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Transitional Process and Human Rights Developments in the MENA Region: The Cases of Egypt and Tunisia

Orta Doğu ve Kuzey Afrika Bölgesindeki Geçiş Süreci ve İnsan Haklarının Gelişimi: Mısır ve Tunus Örnekleri

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ÖZ

Orta Doğu ve Kuzey Afrika'daki ayaklanmalardan on yıl sonra, geçiş süreci belirsizliğini korumaktadır ve bölgedeki geçiş ülkeleri insan hakları uygulamalarının iyileştirilmesi konusunda birçok zorlukla karşı karşıya bulunmaktadır. Bu makale, Orta Doğu ve Kuzey Afrika Bölgesindeki 2011 ayaklanmalarından sonra insan haklarının gelişimine bakacak ve insan haklarının iyileştirilmesi vaadini taşıyan geçiş sürecinin neden başarısız olduğu sorusuna cevap vermeye çalışacaktır. 2011 ayaklanmalarından sonra Mısır ve Tunus'taki anayasa yapım sürecine, geçiş dönemi adaletine ve farklı ideolojik ve siyasi aktörler arasındaki kutuplaşmaya odaklanan bu makale, geçiş sürecinde Mısır ve Tunus'taki kurumsal çerçeve ve aktörlerin süreklilik ve değişimlerinin, insan haklarının korunmasına yönelik etkisini inceleyecektir...

ABSTRACT

A decade after the uprisings in the MENA region, the outcomes of the transitions from authoritarian systems are obscure and transitional countries are facing many challenges in the matter of the improvement of human rights practices in the region. This article looks at the transformation in the field of human rights after those 2011 uprisings and addresses the question of why the transitional process in the MENA region, which held the promise of the advancement of human rights, failed to improve human rights practices. It explores the impact of continuity and change in institutional frameworks and actors in Egypt and Tunisia on the protection of human rights during the transitional process, focusing mainly on constitution-making processes, transitional justice, and polarisation among various political actors with different ideological and political backgrounds.

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Introduction

The uprisings across the Middle East and North Africa (MENA) in 2011 have opened a window of opportunity for the countries in the region to improve human rights¹ practices. Years of political oppression and human rights violations, triggered uprisings in the region and made human rights a crucial element in challenging the power of the authoritarian governments (Mokhtari, 2015; Monshipouri, 2014, pp. 63-64; Richardson-Little, 2015, p. 158). The protesters framed the objective of these uprisings mainly in terms of human rights, social justice, economic opportunities, freedom, and dignity (Monshipouri, 2014, pp. 63-64). The ouster of the authoritarian regimes was regarded as a historical opportunity to make advances in the field of human rights in the region.

As human rights improvements have a significant impact on democratisation and conflict resolution, it is of utmost importance that the international community and domestic policymakers centre the improvement of human rights in transitional countries as a primary goal (Horowitz and Schnabel, 2004, p. 3). The establishment of an institutional and legal framework is fundamental to the protection of human rights in transitional countries. Nevertheless, transitional countries typically face several challenges in establishing the institutional and legal frameworks necessary to promote and protect human rights (Saral, 2019). It is no less common that transitional countries experience harsh human rights violations while undergoing transformations in the political, social, and economic spheres. In most cases, political realities force transitional countries to maintain their existing political frameworks instead of introducing fundamental changes in institutional and legal frameworks. At the same time, transitional countries may fail to address human rights with a holistic approach and mostly focus on the democratic transition while undermining economic rights, which, in turn, causes the worsening of economic conditions in these transitional countries (Tian, 2014, p. 99).

