a stark gender imbalance. Nearly half of Tunisian women report experiencing harassment or violence at some point in their life. Article 46 of Tunisia's constitution states "The state commits to protect women's accrued rights and work to strengthen and develop those rights" (Article 46). Once again this appears to be all for show, as there are numerous accounts of the government remaining silent on instances pertaining to the unjust treatment of women. <sup>8</sup>

### **Conclusion**

This paper examined the constitutions of Algeria, Egypt, Morocco, and Tunisia along with accounts of their human rights practices. Specifically, looking at how the post-Arab Spring documents either 1) provide greater protections of human rights or 2) acts as mere "window-dressing" and cover-up to what is actually practiced. Upon examining constitutional threats versus constitutional promises, individual versus organizational rights, judicial independence, and human rights treaty adoption the answer is clear. Constitutional language is not what protects citizens; it is about the regimes desire to uphold human rights.

In sum, this paper raised four hypotheses, and the empirical analysis found support for a few of them. First, in support of hypothesis 1, evidence from Algeria, Egypt, Morocco, and

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<sup>8</sup> Article 46 could also be explained as either 1) a "constitutional threat" or 2) an area where the state feels threatened as the provision uses the word "accrued" referring to the backing of legal authority and/or rights that have already been established. i.e. if there is not sufficient protections for women already than they are off the hook.

Tunisia showed that restrictions placed on a particular constitutional right weakens the right leading to more restrictions and government abuses. There are “constitutional threats” and they often present by padding the documents with extra language and escape hatches so that the government does not have to comply with the right. Second, the empirical analysis rejects hypothesis 2 as the rights to assemble, protest, and form unions are just as likely to be restricted. This is found in the case of Algeria, where the right to form unions is proclaimed in their constitution yet not upheld in practice. Citizens who attempt to form unions outside of the General Union for Algerian Workers often face legal repercussions. Another example is Egypt where 3,000 citizens were arrested for protesting. Unfortunately, group rights are just as likely to be suppressed as individual rights. Third, hypothesis 3 proclaims that an independent judiciary is more likely to uphold constitutional rights. While the answer to this question is yes, it is hard to put it in the context of the Middle East. In the case of Tunisia, their constitution states that there should be an independent judiciary. However, in practice they disregard this clause and the judiciary acts as in favor of the president’s wishes.<sup>9</sup> Therefore, it is probable to conclude that an independent judiciary does provide democratic safeguarding, however it is not found in these four cases. Finally, treaty adoption does not impact human rights practices. In the case of Algeria, the country has ratified numerous human rights treaties but does not abide by them in practice. This is also the case in Egypt, which has adopted several human rights treaties yet continues to suppress its citizens based on gender and sexual orientation.

*Do De Jure* constitutional rights impact *de facto* protections of those fights? Algeria, Egypt, Tunisia, and Morocco were under immense pressure to democratize; and each had the eyes of the world watching how they would handle the uprisings and demands for change. It

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<sup>9</sup> Tunisia’s president plays a major role in the selection of judges.

seems as though there is a common thread in each of these case studies. The notion that a constitution can be ratified with little intention to actually implement the laws set forth in the document. At the end of the day constitutions are symbolic pieces of paper, but they themselves do not impact the *de facto* protections of human rights. They only change human rights records if that is what the regime is seeking to accomplish. The leaders in these countries know that human rights and democratic practices are key elements to their acceptance in the international community. Therefore, penning a new constitution loaded with language pertaining to human rights violations is a means of distracting from what is actually happening in their countries. The leaders saw an opportunity they could capitalize on, stop the revolutions from spiraling out of control while also securing their spot in the international domain.

President El-Sisi of Egypt ratified the constitution to distract from the fact that he wanted to keep his grip on power. He saw the Arab Spring as an opportunity to appear a true democratic leader and pave a path toward prosperity. And this is true of the leaders in Algeria, Morocco, and Tunisia as well. There is not a true-relationship between the public and the rulers in these countries. Any notion of sympathy is merely a coverup for what is actually happening. These leaders believe that they can pad their constitutions with human rights for the optics, with no intention of actual implementation. To them, the words are empty vessels to advance their merciless agendas. *De jure* constitutional rights do not impact *de facto* protections if the rights are meant as mere “window-dressing” and not penned to be enforced.

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