



The Social Justice Blind Spots in the New Arab Constitutions

APRIL 30, 2019 – ZAID AL-ALI

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The Arab uprisings that began at the end of 2010 were motivated by a number of concerns, not least of which were unacceptably low standards of living and growing inequality in much of the region. The millions of people who participated in the uprisings were acutely aware of their situation, and articulated their demands in a number of slogans that included specific references to concepts such as “social justice.” In response to these demands, ten different countries (close to half of the region) engaged in what was supposed to be wholesale or partial reform. This includes countries where former heads of state were removed from office (Tunisia, Libya, Egypt, and Yemen), countries where heads of state survived and promised serious reform (Morocco, Algeria, Sudan, Iraq, and Bahrain) as well countries that descended into conflict almost right from the start (Syria).

Creating new constitutions or amending existing ones was a critical part of the reaction to the uprisings. As the basic legal reference for a country, a constitution is the axis from which all other laws and policies will emanate. A well-crafted constitution cannot, of course, guarantee good governance and the rule of law. But a poorly crafted constitution can almost guarantee failure for attempts at broad political and social change. Equally, constitutions can have implications for countries’ economic outcomes, particularly when it

comes to economic outcomes with deep social implications, such as the levels of inequality and poverty—in other words, matters of social justice.

Yet despite the importance of constitutional reform to the success of the movements the Arab uprisings spawned, there has been a paucity of research on the topic. This report provides an overview of what happened—and, even more so, what didn’t—in the drafting of new or modified constitutions in the wake of the Arab uprisings. In a canvass of Egypt, Syria, Tunisia, and Yemen, the report shows how both the processes and products of these countries’ constitutional reform efforts have all but doomed them to further difficulties, if not outright strife. The report also discusses the points that the post-uprising reformers got right, and compares their achievements and challenges to the experiences of other countries around the world.

In light of this investigation, there are several remarkable aspects about Arab constitutional reform efforts since 2011. For one, the rigorous academic debate about direct enforcement of the new constitutions, and about whether new mechanisms should be instituted to improve enforcement, was completely ignored by negotiators and drafters. The documentary evidence suggests that in official negotiations, direct enforcement may have been mentioned just once, and, at that, only tangentially.

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Further, constitutional reformers expended almost all of their efforts to try to ensure their own personal survival in a fast-changing political environment. The focus on survival is understandable, but it should not have come at the expense of resolving or at least improving the relationship between the individual and the state. Negotiators offered close to no substantive advances in response to the general population's demands, which strongly suggests that both liberals and Islamists in the region have little to offer the poor and marginalized communities of this region.

This report does not argue that inclusion of socioeconomic rights in constitutions, or even justiciability, is a panacea in the effort to improve equality. Rather, the argument is that the absence of a meaningful discussion on socioeconomic rights is symptomatic of the failure of states, senior officials, and negotiators throughout the region to seriously consider the rights of ordinary people in the post-uprising period. Constitutional negotiations are by no means the only opportunity to improve the general population's situation, but they are an opportunity to innovate, perhaps with a view to establishing new legal mechanisms that can directly affect the lives of the people who are in most need of assistance, or to establish a clear path for policymakers to follow once the constitution is in force.

However, the final outcome of the post-2011 constitutional processes delivers close to no advances for the general population, which virtually guarantees that inequality will remain unaddressed and that a new round of major reforms will have to be explored at some point in the future. When that takes place, reformists will have to look beyond Islamists and liberal policies if they hope to deliver a lasting solution to this problem.

Social Injustice and the Uprisings

The 2011 uprisings arose from a period of unprecedented inequality and historically bad quality of governance, which appear to have worsened in the period immediately preceding the uprisings. At the end of the colonial period, large numbers of the residents of the Middle East and North Africa had no or limited access to employment, education,

health care, and clean drinking water.¹ After the former colonial powers retreated from the region in the 1950s and 1960s, poverty declined markedly as a result of deliberate state policies that were designed to improve access to essential services.² Despite these advances, however, on the eve of the 2011 uprisings, socioeconomic conditions remained highly precarious.

The absolute number of people living in poverty and without access to adequate services was unacceptably elevated in the crushing majority of countries. In 2010, more than one in five Tunisians lived in poverty or extreme poverty.³ Poverty rates in much of the region were either similar or worse: almost 19 percent in Iraq in 2012, and nearly 27 percent in Egypt in 2010.⁴ Unemployment rates were just as dire. Tunisia's in 2010 was some 13 percent, Egypt's 12 percent, and Yemen's 18 percent. Youth unemployment rates were even worse: Tunisia's 29 percent, Egypt's 24 percent, and Yemen's 34 percent.⁵ Regional rates followed similar patterns.

Hunger was also widespread in the Middle East and North Africa before the uprisings, and continues to be. The number of individuals suffering from chronic undernourishment doubled from thirteen million people in 1990–92 to twenty-five million people in 2010–12.⁶ Hunger was particularly bad in Yemen, where in 2010 almost 26 percent of the population was undernourished.⁷ To make matters worse, the food that is available to the region's poor is often of such poor quality that it has led to an additional health crisis—the rise of noncommunicable diseases related to diet.⁸

In general, regional educational opportunity and attainment have been comparatively poor; even in the best cases they have fallen short. Egypt's situation is the most concerning of all: in 2010–11, it ranked 131 out of 139 countries in the quality of its educational system, with similar rankings in the quality of its math and science education and quality of management of its schools.⁹ In 2016, one out of five Egyptian schools were said to be unfit for use, due to lack of water and sanitation facilities.¹⁰ Morocco ranked 105 for the overall quality of its educational system.¹¹ Literacy has also remained stubbornly low throughout the region. In Yemen, for example, the literacy rate was just 54 percent in 2004; in Iraq, it was just

44 percent in 2013 (the last years for which data is available in each country, respectively). Especially disquieting are the gaps between male and female literacy—in Yemen, one of the most extreme examples, the two figures were 73 percent versus 35 percent.¹²

Health systems are also severely lacking—inefficient, understaffed, and underfunded.¹³ Budgetary constraints have been blamed for these deficiencies, particularly following structural adjustment programs. This has led to an incessant stream of deeply demoralizing stories throughout the region, including poorly trained staff causing accidents that often lead to injury and even death on a regular basis.¹⁴

But worst of all, perhaps, and at the core of Arab discontent, is the inequality. Poor citizens in countries across the region can contrast their own situation to those of their more prosperous compatriots, and to those individuals who happen to live in wealthier countries in their immediate vicinity (including in Europe or in Gulf Cooperation Council countries). The Tunisian National Institute of Statistics has found that the Center-West and the Southwest of the country suffer from disproportionately high poverty and extreme poverty rates (which would explain why, in December 2010, the Tunisian revolution began in the center of the country).¹⁵ Virtually all countries in the region provide near-perfect chances for children from the most advantaged backgrounds to enter school and reach the secondary level, whereas almost none come close to providing the same opportunities for children from the least advantaged backgrounds.¹⁶ In Morocco, between 2008 and 2012, according to UNICEF data, the richest fifth of the population has a 95 percent chance of having a skilled attendant available at birth while the poorest fifth has only a 30 percent chance. The World Bank's data indicates that in the decade before the uprisings, the share of income that went to the top 20 percent of the populations of Syria, Yemen, Morocco, and Egypt ranged from 41 to 48 percent, while the bottom 20 percent controlled between 7 and 9 percent.¹⁷

In the past, the region's inhabitants might have been more willing to accept inadequate standards of living for a variety of reasons. But today, as a result of glaring disparities in

wealth within individual countries and also between specific Arab countries and neighboring countries, many of the region's inhabitants are no longer willing to defer their hopes and their expectations for improved living standards. The 2011 uprisings were a symptom of that reality, and without improvements in socioeconomic conditions accompanied by noticeable and tangible reductions in inequality, further social instability is essentially inevitable.

A number of analysts were alarmed by the dangers that these trends presented. By way of example, Mohammad Jamal Barout, a Syrian analyst, wrote in 2005 that "Syria does not have multiple paths or choices before it. Only two paths remain, with no other options: a total, across the board reform—in politics, the economy, the administration and human development—in conformity with democratic good governance of the political system and society, or catastrophe."¹⁸

The People and Their Petition

The type of dramatic change that Barout anticipated finally took place in late 2010.¹⁹ Following the self-immolation of an impoverished fruit seller in central Tunisia, millions of protesters took to the streets from Morocco to Iraq, and from Aleppo to Aden. The principal slogan that joined crowds together, "the people want the downfall of the regime" ("al-sha'ab yureed isqat al-nizam"), is worth breaking down into its component parts, as it reveals how aware protesters were of the dynamics that I describe above.²⁰ First, protesters self-identified as "the people" (al-sha'ab), imposing themselves as a new category of actor in each country's political dynamic, in opposition to other preexisting groups, including specific political parties, trade unions, or particular communities (geographic, demographic, religious, or otherwise). Through their repeated use of the term, protesters were emphasizing the existence of the elite pact that had been in force since the colonial period, as well as the fact that they were excluded from it. "The people" also defined the protest movement as broadly as possible, in response to the compartmentalization by the pact of elite society. "The people" were now determined to sweep all those categories away in favor of each country's entire citizenry.

The “people” were obviously an amorphous group, which was not necessarily limited to those who were excluded from the elite pact (for example, the unemployed).²¹ Many trade unionists, bureaucrats, and even members of the security sector were acutely aware of their declining socioeconomic status and so therefore joined the protests.²² This movement toward popular unity did not include all components of society (each group’s respective leadership was often less enthusiastic than the rank and file) nor did it extend far beyond the first victories against the ruling regimes. As this report explains below, many protest leaders, including those of revolutionary movements, were highly divided, or had very few innovative ideas on how the region’s major difficulties should be resolved.