A decade after the uprisings in the MENA region, the outcomes of the transitions from authoritarian systems are obscure and transitional countries are facing many challenges with deep disappointments in the matter of the improvement of human rights practices in the region. The outcomes of these transitional processes vary from rare success stories, as in the case of Tunisia, to the disappointing backsliding of human rights, as in the case of Egypt, or the collapse of the state and disintegration of society, as in the cases of Libya and Syria (Larbi, 2016). Since 2011 scholars have described the transitional process in the MENA region, in full swing and still expanding, as incomplete (Dorsey, 2018, p. 84; Sadiki and Hachimi, 2018, p. 11) and uncertain (Ibrahim, 2010). To understand the prospects of the transitional process in the region, some scholars have focused on the similarities and differences between the transitional Arab countries and other transitional regions like Latin America and Southern Europe (Schmitter and Sika, 2017). The transitional process poses increasing dilemmas and difficulties for the countries in the region (Tian, 2014, p. 96), and Egypt and Tunisia, as two important transitional MENA countries (Asseburg and Wimmen, 2016; Hassan et al., 2019; Ibrahim, 2010; Stepan and Linz, 2013), have similarly faced diverse challenges in the course of their post-uprising transitions. These two major countries of the Arab uprisings are interesting cases to compare because of their similarities and their crucial underlying differences. Both are Arabic-speaking countries with a majority Sunni Muslim population and both had hegemonic and authoritarian

¹This article takes the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, as the source of international human rights standards.

regimes with restrictive legal systems and policies on human rights (Andrieu, 2016; Huellen, 2013; Freedom House, 2005; Freedom House, 2007; Freedom House, 2011). Throughout their histories, citizens of both countries suffered the abuse of basic rights and freedoms in the hands of authoritarian rulers who largely violated the international human rights treaties that were signed and ratified. Both countries experienced political unrest and the removal of authoritarian rulers, but the results of the transition processes were different, leading to a certain degree of democratic change and reforms in Tunisia and to a highly uncertain and unstable environment with a hegemonic authoritarian regime in Egypt. Both countries also had some similarities in the first years of the transitional period following the uprisings in 2011. Both held free elections, wherein Islamist parties won and went through processes of drafting new constitutions. However, Tunisia experienced a partly successful transitional process, whereas Egypt's post-revolutionary transitional process involved significant setbacks (Hassan et al., 2019). Egypt, after a coup in 2013, returned to authoritarian rule, violating human rights in a more aggressive way than before the 2011 uprisings (Human Rights Watch, 2015; Human Rights Watch, 2019, Human Rights Watch, 2020). Even Tunisia, as the only success story of the transitional process in the region, faced several challenges in establishing the necessary institutional framework and promoting human rights. As a consequence of the slowdown in the establishment of a new institutional and legal framework in Tunisia after 2014, this country also experienced a backsliding in human rights protection. This was partially caused by the disintegrated approach of these transitional countries with regard to the economic, social, and political aspects of the transition. Security threats and serious socio-economic problems made it very hard for the governments to meet the expectations of their citizens with regard to their political and socio-economic rights, which caused new outbreaks of upheaval in the region in turn (Florensa, 2016, p. 11). Moreover, the institutional and actor-related features inherited from the authoritarian regimes influenced the course and outcome of the transitional processes in both countries. These similarities and differences in the transitional processes of these two countries provide an opportunity to gain useful insights into the dynamics of the transitional processes in the course of the uprisings in the MENA region (Asseburg and Wimmen, 2016).

This article aims to analyse the transitional process after the 2011 uprisings in the MENA region focusing on two significant transitional countries, namely Egypt and Tunisia. It addresses the question of how the transitional process impacted the development of human rights in the MENA region, looking at the impact of the continuities and changes in the institutional frameworks and actors in Egypt and Tunisia on the development of human rights during the transitional process. An overview of the theoretical framework of the transitional process will be provided first, focusing mainly on constitution-making processes, transitional justice, and polarisation among various political actors with different ideological and political backgrounds. In the next step, this article presents analyses of these two cases, building up the theoretical framework.

Transitional Countries and Human Rights

Transition is a gradual process of political change (Turner, 2015, p. 210) and this term is generally used interchangeably with democratisation. Some scholars also use "transformation" to emphasise the fluidity and unpredictability of the process and to avoid a directionality or the requisite for some form of democratisation (Heydeman, 2016, p. 195). The transitional process from authoritarian regimes is mostly expected to result in democracy following the European transitional examples, which mainly resulted in the consolidation of democracy. However, transition is an open-ended process and democracy is not necessarily its end point. Transition processes can also lead to the restoration of an authoritarian system (Colombo, 2016; O'Donnell et al., 1986; Senen, 2016, p. 21). Thus, the question of "a transition

to what” is a challenging one within the context of the analysis of transitional processes (Dorsey, 2018, p. 84). Transitional countries where authoritarian features have long been embedded in state institutions and policies face particular challenges that limit their ability to meet the expectations of revolutionaries with regard to transitions to more democratic regimes and the protection of human rights. Studies on the transitions of Arab countries are mostly dominated by the theories of “Arab exceptionalism”, referring to the lack of successful democratic transition in the region (Diomand, 2010; Zhongmin, 2015, p. 39). The uprisings beginning at the end of 2010 were referred to as the fourth wave of democratisation (ibid., p. 40). However, the transitional processes in the MENA countries from 2011 onwards have not been straightforward; there have been transitions from authoritarian systems to more democratic regimes to a certain extent, but these have turned out to be rather undecisive and open-ended processes providing a basis for ongoing human rights violations (Asseburg and Wimmen, 2016; Bouziane, 2013; Tian, 2014, pp. 100-101).

Special attention should be paid to the main sources of ongoing violations in transitional countries in order to address transitional human rights problems in a constructive manner. The success of a transition is largely associated with free and fair elections together with legal and institutional protection of human rights involving extensive political rights and freedoms such as freedom of expression, freedom of media, and freedom of association. However, in practice, the existence of extensive political rights and freedoms does not necessarily always mean strong protection of human rights, and the assurance of political rights and freedoms does not necessarily hinder limitations of other human rights. The disproportionate application of police and judicial powers as well as the restriction of economic opportunities of individuals and groups may potentially violate the rights of people from diverse political backgrounds (Horowitz and Schnabel, 2004, p. 4). In most cases, the development of human rights in transitional countries is related to the change and continuity in actors and institutional frameworks. The question of what has been inherited from past authoritarian regimes is a decisive one with regard to human rights protection in transitional countries. In this context, it is also necessary to pay attention to the anti-democratic and authoritarian values inherited from the former regimes and to the human rights violations committed under those regimes. It is not rare that newly established democratic norms co-exist with constitutional or legislative elements inherited from past authoritarian regimes, which in turn limit democratic practices and impact the transitional process negatively. Moreover, the political elite from the former authoritarian regime may actively hinder a move to a more democratic one (Garretton, 1994, p. 222-223). Transitional processes are identified by transformations at the institutional level, which are mostly evidenced by changes of political systems or revisions of constitutions (Colombo, 2018). The struggle for human rights during the transitional period necessitates changes in the country’s institutional and political landscape. Human rights protection requires limiting the power of the government, securing equality among citizens under the rule of law, guaranteeing an independent judiciary, and, above all else, establishing the necessary institutional frameworks for all of these. Governments are required to protect the basic rights and freedoms of individuals and should limit their own powers in order to do so (Gomez and Robin, 2014, p. 8). Positive improvement in the field of human rights in transitional countries depends on the creation of certain state institutions and laws, and the implementation of particular state policies leads to increased enjoyment of human rights. Elements such as international treaty commitments, constitutional guarantees, and legal and institutional frameworks are necessary for the effective promotion of human rights (Saral, 2019). Institutional and legal reforms during the transitional process are not only necessary to weaken the institutional framework inherited from the authoritarian past and to strengthen the institutions necessary for the protection of human rights; they also increase the domestic

awareness of the international dimension of human rights, which has long-term positive effects on their promotion (Panizza, 1995, pp. 171-173).