Secondly, protesters did not only impose themselves as a physical and political presence, but were also taking action to shape their own destiny: now, they were saying, not only do the people exist, but they also “want” (“yureed”). For more than a hundred years, ruling regimes had prevented the broader community of citizens living under their control from expressing its views openly. Many countries never organized elections (including countries like Iraq, where referendums on presidents were organized instead), others organized sham elements (including Yemen, where opposition candidates called for all citizens to support the incumbent president), and all countries practically eliminated opportunities for speech (including by prohibiting any discussion of senior officials’ health). That period of oppression had been crumbling for some time, but by 2011 was firmly at an end. During the uprisings, protesters adopted a radically different approach. They were not responding to any specific action on the part of their national governments; they did not take to the streets to express displeasure at the passing of a new constitutional reform or the passage of a new law. The people had taken to the streets because they “wanted” to impose an agenda that was independent from whatever their national governments were devising.

Thirdly, protesters clearly identified the target of their action—namely, the “regime” (“al-nizam”). The term’s main characteristic is its comprehensiveness. The people were not making demands in relation to a political party, or a

specific institution (such as the police, the courts, or even the presidency). The demand was directed against the entire functioning of government, including constitutional arrangements such as the elite pact, executive immunity, and presidents for life, as well as institutional mechanisms that deliberately allowed for corruption and nepotism to thrive.²³ For a period of a few hours, there was some disagreement in Egypt about this specific term, in response to Hosni Mubarak’s offer to delegate his powers to his newly appointed vice-president, Omar Suleiman.²⁴ The mass of protesters in Tahrir Square and elsewhere in Egypt immediately rejected the initiative, but there were different views about how that rejection should be conveyed. For some, the view was that the focus on the “regime” should be replaced by the “president.” Very quickly however, protesters reverted to the slogan’s original formulation, which continued to be the preferred message of protest even after Mubarak was forced from office.²⁵

Finally, protesters were plain in their intent. For the regimes, they saw only one possible form of remedial action, which was its “downfall” (“isqat”). Apart from in Morocco, where protesters were more measured in their demands, protesters demanded not only reforms, a new president, or even a new government, but also a complete break from the past. The regime’s downfall could only mean one thing: a constitutional, legal, and institutional revolution. Given that the “regime” consisted of a specific set of rules that held the states’ institutions together, a new arrangement would have to be devised, this time not for the elite pact’s benefit but in favor of the “people.” In particular, the relationship between the individual and the state would have to be redesigned to allow for the emergence of the type of society that people were expecting. As such, by virtue of its two principal slogans, the people were simultaneously determining the broad procedure that the transition should follow (revolution, by virtue of the regime’s downfall), as well as the substantive result that they wished to reach (“bread, freedom, and social justice”—“aish, hurriyyah, wa ’adalah ijtimaiyyah”). As a result of this context, there was never any doubt in anyone’s mind that the protest movement would have to result in new constitutions being drafted throughout the region, and

that socioeconomic rights would be a major focus of that redrafting effort.

Constitutions Matter for Social Justice

There are obviously a large number of causes for the tragic state of affairs in the Arab world that set the scene for the uprisings. Most of these causes have been widely discussed and commented upon—prohibitions against the free exercise of civil and political rights, high-level corruption, and even the influence of neoliberal economic policies.

Oddly, though, especially in consideration of the protestors' initial demands, the region's constitutional frameworks feature less prominently in this commentary, despite all the attention after the uprisings that was dedicated to reforming them. Apart from the obvious problems with the political systems for which they provide, the constitutions are also noteworthy for at least two different reasons. Firstly, the constitutions either remained silent on socioeconomic rights or never clearly established that they should be directly applicable. Secondly, they established some of the most highly centralized systems of government in the world, thereby worsening the rural–urban divide in most countries in the region.

A comparison of other countries from outside the region, including those that have grappled with similar issues to those that exist in the Middle East, shows that better constitution drafting was in reach—or should have been.

In modern practice, the overwhelming majority of modern constitutions provide for the right to health care, a fair wage, education, adequate housing, social security, and many others (the United States being a major exception, where these issues are left to government policy). Despite their incorporation into national constitutions, these rights have not all been enforced in the same way. And to protect fundamental rights, constitutions must provide for meaningful enforcement mechanisms. Constitutions traditionally grant courts the authority to hear claims that rights have been violated by the state as well as the ability

to strike down laws that violate these rights. All legal systems formally consider that civil and political rights can be directly enforced in a court, but do not consider that socioeconomic rights should be treated in the same way.

All constitutional reform efforts have to address a variety of fundamental issues. The process through which the constitutions are to be redrafted and replaced are among the first concerns. Also, in countries that are seeking to recover from a period of totalitarian rule, much effort is made to set in place the types of checks and balances that will help prevent backsliding in the future. The constitutional processes that followed the 2011 uprisings were also put in the unique situation of having been told, very clearly, that the bulk of the population was demanding “social justice.” That term was never precisely defined, but there is little question that it included greater economic equality and opportunity for those segments of the population that had been hitherto marginalized.

There are several ways in which modern constitutions can seek to address inequality. One possibility that appears to be in fashion in many parts of the world today is decentralization, based on the assumption that local governments are better placed to design local solutions to local problems and that they should be given the opportunity to raise revenue locally in order to help resolve those difficulties.²⁶ Another option is to improve enforcement for socioeconomic rights.

Among the many countries that do enshrine socioeconomic rights in their constitutions, there is an important debate as to whether they should be directly enforceable. In this context, direct enforcement of a social or economic right, such as the right to health care, means that individual citizens who conclude that they do not have adequate access to health services (either because the closest local clinic is too far away, or because it does not offer adequate coverage or treatment) can bring claims before national courts to compel the government to take action. Traditionally, as a result of a number of historical and legal factors, despite the fact that they are enshrined in national constitutions, many legal systems consider socioeconomic rights to be “aspirational,” meaning that they merely provide an indication as to what

national authorities and society should be striving for. In practice, that means that many legal systems will not grant claims against national governments for the failure to enforce socioeconomic rights.

Some legal systems have adopted a completely different route, which is to explicitly provide for direct enforcement in their national constitutions. This has opened up many possibilities, and the experience of direct enforcement over the past few decades has led to a rigorous international debate as to what type of difference it has made in practice, and whether more should be done to combat poverty. Policymakers, judges, legal professionals, and scholars from all over the world have been engaging with each other in an attempt to further alleviate poverty.

Socioeconomic rights were given significant prominence when they were incorporated in and treated equally to civil and political rights in the Universal Declaration of Human Rights. In 1966, the International Covenant on Economic, Social and Cultural Rights (the ICESCR) provided that socioeconomic rights should be achieved through “progressive realization.”²⁷ The ICESCR informed many national legal systems’ views of socioeconomic rights. National authorities in many countries looked to the fact that international law treated civil and political rights separately from socioeconomic rights and reflected that distinction in their own national constitutions. Indeed, many Arab countries followed that approach.

In addition, the ICESCR’s reference to “progressive realization” was understood to mean that governments should be responsible for bringing these rights into fruition through the gradual evolution of policies. Thus, the manner in which socioeconomic rights are delivered and protected should be left for the executive branch of government to determine on a year-by-year basis and through a balancing of priorities in each year’s annual state budget. India, which drafted its constitution shortly after declaring independence, followed this approach and placed these rights in a chapter of the constitution titled “Directive Principles of State Policy.” It expressly made these rights nonenforceable.²⁸

“Progressive realization” also meant that the rights could not be considered to be fully in force, which in turn meant that national courts could not compel action by national authorities to respect them.

South Africa was one of the first countries to take a view explicitly contrary on this question. After the fall of the apartheid regime, the country engaged in a vigorous constitution negotiation process, in which the status of socioeconomic rights was very prominent in the national debate. President Nelson Mandela personally intervened when he stated that a “simple vote, without food, shelter and health care is to use [civil and political] rights as a smokescreen to obscure the deep underlying forces which dehumanise people. It is to create an appearance of equality and justice, which by implication socioeconomic inequality is entrenched. We do not want freedom without bread, nor do we want bread without freedom. We must provide for mental rights and freedoms associated with a democratic society.”²⁹ The constitutional negotiators finally agreed not to distinguish between socioeconomic rights and other fundamental rights; both are contained in the constitution’s bill of rights, and are covered by that chapter’s justiciability guidelines.³⁰

South Africa’s constitution does, however, recognize that these rights might pose challenges that civil and political rights do not. In particular, whereas state measures to guarantee the exercise of the freedom of assembly does not typically consume significant portions of the annual budget, immediate application of the right to health care to every citizen could lead to massive overhauls of the state budget in ways that may not be possible. As a result, the constitution includes specific wording that recognizes the state’s budgetary constraints. For example, it provides that “everyone has the right to have access to adequate housing” but that the state is only obligated to act “within its available resources, to achieve the progressive realisation of this right.”³¹

This provision recognizes that some socioeconomic rights may implicate state budgets in ways that some civil and political rights do not. For this reason, the constitution

only requires the state to act within available resources. This provision also recognizes that it may take time to build institutions to administer these rights, and so the constitution allows for the progressive realization of them.³² The enforceability of these provisions is not questioned in South Africa, but each case does raise complex questions regarding how these rights should be enforced, and when it would be reasonable for a court to force the government to ensure protection of a particular right. The constitution provides courts with the necessary flexibility to enforce socioeconomic rights while still respecting resource and time limitations.³³

A category of rights called “third-generation rights,” which includes environmental and collective community rights, also raises questions of enforcement because they often contain broad language and have an aspirational tone. Chile’s constitution seeks to address this issue by containing specific language ensuring that these rights are enforceable, allowing those who are deprived of them to resort to the courts to seek protection. The rights protected range from equal protection, to the right to life, to freedom of contract. Though these rights may appear to be broad, unenforceable principles, in Chile the constitution makes them justiciable. The constitution expressly considers the right to an uncontaminated environment and states that it is also justiciable.³⁴

The constitution of Colombia goes one step further by creating a special mechanism to ensure that individuals always have a course of action to protect their constitutional rights, particularly in situations when the courts are unable to satisfy their function. The constitution recognizes that the ordinary judicial process is in some cases insufficient or unsatisfactory for many individuals. It therefore states that where an individual does not have access to a judicial remedy, he may appeal before a court at any time and in any form. In practice, this right has allowed for Colombians who do not have access to legal representation to make their submissions to the Colombian courts in the form of short letters, and sometimes even in the form of oral messages. This mechanism, referred to in Colombia as a “tutela,” is today studied around the world for its innovative approach

to the enforcement of civil, political, and socioeconomic rights.³⁵

Today, there is a vigorous debate on the impact that direct enforcement has had in practice. Some scholars and others have noted that judicial remedies are typically only available to individuals who have access to legal representation, and that the most marginalized segments have little hope of seeing their constitutional rights realized in court. Others have noted that courts have limited reach and that whatever judgments they render can at best affect only small segments of society at a time.³⁶ Still others have noted that, despite having few means at their disposal, courts have made significant progress, which is an argument in favor of even greater remedies.³⁷ A final argument has it that, regardless of the court remedies that are available, the fact that socioeconomic rights are justiciable has forced governments into a “culture of justification.” What this means in practice is that governments in many countries can no longer formulate their policies without any public debate. Their actions must be justified publicly, which contributes to debate about whether goals set by constitutional provisions are being met, which is considered by some to be achievement enough.³⁸

I do not wish to suggest that Arab-majority countries adopt these reforms or reproduce them. The point here is merely to underline the efforts that are being made, and also to show that some of these efforts may be bearing fruit and are at least worth considering in any national constitutional process that is motivated by massive public upheaval.

Origins of the Arab World’s Constitutions

The first generation of Arab constitutions mainly focused on guaranteeing political and civil rights such as the freedoms of expression, association, and assembly. During the first half of the twentieth century, the right to education was not always provided for, and when it was, it was only on a limited basis. Other rights including health care, housing, the right to employment, and social security were essentially never mentioned.³⁹ There were exceptions, especially relating to health care, but these were incomplete. Egypt’s 1923

constitution provided that free education was a right but noted that this did not include any education that “breached public order or contradicted morals.”⁴⁰ Lebanon’s 1926 constitution (the only colonial-era constitution that is still in force) provides that some forms of education are free.⁴¹ But neither Egypt nor Lebanon mentioned the right to education generally.

As attitudes towards socioeconomic rights started changing around the world in the second half of the twentieth century, Arab constitutions adapted accordingly. Colonial powers were replaced with national liberation movements that based their internal legitimacy partly on their ability to deliver improved standards of living. The new regimes were also unabashedly ideological, and openly promoted specific political and moral values through the services that they provided free of charge to the general population. Iraq’s interim 1970 constitution provided that “the State shall undertake to protect public health through continuous expansion of free medical services in prevention, treatment and medicine throughout cities and villages.”⁴² It also included a number of provisions on education.⁴³

Egypt’s 1971 constitution followed the same pattern. It provided for the existence of a right to “health insurance services” without specifically and clearly indicating that Egyptians had an absolute right to health care.⁴⁴ It also confirmed that education was a right, while specifically privileging religious education.⁴⁵ Syria’s 1973 constitution provided that the state “protects citizens’ health and provides them with means of protection, treatment and medication.”⁴⁶ It also guaranteed “cultural, social, and health services,” and provided that “all education is free”—in this case spelling out that the education should aim to create “a socialist nationalist Arab generation.”⁴⁷ Yemen’s 1991 constitution also provided for free health care, and the right to education.⁴⁸ Many of these same constitutions also provided for an unequivocal right to work.⁴⁹

Postcolonial institutional design in Arab states did not allow for any independent court action that could curb or influence

state policy. The constitutions themselves provided the executive branch just about everywhere with full authority to control appointments in the judiciary.

Despite the generous wording, none of these provisions were ever designed to be directly applicable and enforceable. Firstly, postcolonial institutional design in Arab states did not allow for any independent court action that could curb or influence state policy. The constitutions themselves provided the executive branch just about everywhere with full authority to control appointments in the judiciary. Iraq’s interim 1970 constitution is perhaps the most extreme example of this. It provides that judicial independence and the conditions under which judges could be prosecuted were both to be determined by law.⁵⁰ Meanwhile, it also established an unelected “revolutionary command council” which had the authority to issue legislation.⁵¹ In other words, a tiny number of putschists had full control over the judiciary, which virtually guaranteed full obedience of judges throughout the country. Other Arab institutional frameworks followed similar if not identical patterns.

In any event, even if a judge were willing to challenge the state, the legal doctrine in force in all Arab countries at the time was very much in conformity with the traditional view set out above, which is that socioeconomic rights were by their very nature unenforceable. Citizens were not encouraged to raise claims against the state, courts would not accept jurisdiction, and even when they did accept to hear specific claims, those claims were dismissed outright. In addition, legal scholarship was highly restrictive. Academics and scholars were forbidden from studying, let alone criticizing, their own constitutions, which meant that opportunities to develop new legal theories on the enforceability of specific constitutional provisions were virtually non-existent.

The Promise of the New Constitutions

An examination of the final texts of the post-2011 constitutions illustrates how aware constitutional negotiators and drafters were of protesters’ demands.⁵² In particular, the constitution’s preambles all set out the reasons for which the new texts were drafted and also indicate what

priorities they are meant to satisfy. Although each of these constitutions includes idiosyncrasies that reflect unique national circumstances (such as the role of the monarchy in Morocco, or the sense of international isolation in Syria), there are themes and principles that recur in all of the texts. The preambles to the Egyptian (2014), Tunisian (2014), Moroccan (2011), and Syrian (2012) constitutions all present historical and political narratives, which are designed to encapsulate the state's ideology.⁵³ They also seek to divorce the new constitutional arrangement from the past. All four of the texts make reference to the people's or the nation's place in the world community, sometimes through the mention of international institutions and at other times by providing an account of the nation's contributions to world history. More importantly however, the texts also strongly emphasize popular sovereignty and social justice, sometimes to the extent that these principles are repeated several times within just a few lines.

The Egyptian preamble states that the purpose of the revolution is to “achieve freedom and social justice together” (an exact reflection of the popular slogan cited above), that the Egyptian people believe in “democracy as a path, a future, and a way of life; in political plurality; and in the peaceful transfer of power,” and that all people have the right to “freedom, human dignity, and social justice.” Tunisia's preamble provides that the constitution has as its objective to establish the “framework of a civil state founded on the law and on the sovereignty of the people” and that the constitution seeks to “build on national unity that is based on citizenship, fraternity, solidarity, and social justice.” According to the Moroccan preamble, the state seeks to establish a “democratic State of Law” through “participation, of pluralism and of good governance,” and also develops a “society of solidarity where all enjoy security, liberty, equality of opportunities, of respect for their dignity and for social justice.” Even the Syrian preamble emphasizes the “rule of the people based on elections, political and party-based pluralism ... social justice, equality, equal opportunities, citizenship, and the rule of law.”

Social justice also features prominently in many of the constitutions' substantive provisions. Algeria's 2016

constitution specifically provides that national institutions should have as their objective “to promote social justice.”⁵⁴ Libya's draft constitution makes four separate references, including requirements that the state's vertical distribution of power should be structured in a way that ensures social justice, that the economy should encourage social justice, and that the country's taxation system should be based on social justice.⁵⁵ Jordan's 2011 constitution also provides that the government should “apply the principle of progressive taxation, along with the attainment of equality and social justice.”⁵⁶ Finally, the draft Yemeni constitution provides that the country's taxation system and the national economy should be based on social justice.⁵⁷

The evolution from the earlier generation of Arab constitutions to the post-2011 texts could not be clearer. Although the former made some reference to progressive values that are similar in nature to the desire to achieve “social justice,” these were often secondary concerns in comparison with the then ruling authorities' political aims, including the establishment of socialism and the monopolization of power by undemocratic forces. The preamble to Morocco's 1996 constitution made quick reference to international organizations and obligations, and to the need to establish peace and security in the world—and made no mention of the needs or aspirations of ordinary people. Syria's 1973 constitution essentially consisted of a historical narrative from the point of view of the Syrian Ba'ath party. The preamble also stated that “freedom is a sacred right and popular democracy is the ideal formulation,” but only after several references were made to the Ba'ath party's special role in guiding state and society. The preamble to Egypt's 1971 constitution was clearly drafted with progressive ideals in mind, but was vague on the details. Multiple references were made to the “dignity of man,” although no clear explanation was offered as to what human dignity consisted of.⁵⁸ Tunisia's 1959 constitution was the only text that would not have been out of place among constitutions drafted since Arab uprising constitutions. It made reference to “human dignity, justice and liberty,” the “sovereignty of the people,” “respect of human rights,” and “citizens' right to work, health care and education.”⁵⁹

The Result: The Case of Egypt

Despite the new constitutions' clear recognition of popular aspirations, almost nothing was done to ensure that these supposed commitments would be translated into reality. The changes that were introduced were essentially cosmetic: the list of rights is longer, and each individual right is more detailed, but the general relationship between the state and the individual is unchanged.