Another important point to consider is the constitution-making process in transitional countries, since transitions and constitutional processes are linked to each other. Thus, the international community must help and support transitional countries for successful constitution-making processes. Constitutions are regarded as peace agreements symbolising the departure from past authoritarian systems and it is also expected that the constitutional framework of a transitional country will be in line with the principle of rule of law and the international standards of human rights protection, which would also provide the basis for the further design of all state institutions and policies (Turner, 2015, p. 268). As the constitution of a country is its most important legal document with regard to human rights promotion, the constitution-making process has the potential to provide us with a significant picture of the institutionalisation of human rights in transitional countries. In this regard, constitutions not only define the relationship between citizens and their government; they also set limitations before the government to safeguard citizens from violent state behaviours. Constitutions in post-revolutionary countries particularly reflect the consensus among various political actors focusing on the question of how the state should be organised. However, this consensus might focus more on the break from the past and on enshrining political gains into the new constitution. Thus, constitutions reflect the struggles among opposing political actors with different visions of how the post-revolutionary state should be transformed, all trying to inject their own legal and cultural principles into the new constitution. In this regard, within the transitional context, constitutions also guide the process of negotiation among various political actors and may culminate in entrenching the rule of law with an aim of ending violence and compensating past human rights violations (Turner, 2015, p. 269). The constitutions in transitional countries also shape the outcome of the transitional process as they mark the establishment of an institutional and legal framework for the new political sphere and provide an opportunity for the new regime to distance itself from the past authoritarian and abusive regime. They symbolise the commitment of the new regime to the rule of law and to the protection of human rights by ensuring accountability for human rights abuses and hindering their re-occurrence through the consolidation of democracy (Teitel, 2000; Turner, 2015).

One of the main debates with regard to human rights during the transitional period is how to deal with the past human rights abuses committed under past authoritarian regimes and how to punish the actors accused of gross human rights violations. In this context, the question of how to establish rule of law and enshrine human rights guarantees into the institutional framework of the country to avoid the recurrence of similar human rights violations is also a significant one. The punishment of past violators is thus not only a question of justice or moral obligation but also a necessary mechanism to prevent the recurrence of such crimes in the present or the future (Panizza, 1995, pp. 171-173). Transitional justice stands out here as a powerful tool for a peaceful transition to a democratic system based on the rule of law by helping political actors build trust between the newly established government and citizens who suffered longstanding and severe human rights violations under the past authoritarian regime, as well as offering an opportunity to compensate the past wrongdoings. There are several measures available to political actors to achieve a successful transitional justice process, such as trials, truth-seeking, and reparations. As Andrieu (2016) points out, if these mechanisms are applied wholly and successfully, the recurrence of violence in transitional countries can be hindered and the democratisation and reconciliation of post-authoritarian societies will be fostered (Andrieu, 2016, p. 262). On the one hand, there is an ethical aspect of transitional justice, namely dealing with past crimes. In this context, punishing the actors responsible for

severe human rights violations of the past provides a powerful institutional and symbolic reparation to the victims. On the other hand, transitional justice as a political strategy punishes those past crimes, and, in doing so, aims at maintaining the democratic regime, because punishing past crimes is not only an essential condition for healing the wounds caused by past human rights violations. It also ensures that grave human rights violations will not occur again in the future (Garreton, 1994, p. 224).