An examination of Egypt's 2012 and 2014 constitutions clearly illustrates this point. The 2012 constitution was supposed to mark a new beginning in Egyptian constitutional history.⁶⁰ Pursuant to relatively free and fair parliamentary elections that took place at the end of 2011, the new legislature appointed a one-hundred-member body that was responsible for preparing a final draft within six months, at which point it was approved in a referendum. The drafters claimed that they were intent on establishing a semi-presidential system of government that could not be dominated by any particular political party in the future. However, the drafters were unable to break away from the traditions that had been established by the 1971 constitution. For example, the president's power to appoint members of the upper chamber of parliament was maintained, giving the president an unjust and undeserved amount of leverage over the legislative process.⁶¹ Given that the upper chamber was responsible for approving all of the president's appointments to the country's independent institutions (including the audit institution and the central bank), that process was skewed in the president's favor in a way that was impossible to justify.

The drafters decided not to negotiate a new arrangement on decentralization. Despite huge disparities in service delivery and standards of living between the country's major urban centers and much of the rest of the country, the 2012 constitution deferred to the preexisting legal framework, which essentially provides that all decision making should be maintained in the capital and that provincial governors should be appointed by the central government.⁶² Worse still were the provisions on civil–military relations. The 2012 constitution explicitly recognized, for the first time, that civilians could be tried by military courts for crimes that

“harm the armed forces.”⁶³ The term was left to be defined by subsequent legislation. Also surprising is the fact that the national defense council (which has eight military members and seven civilians) was made responsible for discussing the military's budget.⁶⁴ Meanwhile, almost nothing was done to improve the framework for the improvement of rights: although the list of socioeconomic rights was prolonged, no effort was made to improve the performance of the (woefully underperforming) judicial sector, and litigants were not given any additional rights to bring claims to court. In short, the 2012 constitution departed from its predecessor in ways that changed the balance of power within the state, but not in a way that would directly affect the rights of ordinary Egyptians.

Egypt's 2014 constitution also does not significantly depart from the 1971 constitution's framework. Following the military's decision to depose the Muslim Brotherhood-affiliated president Mohamed Morsi in July 2013, the country's interim authorities appointed a fifty-member committee that drafted a new text in three months, which was then approved in a referendum. The resulting 2014 constitution maintains, and on occasion worsens, many of the negative characteristics that have plagued Egypt's constitutional practice for decades. The tribe-like mentality through which state institutions are granted impressive amounts of independence and privileges, despite the fact that they do not deliver adequate services to the people, has been reinforced, diminishing the potential for democratic accountability and pressure for improvement.⁶⁵ Just as worryingly, the new constitution tilts the balance of power firmly back in the president's favor. For example, the president now has wide powers during a state of emergency, which is no longer subject to a maximum number of months or even years. This provision is not particularly reassuring given the circumstances, to say the least.⁶⁶

Most important for our discussions here is that, although the list of socioeconomic rights is even more detailed than under the 2012 constitution, all the rights remain generally non-justiciable. The 2014 constitution does include a small number of provisions that are designed to impose the obligation on any future government to adopt a more

progressive set of investment priorities. For example, the constitution now establishes minimum percentages of the gross domestic product (GDP) that must be allocated to health and education.⁶⁷ Although these provisions are designed to show that some importance was given to the improvement of living standards of the poorest segment of society, there is significant doubt as to whether they will make any difference in practice, given the innate difficulties that exist in implementing provisions of this nature. The constitution also does not offer any convincing mechanism for the enforcement of rights: apart from even more independence than before, the judicial sector remains unreformed and no additional mechanisms have been created, meaning that the rights provided for will almost certainly remain unprotected.⁶⁸

Cosmetic Changes and Politicization

The post-2011 constitutions also make a number of changes to the way in which individual rights are worded, and not always to a positive effect. Egypt's 2014 constitution provides that "every citizen" has the right to education, and also states that the quality of the education provided has to meet global standards.⁶⁹ Tunisia's 2014 constitution also guarantees free public education for all and commits to "high quality education, teaching and training."

At the same time, the additional detail on socioeconomic rights reveals a tendency to politicize these rights in favor of particular outcomes. In Tunisia, education is now designed to "consolidate the Arab-Muslim identity and national belonging in the young generations, and to strengthen, promote and generalize the use of the Arabic language and to openness to foreign languages, human civilizations and diffusion of the culture of human rights."⁷⁰ These provisions seek to impose a political vision of education, with which significant numbers of the region's inhabitants would not agree.

Health care is naturally a less politicized area, and so the additional detail has been broadly neutral and potentially beneficial. Tunisia's 2014 constitution provides that health care is a right for "every human being" (which therefore does

not limit the provision of care to citizens).⁷¹ It also stipulates that the state should provide a wide range of services, including preventative care. Egypt's equivalent provision limits the right to health care to citizens and does not specifically mention preventative care, but it does commit to the "fair geographical distribution" of health care facilities.

Many of the other post-2011 constitutions follow the same pattern of limiting themselves to tinkering with the system of government, lengthening the list of rights, and deliberately avoiding any discussions of how those rights will be enforced. Libya's 2017 draft constitution provides for the right to health, education, work, and food and water, among many others.⁷² Debates about these rights within the Constitutional Drafting Assembly (an elected body charged with drafting the text) generally revolved around how to formulate them in a way that encouraged broad coverage, while addressing inequalities.⁷³

Despite these generous formulations, what is missing in the final draft of Libya's constitution (as in the rest of the post-2011 Arab constitutions) is any degree of certainty that these socioeconomic rights will be directly enforceable by the courts, rather than remaining purely aspirational. In Libya, while the current wording does not suggest that such rights are not directly enforceable, the reality is that Libyan courts (and courts in the Arab region generally) have often refused to enforce socioeconomic rights, on the grounds that to do so would violate the separation of powers. The absence of any clear guidance on this issue in Libya's final draft is another example of how specific sections appear to have been drafted without consideration for the context in which they were formulated.

In Morocco, opposition parties were granted some new standing under the 2011 constitution, but the king still maintains firm control over key state institutions and still has significant influence over the government (on which he can impose his will at any time) and the judiciary.⁷⁴ An analysis of the 2011 amendments to the Jordanian constitution leads to the same conclusion.⁷⁵ The king is solely responsible for appointing the government, has virtually unlimited powers to declare states of emergency (during which his

power is essentially absolute), and he is solely responsible for appointing all the members of the constitutional court. Syria's 2012 constitution achieves close to nothing for the general population, while ensuring that the current president can remain in office until 2027 if he so chooses.⁷⁶

Tunisia's 2014 constitution is the only text that has any chance of satisfying popular demands for social justice.⁷⁷ It establishes the building blocks for an independent judiciary, mainly through the establishment of a new constitutional court. The negotiating parties argued at length about how the new court's members should be chosen, and finally settled on a mechanism that makes it close to impossible for any particular party or branch of government to dominate the court. In addition, the 2014 constitution incorporates the Arab region's first limitations clause, which curbs the government's and the parliament's ability to limit fundamental rights. The document provides that any limitation on rights must be in conformity with the needs of a democratic society, and also states that whatever means are used to limit a specific right must be "proportional" to the objective.⁷⁸

However, even the Tunisian constitution falls short in a number of important respects. Most importantly, perhaps, is the fact that its section on decentralization leaves much to be desired, particularly considering the circumstances. Indeed, Tunisia's revolution was an unplanned revolt that was sparked in Sidi Bouzid, a poor town in the country's impoverished center, where residents had long chafed under what they perceived as discriminatory treatment by the central government. The 2014 constitution was an important opportunity to remedy this situation, and in fact one of the Constituent Assembly's thematic committees was dedicated specifically to this issue. The final constitution dedicates eleven articles to decentralization, but it leaves much open to question, in a way that the country may come to regret.⁷⁹

The Tunisian constitution's lack of attention to the security sector is also surprising. As a result, the types of compromise language and checks and balances that are omnipresent on issues such as government formation are almost entirely absent so far as the military, the police, and the intelligence

services are concerned. Instead, most of the wording relating to the army and police grants authority to the president in a manner that is reminiscent of the pre-2011 environment.

The Harvest of a Flawed Debate

An analysis of the documentary evidence, as well as of other sources, reveals that no meaningful debate between stakeholders took place during regional constitution drafting. I was personally involved in all three of the constitutional processes set out in this section. In all cases, I participated in discussions with constitutional drafters at all stages of the negotiation processes, and in some cases I was present during closed drafting sessions. In part, I draw upon this experience to conclude that, if the rights of ordinary citizens were essentially unchanged, it was mainly as a result of the fact that the issue was never seriously addressed during the negotiation process.

Throughout the region, what debate did take place on constitutional reform was dominated by two main political trends. First, Islamist parties that were affiliated with the Muslim Brotherhood or with Salafi trends were on the ascendancy, returning pluralities or outright majorities in elections in many countries. Second, a broad coalition of anti-Islamists brought together nationalists, secular movements, liberal parties, and some left-wing movements, as well as others. Both sides engaged with the other in constitutional drafting chambers throughout the region, sometimes in elected bodies (as in Tunisia and Libya) and at times in appointed committees (as in Morocco, Jordan, Algeria, Egypt, Yemen, Syria, and others). In almost all cases, however, Islamist and liberal parties invested almost all of their efforts in tweaking, without making substantial changes to the system of government.⁸⁰

As the results of the negotiation processes indicate, constitutional negotiators and other senior policymakers did not consider the failure of previous constitutional provisions to make any appreciable difference in the lives of ordinary people, nor did they make any significant attempts to determine alternatives. Instead, they occupied themselves with altering the wording of specific provisions, either with a

view to making them more precise, or in order to suggest a wider form of coverage, without ever bothering to consider if their new formulations, just like the ones that they replaced, would ever be applied in practice.

Yemen

In January 2011, Yemen was teetering on the border of collapse. The state had completely violated its social compact with the people: socioeconomic conditions were appalling (particularly for women) and security was highly precarious.⁸¹ Earlier constitutional provisions promising generous socioeconomic rights had little to no impact for the general population. The initial stages of the 2011 uprising almost led to a civil war, and required significant on-the-ground intervention by senior UN officials and the Gulf Cooperation Council (GCC) to avoid a full-blown conflict.⁸² State institutions, the country's main political forces, and the people were faced with a choice: they could either launch a real reform effort that would introduce the type of radical change that the situation and the people were demanding, or they could satisfy themselves with tinkering with the state's institutional structure and with introducing superficial changes to the wording of specific provisions. Following Ali Abdullah Saleh's resignation from the presidency, a National Dialogue Conference (NDC) convened (from March 2013 to January 2014), which led in turn to the formation of a constitutional drafting commission (CDC). The transitional agreement that helped avert a full-blown conflict was referred to as the "GCC Initiative" and its "Implementation Mechanism."

The conference opened in March 2013 and closed in January 2014, after its original deadline of September 2013. The NDC was tasked with addressing a large number of issues, including redesigning the state's institutional structure as well as national and local reconciliation. It was intended to include a broad range of political forces, actors, and representatives. The Implementation Mechanism also set out a list of all the issues that should be discussed by the NDC, including the process through which the constitution should be drafted, the state's structure, the political system, and human rights.⁸³

The NDC included a number of "working groups," each of which was responsible for debating and reaching agreement on discrete areas. Among these was the "Rights and Freedoms Working Group," which was formed for the purpose of discussing issues including "citizenship, freedoms, pluralism and democratic participation."⁸⁴

The way in which the entire transition was structured shows that the state had little intention to engage in any serious reform. The most pressing question, and the one most likely to lead to conflict, was whether Yemen should reformulate itself as a federation and how that should be achieved. The issue was decided only in very broad terms by one of the NDC's working groups, and eventually left most of the essential design features to the CDC (an unrepresentative group of individuals of whom only a third had any real capacity to deal with the federal question). The debate that took place is captured in the outcomes, which show that the working group members engaged in superficial changes—tinkering without any regard for whether or not any of their provisions would ever be implemented in practice.⁸⁵ In a telling example, the NDC's Rights and Freedoms Working Group tagged on an anodyne detail to the 1991 constitution's requirement for the state to build hospitals, requiring the establishment of "medical research centres" and "emergency units in all districts and provincial centres." Other contributions from this group's efforts were similarly innocuous, even when they were the result of extensive debate.⁸⁶

In subsequent years, the crisis in Yemen worsened, ultimately descending into war. The conflict has a number of causes, including the constitutional negotiation process. The draft constitution provided for a federal system of government that was so controversial in some parts of the country that an adviser to the president was kidnapped as he was delivering the final draft to the president.

The benefits to improving the constitution drafting processes may not be easy to quantify, but there is far too much to lose not to try. When the present war ends—whenever that may be—the original cleavages will still remain.

Tunisia

Tunisia's constitutional process took place in far more propitious circumstances. It was defined by an absence of conflict and minimal violence, as well as heightened political tensions that ran along ideological as well as geographic lines (with the north of the country leaning more toward secular politics, and the south toward Islamist political thought and representation). A constituent assembly was elected in October 2011, which was tasked with drafting a new constitution. The internal rules provided for the establishment of a number of specialized committees, including a "committee on rights and freedoms," where the bulk of the conversation on socioeconomic rights took place.⁸⁷

The constitutional process was dominated by a few substantive questions, all of which had to do with who within the country's political spectrum would ultimately wield power. It was generally assumed by most political actors that Ennahda, the country's largest party at the time, would continue to be a major presence in parliament for at least the foreseeable future, and that the presidency was more likely to be won by a secular candidate. Those assumptions informed the majority of the debate that took place during the negotiation process. Constituents argued over the role that the president would play in forming the government, whether the presidency or the prime minister and cabinet should have control over national security, and who should be responsible for appointing the constitutional court.

Rights and liberties, including socioeconomic rights, captured only a tiny amount of attention in comparison. The only significant issues that were discussed were the relationship between religion and state and gender equality (both of which issues were consequences of the political divide), and whether the new constitution should include a limitations clause.⁸⁸ The rest of the conversation was almost entirely dedicated to reorganizing words on a page, replacing already existing adjectives with more evocative terms, or qualifying language that in any event never had any chance of being applied.

Many assembly members were heavily influenced by the 1959 constitution and its legacy and were reluctant to stray too far from a system that they had only reluctantly disavowed. That partly explains why some of the 1959 constitution's provisions were reproduced verbatim in the 2014 constitution. It also partly explains why the discussions never dealt with fundamental questions such as whether and how the constitution could be used a mechanism to combat inequality. Justiciability was never raised.⁸⁹

The lack of genuine debate on the status of socioeconomic rights can actually be traced through the drafts that were produced during the negotiation process. Four separate drafts were released in 2012–13, with the final draft being adopted in January 2014. From the start, the right to education took shape and provided that "the state shall guarantee the right of all persons to all stages of education, free of charge."⁹⁰ During the year and a half of debate that followed, that provision remained in all subsequent drafts, virtually unchanged. By the time the final draft was adopted in January 2014, it took the following form: "Education shall be mandatory up to the age of sixteen years. The state guarantees the right to free public education at all levels."⁹¹

The same pattern was followed in discussions relating to the right to health care. Negotiators argued about whether the right to health care should be described as being "a fundamental right" or simply as a "right," whether a separate provision on social security should be merged with the provision on health care, and whether the reference to "indigents" should be expanded to include "those without support." The final version of the provision, agreed upon close to a year and a half after the first draft, provides that "health is a right for every human being. The state guarantees preventative health care and treatment for every citizen and provides the means necessary to ensure the safety and quality of health services. The state ensures free health care for those without means and those with limited income. It shall guarantee the right to social assistance in accordance with the law."⁹²

The discussions on the right to work were even more uneventful. The negotiators were able to agree, virtually without controversy, that the new constitution should include a right to work. The first draft stated that “every citizen is entitled to work. The state exerts all effort to ensure the availability of work in a sound and fair environment.”⁹³ That same wording was maintained without any change in the following three drafts. Some change in favor of greater gender equality was introduced in the final draft, which includes the words “male and female” besides the word “citizen.”⁹⁴

Egypt

Egypt’s parliament appointed a constitutional drafting committee (CDC) in June 2012, almost a year after the military-assisted deposing of Hosni Mubarak. The CDC was dominated by the Muslim Brotherhood’s Freedom and Justice Party (FJP) and its allies.

The CDC’s drafting process followed a pattern that was almost identical to the Tunisian process: parties had no difficulty reaching agreement on the rights of individual Egyptians, but were consumed with developing mechanisms that would help them guard against their political opponents. By way of example, the first draft that was produced by the CDC required the state to “guarantee the availability of social and health insurance services” and to “provide health care and health insurance to all citizens within the framework of a unified health system” to all citizens, including “indigents.”⁹⁵ All of these elements were maintained in the final draft.⁹⁶

In the end, however, the 2012 constitution remained in force only for six months. By July 2013, Mohamed Morsi had been ousted and the FJP driven underground by a resurgent security state. The 2012 constitution was suspended; it was now to be amended through a multi-stage process.⁹⁷ In particular, it provided that a new fifty-member constitutional drafting committee (the C50) would have two months to prepare a final draft. The C50 was supposed to represent a broad range of stakeholders, but it was dominated by individuals who were hostile to Egypt’s Islamist movements. The FJP and its allies were entirely excluded.⁹⁸

One would have expected, given the circumstances, that the C50 would have been motivated by entirely different concerns from the political force that had just been deposed and that the final outcome of its work would be wholly different from what was produced by the CDC. Instead, the C50 maintained much of the CDC’s structure and formulations and satisfied itself with introducing a number of changes that will likely not make any practical difference to the lives of ordinary people. In just one small example, whereas the CDC’s final draft provided that the state should allocate a “sufficient percentage of the national revenue to healthcare,” the C50’s final draft provides that that percentage corresponds to “no less than 3% of Gross Domestic Product (GDP) to health.”⁹⁹ The C50’s minutes also reveal that members spent significant time and effort arguing over minor terminological issues.¹⁰⁰

During the discussion on education rights, one C50 member, Naser Ameen, made what can be described as a unique contribution. “The right to education, to health and to housing should be redrafted on the basis of the popular demand that they should be considered to be rights of the people,” Ameen argued. “If housing, education and health are considered to be rights, then there will be a commitment on the state to deliver.”¹⁰¹ What Ameen was clearly suggesting was that socioeconomic rights should enjoy the same status as civil and political rights. However, none of the other members appeared to have reacted to that intervention. Instead, they focused on minute and ancillary details.¹⁰²