Human Rights Protection in Transitional Tunisia and Egypt

Following the uprisings and the ouster of the authoritarian regimes in Tunisia and Egypt, democratic elections were held in both countries. As free and fair elections are accepted as crucial elements of a successful transition to a more democratic system, the elections in both countries were welcomed with great expectations. However, the electoral victories of Islamist actors raised great concerns about the future of these democratic transitions. The election of the Muslim Brotherhood's Mohammad Morsi in June 2012 as president of Egypt and the electoral victory of the Ennahda Movement and its strong influence in the Tunisian political arena after President Zine El Abidine Ben Ali stepped down as a result of the protests were both regarded as extremely critical for the course of events in the post-revolutionary MENA region. Indeed, the establishment of Islamist parties as key players in the transitional process created new internal divisions and disagreements that greatly impacted the process of the transformation of institutional and legal frameworks in the region. Particularly in Egypt and Tunisia, ideological dilemmas of secularism and the role of religion in the political sphere were excessively present. The tension between the secularist and Islamist parties shaping the transitional institutional and legal reforms could be partially defused in Tunisia, whereas the repeated occurrence of turbulence in Egypt moved the transition backward (Tian, 2014, pp. 100-101). The ability of secularist and Islamist actors to reach a consensus on the establishment of an institutional and legal framework contributed to the success of the transitional process in Tunisia. Such compromise between different political actors did not exist in Egypt, and this made the Egyptian transitional process fail (Hassan et al., 2019). In particular, the debate among secularist and Islamist actors regarding the place of religion in the constitution (Darin, 2015, p. 1031) illustrated the importance of the delicate balance between Islamist and secularist actors for the outcome and the success of the constitution-making process.

The impact of the influence of actors from the old regime was very strongly exemplified in the case of the Egyptian transitional process, but it was also decisive for the backsliding of the transitional process in Tunisia after 2014. The strong influence of the Egyptian military and anti-revolutionary political actors from the Mubarak era was critical in the overall failure of the transitional process in Egypt. This is one of the main reasons why the transition in Egypt involved a shift from an authoritarian regime to another more authoritarian one. In Egypt, the military, which has been the most significant pillar of Egyptian politics since 1952, has dominated the transitional process and, moreover, increased its power excessively after the uprisings. With the start of the revolutionary developments and the overthrow of Mubarak, the military and former regime officials started to support and lead Egypt's counter-revolution (Agha and Malley, 2011; Stork, 2012; Sultany, 2017). The army allied with former regime officials with the aim of stopping the institutionalisation of the revolution and, in turn, caused the destabilisation of the country. The Egyptian military, judiciary, and security forces were involved in counter-revolutionary actions not only during the period of the Supreme Council of the Armed Forces but also during the short-lived Morsi government, which heavily influenced the transitional period and human rights practices in the country in turn (Sultany, 2017).

In the case of Tunisia, one might say that the relative success of the transitional process was a result of the involvement of balanced Islamist and secular political actors who, at the end,

could reach a compromise and consensus with regard to the institutional and legal framework to be established in the post-revolutionary period. However, in a similar vein, the return of some political actors from the Ben Ali era was also decisive in the backsliding of the democratisation process in transitional Tunisia, particularly after 2014 (Schmitter and Sika, 2017). Many problems, such as uneven economic growth, security concerns, a failure to address the everyday needs of the Tunisian citizens, and political instability, contributed to that backsliding in the transitional process of the country (Quamar, 2015, p. 280), giving rise to growing disappointment among Tunisians and making the Nidaa Tounes party an appealing alternative for Tunisian voters. It was not a surprise when Nidaa Tounes—drawing from among Ben Ali officials, political actors, and smaller leftist groups—won the 2014 elections and opened the way for the comeback of many political actors from the Ben Ali era to the Tunisian political scene (Quamar, 2015, pp. 281-282). This return of a number of political actors from the former Tunisian regime has caused a slowdown in institutional reforms and transitional justice, which, in turn, has negatively influenced the country's transitional process and human rights protection (Saral, 2019, pp. 17-21).

The realisation of certain institutional reforms in Tunisia to adjust to the revolutionary needs of the country also led to success in the transitional process. After Ben Ali's ouster in 2011, Tunisia underwent an intensive process of political and institutional change; as a result, a more successful transition was experienced there compared to other transitional MENA countries (Bellin, 2011, p. 6; Saral, 2019). Of particular importance in this context is the establishment of the constitution of 2014 and several other independent commissions such as the Truth and Dignity Commission (IVD), the Commission against Torture, and the Human Rights Commission, which were aimed at strengthening the institutional and legal framework in Tunisia to effectively protect human rights (Saral, 2019, pp. 19-21).