The Future

One of the mysteries of the post-2011 constitutional drafting processes is how such an opportunity to redefine constitutional tradition in the region could have been missed, with only the partial exception of Tunisia. Other countries in the Global South have been busy developing mechanisms to overcome their own legacies of repression (including Colombia’s “tutela” mechanism, Kenya’s judicial vetting commission, and the legacies of South Africa’s deliberately progressive constitutional court).¹⁰³ Most if not all of these countries are still struggling with how to resolve persistently high rates of poverty, but all of these countries witnessed

serious attempts by large segments of their own societies to develop creative solutions to these problems.¹⁰⁴

Surprisingly however, virtually none of the lessons that were developed as a result of those experiences were adopted or even adapted to the local context by constitutional drafters in the Arab region. Some analysts have noted the power dynamics between elements linked to longstanding regimes as being the principal explanation. Others have noted that more structural factors, including socioeconomic development, natural resources, and the influence of traditional forms of government (for example, monarchies in Morocco, Jordan, and the Gulf) conspired to prevent any major changes in the vast majority of cases.¹⁰⁵ Whatever the reason may be, the effect is the same: no serious reform to the relationship between the individual and state has been attempted. In all countries, including those where anti-Islamist secular movements dominate politics, as well as those that are heavily under the sway of Islamist movements, there are no new rights, there is no new form of recourse, and there are no new remedies for the general population. Given that social and economic inequality show no sign of improving in the region, the long-term prospects are worrying.¹⁰⁶ Constitutions are far from being the only determinant factor in the fate of nations, but unless regional economic trends improve soon, a new wave of radical change is inevitable. What is less certain, however, is the outcome that such a change will bring—but constitutions are one key forum in which they will be contested.¹⁰⁷

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Author

Zaid Al-Ali is the Senior Adviser on Constitution-Building for the Arab Region at International IDEA and an independent scholar.

Notes

¹ For example, in a 1952 mission report, the World Bank described standards of living in Iraq as “extremely low,” noting that “90 percent of the population are illiterate” and that “housing and sanitation are for the most part primitive.” The Economic Development of Iraq: Report of a Mission Organized by the International Bank for Reconstruction and Development at the Request of the Government of Iraq (Baltimore: Johns Hopkins University Press, 1952), 1, <https://babel.hathitrust.org/cgi/pt?id=uc1.b4217863;view=1up;seq=10>. The situation was relatively similar in other Arab countries, including Egypt. See Edward R. J. Owen, Roger Owen, and Sevket Pamuk, *A History of Middle East Economies in the Twentieth Century* (Cambridge, Mass.: Harvard University Press, 1998).

² See Tarik M. Yousef “Development, Growth and Policy Reform in the Middle East and North Africa since 1950,” *Journal of Economic Perspectives* 18, no. 3 (2004): 91–116.

³ “Mesure de la pauvreté, des inégalités et de la polarization en Tunisie, 2000–2010,” Tunisian Institut National de la Statistique, October 2012. The World Bank’s final country brief on Tunisia prior to the 2011 uprising offered significant praise to the Tunisian authorities at the time, and estimated the national poverty rate to be at 7 percent, which it described as being “amongst the lowest in the region.” The country brief has received significant attention for misjudging (some say misreporting) Tunisia’s situation. Indeed, with the revolution only a few months away, the report’s first sentence read: “Tunisia has made remarkable progress on equitable growth, fighting poverty and achieving good social indicators.” See “Country Brief,” World Bank, April 2010, http://siteresources.worldbank.org/INTTUNISIA/Resources/Tunisia_CB_EN_final.pdf.

⁴ Note that World Bank data on poverty in Iraq for the year 2010 is not available. See “World Development Indicators,” World Bank, accessed March 3, 2019, <https://databank.worldbank.org/data/source/world-development-indicators/preview/on>.

⁵ Figures are rounded to the nearest whole number. See World Bank, “Development Indicators.” Many of these countries’ unemployment rates increased after the uprisings.

⁶ See the State of Food Insecurity in the World by FAO, available at <http://www.fao.org/3/a-i3027e.pdf>.

⁷ There was great variability in hunger indicators between different countries, but there were few if any bright spots. A United Nations Development Programme’s “Arab Human Development Report 2009” stated that between 1990 and 2004 “Saudi Arabia, Egypt, Lebanon, Jordan, Morocco and Yemen . . . recorded increases in both the absolute numbers and prevalence of undernourishment, while Syria and Algeria achieved very small reductions in prevalence but none in numbers.” “Arab Human Development Report 2009,” 124, <http://www.undp.org/content/dam/undp/library/corporate/HDR/ahdr2009e.pdf>.

⁸ In Egypt, cardiovascular diseases accounted for 40 percent of all deaths in 2013. In 2010, mortality from cardiovascular diseases, cancer, and diabetes, or chronic respiratory diseases of adults aged thirty to seventy was 28 percent, compared to a global rate of 19.7 percent for the same year. See World Bank, “Development Indicators.”

In 2015, there were 7.8 million new cases of diabetes (close to 8 percent of the population). See Maddison Sawle, “Egypt’s Working Poor Are Facing a Silent Killer: Bad Food,” *Mada Masr*, January 3, 2017, <https://madasr.com/en/2017/01/03/feature/society/egypts-working-poor-are-facing-a-silent-killer-bad-food/>.

⁹ It also ranked extremely poorly (126 out of 139) in the quality of primary education. See “Global Competitiveness Report 2010–2011,” World Economic Forum, 2010, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf.

¹⁰ See UNICEF’s country page for Egypt, accessed March 25, 2019, <https://www.unicef.org/egypt/education.html>.

¹¹ Morocco’s quality of primary education ranked 100 out of 139 countries. See “Global Competitiveness Report 2013–2014,” World Economic Forum, 2013, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf, 285.

¹² World Bank, “Development Indicators.” See also UNICEF’s statistics pages for Tunisia, Iraq, Egypt, and Morocco statistics pages, UNICEF, accessed March 25, 2019, <https://www.unicef.org/where-we-work>.

¹³ The countries were “shackled by bureaucratic inefficiency, poor professional capabilities and underfunding; and health risks from new infectious diseases are on the rise,” in the words of “Arab Human Development Report 2009,” 13.

In 2012, the World Health Organization (WHO) described Djibouti, Iraq, Morocco, Sudan, and Yemen as having a “critical shortage of health workers,” based on a WHO benchmark of 2.3 health workers per 1,000. See “Human Resource for Health Observer,” WHO, 2012, <https://www.who.int/hrh/resources/observer10.pdf>.

- 14 A peer-reviewed study, which examined forty-five research studies on medication errors in the Middle East in 2011 from five peer-review databases, indicated that medication prescribing error rates ranged between 71 percent and 90.5 percent, and medication administration errors between 9.4 percent and 80 percent. The study found that “poor knowledge of medicines was identified as a contributory factor for errors by both doctors (prescribers) and nurses (when administering drugs).” See Zayed Alsulami, Sharon Conroy, and Imiti Choonara, “Medication Errors in the Middle East Countries: A Systematic Review of the Literature,” *European Journal of Clinical Pharmacology* 69, no. 4 (2013): 995.
- 15 Tunisian Institut National de la Statistique, “Mesures de la pauvreté.”
- 16 UNDP, “Arab Human Development Report 2009.”
- 17 World Bank, “Development Indicators.”
- 18 Quoted in Gilbert Achcar, *The People Want: A Radical Exploration of the Arab Uprising*, (Berkeley, CA: University of California Press, 2013), 119.
- 19 Jeroen Gunning and Ilan Zvi Baron, *Why Occupy a Square: People, Protests and Movements in the Egyptian Revolution* (New York: Oxford University Press, 2014), 140–41. “There are (at least) three macro-economic dynamics that can be said to have affected the timing and shape of the protest episodes and waves between 2000 and 2010. The first consists of the drop of GDP [gross domestic product] growth rate and the concomitant rise in unemployment at the start of the decade. . . . The second dynamic concerns the rise in food prices, exacerbated by soaring inflation and, by 2011, another dip in GDP growth. . . . The third dynamic concerns the gradual worsening of a slew of economic factors, from rising inflation and poverty, to higher unemployment for university and college leavers and an increase in vulnerable employment. . . . None of this is to suggest that the economic situation alone would have triggered the various protests. The demands and slogans of the mass protests of 2003, 2008 and 2010–2011 were largely political . . . they were direct responses to political events.”
- 20 Importantly, protesters in Morocco generally refrained from using this particular slogan, for a combination of reasons, including a general understanding that Moroccans are attached to some of their traditional institutions, including the monarchy. Protesters generally focused their attention on specific aspects of the ruling regime (including, for example, corruption) as opposed to the regime’s very existence.
- 21 Amin Allal, “Becoming a Revolutionary in Tunisia, 2007–2011,” in *Social Movements, Mobilization, and Contestation in the Middle East and North Africa*, ed. Joel Beinin and Frédéric Vairel (Stanford, Calif.: Stanford University Press, 2013).
- 22 Marie Duboc, “Challenging the Trade Union, Reclaiming the Nation: The Politics of Labor Protest in Egypt, 2006–2011,” *Beyond the Arab Spring: The Evolving Ruling Bargain in the Middle East*, ed. Mehran Kamrava (New York: Oxford University Press, 2014), 247. “The ruling bargain in Egypt was . . . challenged . . . by mobilized workers who became deinstitutionalized because of both the erosion of their economic and social status and the lack of a trade union organizations representing their interests.”
- 23 For Lebanese and Iraqi protesters, their regimes were principally defined by consociational and sectarian arrangements. The 2011 protest movement in both countries focused on those arrangements as a matter of priority.
- 24 See Anthony Shadid and David D. Kirkpatrick, “Mubarak Refuses to Step Down, Stoking Revolt’s Fury and Resolve,” *New York Times*, February 10, 2011, <https://www.nytimes.com/2011/02/11/world/middleeast/11egypt.html>.
- 25 Throughout 2011 and a large part of 2012, while Egypt was under the control of the Supreme Council of the Armed Forces, protesters alternated between demanding the fall of “the regime” and the “fall of the field marshal.” In Tunisia, after the first government following the fall of Zine El Abidine Ben Ali was composed, protesters insisted on its dismissal, by demanding the “downfall of the regime.” See “Police Join Protests in Tunisia,” *Al Jazeera*, January 23, 2011, <https://www.aljazeera.com/news/africa/2011/01/2011122133816146515.html>.
- 26 For more on this trend and on how it has affected theory and practice in Arab-majority countries, see Al-Ali, “Deconcentrating Power in Arab Majority Countries,” *Lawfare*, August 17, 2018, <https://www.lawfareblog.com/deconcentrating-power-arab-majority-countries>.
- 27 See International Covenant on Economic, Social and Cultural Rights, 1966, articles 2, 13, 14, 22, and others, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.
- 28 Article 37 of the Constitution of India provides that: “The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.” Constitution of India, accessed March 5, 2019, https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf.
- 29 Mandela, “Address: On the Occasion of the ANC’s Bill of Rights Conference,” in *A Bill of Rights for a Democratic South Africa: Papers and Report of a Conference Convened by the ANC Constitutional Committee* (African National Congress Constitutional Committee, 1991), 9–14; quote is on page 12.
- 30 Article 8 of the Constitution of South Africa provides that: “The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of the state.” Constitution of the Republic of South Africa, 1996, accessed March 5, 2019, <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>.
- 31 Article 26.
- 32 Article 26.
- 33 Article 172(1)(b).
- 34 See Article 20 of the constitution of Chile, which states, in part: “He who by cause of arbitrary or illegal acts or omissions suffers privation, disturbance or threat in the legitimate exercise of the rights and guarantees . . . concerning the freedom to work and to the right of freedom of choice and freedom to contract . . . can on his own, or anyone on his behalf, resort to the respective Court of Appeals, which will immediately adopt the measures that it judges necessary to reestablish the rule of law and assure due protection to the affected person.” See “Chile’s Constitution of 1980 with Amendments through 2012,” *Constitute*project.org, 2012, https://www.constituteproject.org/constitution/Chile_2012.pdf.
- 35 The relevant passages of the Colombian constitution are in article 86, which also provides that courts must respond to the request in less than ten days. See, for example, “Social and Economic Rights,” *International Institute for Democracy and Electoral Assistance* (International IDEA), August 2014, <https://www.idea.int/publications/catalogue/social-and-economic-rights>.
- 36 See Davis, “Socioeconomic Rights,” 687.
- 37 See, for example, David Landau, “The Reality of Social Rights Enforcement,” *Harvard International Law Review* 53, no. 1 (2012): 189.
- 38 See Davis, “Socioeconomic Rights.”
- 39 For example, neither Iraq’s 1925 constitution nor Tunisia’s 1959 constitution provided for a right to health care or education. All of Iraq’s previous constitutions, including the 1925 constitution, are available on my personal website, <http://zaidalali.com/resources/constitution-of-iraq/>.
- 40 Article 17 of the 1923 constitution. An unofficial translation of Egypt’s 1923 constitution is available on the website of ConstitutionNet, accessed March 25, 2019, <http://www.constitutionnet.org/vl/item/egypt-constitution-1923>.
- 41 Article 10 of the 1926 constitution. See “Lebanon’s Constitution of 1926 21th Amendments through 2004” (an unofficial translation), accessed March 25, 2019, https://www.constituteproject.org/constitution/Lebanon_2004.pdf.
- 42 Article 33.
- 43 Provisions on education “ensure the right to education freely in its different stages, elementary, secondary and university for all citizens” (article 27) while at the same time entrenching education in socialist thought and Arabism (article 28).
- 44 Article 17.
- 45 Articles 18 and 19.
- 46 Article 46.
- 47 Articles 47, 37, and 21.
- 48 Articles 55 and 54.
- 49 These included Syria, 1971, article 36; Egypt, 1971, article 13; and Iraq, 1970, article 32.
- 50 Articles 60 and 61 of Iraq’s 1971 interim constitution.
- 51 Articles 37 and 42 of Iraq’s 1971 interim constitution.
- 52 Unless otherwise indicated, all the constitutions that are currently in force and that I refer to here are available in English on the website of *Constitute*, accessed March 25, 2019, <https://www.constituteproject.org/>. Arabic language originals are available on the Arabic language website of *Constitute*, accessed March 25, 2019, <https://www.constituteproject.org/?lang=ar>.
- 53 Note that since the start of 2011, Egypt has had three separate constitutional texts: an interim constitution that entered into force in March 2011; a constitution that entered into force in 2012; and, after the civil government was deposed by the military in July 2013, a new constitution was drafted in 2013, finally entering into force in 2014. The latter two texts, and the processes that led to their elaboration, are both referred to here.
- 54 Article 8. See the unofficial translation of the 2016 Algerian constitution hosted by *ConstitutionNet.org*, accessed March 25, 2019, www.constitutionnet.org/files/algeria_constitution_2015.pdf.
- 55 These references can be found in Articles 155, 19, and 29, respectively.
- 56 Article 111. The Jordanian constitution does not include a preamble.
- 57 Articles 22 and 15. An unofficial translation of the draft Yemeni constitution

is available on the website of ConstitutionNet, accessed March 25, 2019, www.constitutionnet.org/files/yemen-draft-constitution-15jan2015-english.pdf. The draft Yemeni constitution does not include a preamble.

58 The preamble also committed the state to a broadly progressive agenda that was perfectly suited to the 1970s, including the “integration between science and faith, between political and social freedom, between national independence and social affiliation.”

59 The major difference between the 1959 constitution and its successor was the former’s moral conservatism, which was reflected through its commitment to “protecting the family.”

60 An unofficial translation of Egypt’s 2012 constitution is available on the website of ConstitutionNet, www.constitutionnet.org/vl/item/new-constitution-arab-republic-egypt-approved-30-nov-2012. For a full analysis of the 2012 constitution, see my article, “The New Egyptian Constitution: An Initial Assessment of Its Merits and Flaws,” *openDemocracy*, December 26 2012, <https://www.opendemocracy.net/en/new-egyptian-constitution-initial-assessment-of-its-merits-and-flaws/>.

61 Article 128.

62 On regional disparities, see “Egypt Human Development Report 2004: Choosing Decentralization for Good Governance,” UNDP, 2004, http://hdr.undp.org/sites/default/files/egypt_2004_en.pdf, 22. “By examining the tables that address urban-rural gaps in human development, one can easily identify human development disparities among the major four groups of governorates and among individual governorates; this is in spite of multiple rural development programs and efforts.”

Article 188 of the 2012 Egyptian constitution provided that local councils should be elected, but article 190 allowed for any of their decisions to be overturned by the central government in order to prevent “damage to the public interest”. Worse still, article 187 did not clearly indicate how governors were to be chosen (whether elected or selected) and made no attempt to define their powers, leaving all of these crucial matters to be decided by subsequent legislation, as has been the case for the past few decades. Finally, earlier drafts called for a financial redistribution mechanism between provinces to remedy the gross disparities that exist in the country. That provision was deleted from the final version.

63 Article 198.

64 Article 197.

65 See, for example, article 203, which provides that the armed forces’ budget should appear as a “single figure” in the state budget. It further stipulates that the budget is allocated for the National Defense Council (a majority of whose members are drawn from the security institutions), which is responsible for debating it, as opposed to the parliament; meanwhile, the armed forces’ mandate does not specifically include an obligation to protect or to respect the constitution.

66 Article 143. Another example is that, although the government is formed by the prime minister, the president has the right to appoint the ministers of justice, interior and defense (article 146).

67 Article 18 provides that: “The state commits to allocate a percentage of government expenditure that is no less than 3% of Gross Domestic Product (GDP) to health. The percentage will gradually increase to reach global rates.” Article 19 also provides that: “The state commits to allocating a percentage of government spending that is no less than 4% of Gross Domestic Product (GDP) for education. It will gradually increase this until it reaches global rates.”

68 Article 185 provides that the judiciary’s own budget should appear as a single figure in the state budget, with no accountability and transparency measures offered in return.

69 Article 19.

70 Article 39. A similar example comes from Egypt, where the purpose of education is now to “build the Egyptian character, maintain national identity, plant the roots of scientific thinking, develop talents, promote innovation and establish civilizational and spiritual values and the concepts of citizenship, tolerance and non-discrimination” (article 19).

71 Article 38.

72 Articles 48, 52, 56, and 47.

73 So, for example, article 48 provides that “all people” (as opposed to all citizens) have the right to “high-quality” health care “at all stages,” while also stipulating that the state must guarantee an “equitable geographical distribution” of health services.

74 An example of the king’s firm control can be found in article 10, which specifically provides that the parliamentary opposition has the right to freedom of expression, airtime on official media (proportional to its representation), and public finance. Article 82 provides that “one day per month at least is reserved for the examination of the proposals of law ... which are [from] the opposition.” For more on Morocco’s 2011 constitution, see Mohamed Madani, Driss Maghraoui and Saloua Zerhouni, *The 2011 Moroccan Constitution: A Critical Analysis* (Stockholm: International

IDEA, 2012), <https://www.idea.int/sites/default/files/publications/the-2011-moroccan-constitution-critical-analysis.pdf>.