In spite of these positive steps taken during the first years of the transitional process in Tunisia, the process has faced major challenges since 2014, including weaknesses of the government in establishing the institutions guaranteed by the constitution to create the necessary checks and balances. After 2014, Tunisian political actors failed to provide their support for the institutions promised by the constitution to safeguard human rights in the country, such as the constitutional court and the IVD. More importantly, the post-revolutionary governments failed to meet the demands of the people with regard to social and economic improvements (Larbi, 2016, p. 15; Saral, 2019).

Reforms concerning the institutional framework, including constitutional provisions for the protection of human rights, will remain meaningless if the rule of law and the established institutional framework continue to be disregarded by political actors or if the state becomes dominated by certain actors violating human rights and the principle of rule of law. In that sense, state institutions and the law are used as instruments of domination rather than guarantees of justice or instruments to protect human rights (Panizza, 1995, p. 183). This was strongly the case in post-revolutionary Egypt. Throughout the history of Egypt, the military has enjoyed a privileged position and has been at the centre of the political scene. Since 2011, the military has gained further unchecked powers in the executive and legislative spheres, strengthening its role in politics and threatening the basic rights of Egyptians in the course of the transitional process. Particularly after the 2013 coup, the military achieved an absolute power gain, enabling it to impose its own political agenda and shape the country's political outcomes (Röder, 2016, p. 292). After the military coup of July 2013, the military government weakened the constitutional institutions and systematic human rights violations became state policy. Policies, legal reforms, and institutional reforms in Egypt have also hindered change or have reproduced Egypt's pre-existing authoritarian framework (Sultany, 2017). Egypt after the coup had a regime even more

repressive than Mubarak's government, and the power relationship between political actors and the military shifted more strongly in favour of the latter after the uprisings. The Egyptian military became a more powerful institution after the uprisings, and the post-revolutionary constitutions of 2012 and 2014 strengthened its position in Egyptians politics (Roll, 2016).

As outlined above, the constitution-writing processes and negotiations between political actors from diverse political and ideological backgrounds during the constitution-making process are decisive for the success or failure of a transitional process. Egypt's and Tunisia's constitution-making processes deserve special attention for their diverse accomplishments and, in particular, because of the role of various political actors in these political achievements. The first Egyptian and Tunisian constitutions after the ouster of the authoritarian rulers were regarded as ground-breaking because of the involvement of Islamic parties in the constitution-making process. This was viewed, on the one hand, as the recognition of the supremacy of law by these Islamic parties. On the other hand, it was perceived as a signal of the maintenance of moderate behaviour among Islamist parties, which, in turn, caused hopes for a broad national consensus. Tunisia's successful constitutional process was the product of negotiations and an inclusive approach, whereas Egypt went through grave polarisation between opposite poles and widespread social dissent. Egypt's political actors were not successful in building a political agreement among the most significant opposing parties and institutions, including the military, secularists, and Islamists. The elites involved in the constitution-making process preferred to protect their own narrow interests rather than creating consensus, causing a return to authoritarianism (Florensa, 2016, p. 13).

During the Tunisian constitution-making process, political actors from diverse ideological backgrounds showed extraordinary readiness to reach a consensus. Both secularist and Islamist actors made many concessions on controversial issues, which made the Tunisian case a success story in comparison to the other post-uprising countries in the region (Pickard, 2015, pp. 4-5; Saral, 2019, pp. 11-15). Ennahda made particularly noteworthy concessions on the issue of the place of *Sharia* (Islamic law) in the Tunisian constitution. This was one of the most controversial issues during the constitution-making process with the potential to cause a schism between secularist and Islamist actors. Ennahda not only forwent any reference to *Sharia* in the constitution but also accepted the direct reference to gender equality in the constitution, as well as reference to freedom of conscience and belief, to allow for a smoother transition in Tunisia (Netterstrom, 2015; Marks, 2014; Guazzone, 2013, pp. 38-39; Saral, 2019, pp. 11-15).