Article 48 provides that the king may preside over the government’s sessions. Although the constitution is silent on the government’s rules of procedure when the king is present, given his status within the Moroccan state and society, it is clear that individual ministers would not be in a position to disagree with any of the king’s initiatives or decisions issued in that context.

Article 107 provides that the “King is the guarantor of the independence of the judicial power.” Article 115 provides that the Superior Council of the Judicial Power is presided over by the king, and that the king has the right to appoint five “notable persons” to the council. Article 130 provides that six of the Constitutional Court’s twelve members, as well as the court’s president, are appointed by the king. Three of the remaining members are to be elected by the Chamber of Representatives, and the other three by the Chamber of Councilors.

75 Sufian Obeidat, “The Amended Constitution of Jordan: Analysis and Recommendations Study,” unpublished paper prepared for International IDEA.

76 Al-Ali, “The New Syrian Constitution: An Assessment,” *ConstitutionNet*, February 27, 2012. (This article is no longer available online.)

77 For more on Tunisia’s 2014 constitution, see Al-Ali and Donia Ben Romdhane, “Tunisia’s New Constitution: Progress and Challenges to Come,” *openDemocracy*, February 16, 2014, <https://www.opendemocracy.net/en/north-africa-west-asia/tunisia-new-constitution-progress-and-challenges-to-/>; and Al-Ali, “Tunisia’s New Constitution: A Contextual Analysis” (Arabic), *Siyasat Arabiya*, 18 (2016): 199–31, <https://siyasatarabiya.dohainstitute.org/en/issue018/Pages/art10.aspx>.

78 Article 49. The use of the term “proportional” is a specific reference to the doctrine of proportionality that was developed in Germany during the nineteenth century and which has now become a fundamental element of many countries’ constitutional systems, including Canada, South Africa, Kenya, the European Union, and elsewhere. For more, see Aharon Barak, *Proportionality* (Cambridge: Cambridge University Press, 2011).

79 Amongst other things, the constitution is completely silent on what it is that the local authorities will actually be doing and what they will be responsible for. Will they be responsible for establishing health policy at the local level? Will they be responsible for maintaining roads, garbage collection, or recycling? The constitution does not provide us with any indication whatsoever.

80 For a more detailed treatment of the drafting processes and of the major parties that were involved in the constitutional negotiations, see Al-Ali, “Five Years of Arab Constitutional Reform: Balancing Process Requirements with the Demands of Fragile Democratic Traditions,” in *Reconstructing the Middle East*, ed. Abdelwahhab Alkebsi, Charlotta Sparre, and Nathan J. Brown (New York: Routledge, 2016), 44–87.

81 For more, see Helen Lackner, *Yemen in Crisis: Autocracy, Neo-Liberalism and the Disintegration of a State* (London: Saqi Books, 2018).

82 See Lackner, “Yemen’s ‘Peaceful’ Transition from Autocracy: Could It Have Succeeded?,” *International IDEA*, March 29, 2016, <https://www.idea.int/publications/catalogue/yemens-peaceful-transition-autocracy-could-it-have-succeeded>.

83 The NDC was also charged with discussing reform of the civil service, the judiciary and local governance, national reconciliation and transitional justice, human rights, and the protection of vulnerable groups.

84 Each of the working groups counted among its members political party representatives, civil society representatives, and independent experts. For the key question of what powers state institutions should exercise, and whether Yemen should maintain its centralized system of government or federalize, a “State Building Working Group” was established.

85 The conference reached detailed agreements on a large number of issues, all of which were captured in what is referred to as the conference’s “outcomes,” of which there were close to two thousand. According to the original version of the transition plan, all of the outcomes are theoretically binding on the state and are supposed to form the basis of the future constitutional arrangement. The transition was interrupted by conflict in 2015, which is still ongoing at the time of writing.

86 Other examples abound. To the 1991 constitution’s requirement that the state should provide “free health services,” the working group’s members’ only contribution was to require the state to “scale-up health and educational services all over the country on the basis of modern health and education policies that meet access to such services in high quality to all members of society equally and in a manner that achieves equity.” Finally, a working group also considered the 1991 constitution’s requirement that the state expand “health education” by providing that “[increased] attention should be given to girls’ education in health aspects. Girls should be given suitable opportunities to join this sector and the State shall encourage rural girls enrolled in this field.”

The right to education was supposedly guaranteed by the 1991 constitution through a requirement that the state construct “various schools and cultural and educational institutions.” To this, the working group’s debate focused exclusively on the teaching curriculum’s content and the method of its development. The working group was particularly preoccupied with ensuring that teaching curricula should not be biased in favor of any particular ideology and that it should respect geographic diversity. The working group was so consumed by this issue that it ultimately decided that any attempt to politicize education should be “criminalized.”

87 See Rule 64, “Rules of Procedure,” Tunisian National Constituent Assembly, December 16, 2011, <http://constitutionnet.org/vl/item/tunisia-constituent-assembly-rules-procedure>. For a commentary of the rules of procedure, see Bill Proctor and Ikkal Ben Moussa, “The Tunisian Constituent Assembly’s By-Laws: A Brief Analysis,” International IDEA, 2012, <https://www.idea.int/publications/catalogue/tunisian-constituent-assembly%E2%80%99s-laws-brief-analysis>.

88 A limitation clause was eventually incorporated into article 49 of the final constitution.

89 There was a discussion about whether to include a provision that would have required “social dialogue” (in other words, collective bargaining). Some assembly members argued that the absence of collective bargaining was one of the reasons for persistent inequality in the country. The suggestion was rejected by a near totality of the country’s political forces, including those that dominated the assembly.

See Néji Baccouche, “Economic and Social Rights and the Tunisian Constitution,” UNDP, September 2016, <http://www.arabstates.undp.org/content/dam/irbas/doc/Compendium%20English/part%203/42%20N%C3%A9ji%20Baccouche%20EN.pdf>.

90 See article 2.17, first draft of the Tunisian constitution, August 2012.

91 See article 39. The final draft also provided that the state was under an obligation to “achieve a high quality of education, teaching and training.”

92 See article 38.

93 Article 2.14, first draft of the Tunisian constitution, August 2012.

94 Article 40.

95 Articles 20 and 32, first draft of the Egyptian constitution, September 20, 2012.

96 The final draft also provided that the state should “allocate a sufficient percentage of the national revenue to healthcare.” Article 62.

97 See “Unofficial Translation of the Constitutional Declaration of Egypt (July 08, 2013),” ConstitutionNet, accessed March 5, 2019, <http://www.constitutionnet.org/vl/.item/unofficial-english-translation-constitutional-declaration-egypt-july-08-2013>. For an analysis of the declaration, see Al-Ali, “Another Egyptian Constitutional Declaration,” Foreign Policy, July 9, 2013, <https://foreignpolicy.com/2013/07/09/another-egyptian-constitutional-declaration/>.

98 The C50 was supposed to represent all components of Egyptian society, including but not limited to political parties, trade unions, religious institutions, youth, and women.

99 See Article 18 of the final draft constitution, December 2013.

100 One somewhat humorous example of these debates is members’ discussion of whether the provision on the right to health should use the term “health” or “health care.” Some members argued that “health” would be more inclusive and comprehensive, but in the end a decision was taken in favor of “health care” on the basis that “only God could guarantee health.”

In another example, members disagreed as to whether the constitution should provide for a comprehensive health care system that covers “all diseases.” Some members argued that the wording was too broad, on the basis that it could be understood to mean that the state should provide coverage for cosmetic surgery. Minutes from the C50’s twenty-first meeting, November 6, 2013.

101 Minutes from the C50’s fifth meeting, September 11, 2013, 18.

102 These details included improving the already existing provision’s wording in a variety of ways, such as by including a reference to “good quality” education (see minutes from the C50’s ninth meeting, October 2, 2013, 9); encouraging the education of farmers’ children (see minutes from the C50’s fifth meeting, September 11, 2013, 20); and providing that al-Azhar’s various colleges should be subject to the Supreme Council of Universities (minutes from the C50’s seventh meeting, September 18, 2013, 19.)

103 On Colombia, see article 86 of Colombia’s 1991 constitution. On Kenya, see section 23 in the sixth schedule of Kenya’s 2010 constitution. On South Africa, see Nthabiseng Mogale, “Ten Years of Democracy in South Africa: Revisiting the AZAPO Decision,” in *Law, Memory and the Legacy of Apartheid: Ten Years after AZAPO v. President of South Africa*, ed. Wessel le Roux and Karin van Marle (Pretoria: Pretoria University Law Press, 2007), 127–48.

104 Yash Ghai and Jill Cottrell, “The State and Constitutionalism in Postcolonial Societies in Africa,” in *Law’s Ethical, Global and Theoretical Contexts: Essays in Honour of William Twining*, ed. Upendra Baxi, Christopher McCrudden, and Abdul Paliwala (Cambridge: Cambridge University Press, 2015), 179–80. “In Asia and Africa (but not in Eastern Europe), the people won the right to participate in the making of the new constitutions. . . . They represent a sharp and radical break from the administration of the state since the birth of colonialism and the era of independence. Precisely because of this they face formidable difficulties of implementation and enforcement.”

105 See, for example, Jason Brownlee, Tarek Masoud and Andrew Reynolds, *The Arab Spring: Pathways of Repression and Reform* (New York: Oxford University Press, 2015).

106 See Facundo Alvaredo, Lydia Assouad, and Thomas Piketty, “Measuring Inequality in the Middle East 1990–2016: The World’s Most Unequal Region?,” World Inequality Database, paper series no. 2017/15, <https://wid.world/document/alvaredoassouadpiketty-middleeast-widworldwp201715/>.

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