In addition to consensus and negotiation, international assistance during the constitution-making process was also decisively influential. Egypt refused international aid in writing its constitution while several international organisations and experts supported the drafting process in Tunisia. The Tunisian constitution-making process was a participatory process whereby several sessions were organised to record public concerns. However, the Egyptian constitution-making process was very exclusive with regard to civil society, the role of which remained very weak (Bernard-Maugiron, 2016, p. 124). In Tunisia, the strong presence of civil society positively influenced the transitional process in general and the constitution-making process in particular.

The struggle during the transitional process gave rise to the emergence of an autonomous and strong civil society in Tunisia. This active civil society was one of the main actors in the success story of the Tunisian transitional process, strongly impacting policymaking and the institutional framework. These civil society organisations are also linked with international NGOs, and, in many cases, they interact with the state apparatus at different levels

and on different terms, as in the case of Al Bawsala,² which assisted parliament members during the drafting of laws in the post-uprising period and influenced the institutional and legal framework and policy formation in the country significantly. The best example of civil society's positive role in the success of the Tunisian transitional justice process is the National Dialogue initiative consisting of four significant organisations: the UGTT (Trade Labour Unions), UTICA (Businesses Association), LTDH (League of Human Rights), and National Lawyers Association. This initiative served as an instrument for crisis management, addressed the most contentious political issues with regard to the constitution-making process, and enabled the adoption of a constitution reflecting the consensus among various political actors (Larbi, 2016, p. 19). In contrast to civil society's involvement and international actors' support in the Tunisian constitution-making process, in Egypt the most influential actors in drafting the constitution were the army and the judiciary, who pushed through constitutional provisions in their own interest (Brown and Dunne, 2013).

Transitional justice was also at the centre of debates with regard to the failure and success of the transitional process in both countries following the uprisings in 2011. As in cases of Latin American transitional countries such as Brazil, Chile, and Argentina, the North African transitional countries also faced the challenge of the hesitation of transitional governments to investigate the human rights violations in their authoritarian pasts (Panizza, 1995, p. 180). Even in Tunisia, where transitional justice dominated the post-uprising period of the country, debates about political amnesties and impunities damaged the transitional process. The weakness in punishing those responsible for serious human rights crimes and the willingness to pardon them was one of the major causes of the failure of the transitional process (Saral, 2019, p. 17). The Tunisian case illustrates how it is difficult to translate moral standards into political realities in transitional countries.

In the case of Egypt, one must note the negligence of the Morsi government in establishing a transitional justice committee, which would have been a vital institution in post-uprising Egypt with regard to human rights protection and would in turn have positively contributed to the transitional process of the country. In this regard, transitional justice, which was one of the most important mechanisms of the success of the Tunisian post-uprising transitional period (although the process would be stunted by political figures from the Ben Ali era), was not facilitated in Egypt. In spite of the great efforts in the first years of the Tunisian transitional process, however, transitional justice there could also not be completed successfully. As a result, even a decade after the uprisings some human rights problems are still ongoing, stemming either from military rule or from the weaknesses of political and legal institutions failing to facilitate an effective transitional justice process and address the past violations of human rights.

The backsliding of the transitional process in Tunisia was closely linked to the failure of transitional justice. The transitional process began with great hopes, but it would be sacrificed starting from 2014, particularly due to the growing influence of political actors from the Ben Ali era in the political scene. Political actors of the former regime not only tried to stop the transitional justice process that aimed to compensate the victims of human rights violations and to make past violators accountable; they also tried to grant amnesties and impunities to such state officials of the past. The reconciliation bill intending to pardon officials of the Ben Ali era

² Al Bawsala is a non-governmental organisation under Tunisian non-profit law. For more information on Al Bawsala please see: <https://www.albawsala.com/en/>

who were accused of bribery was the first step in damaging the transitional justice process and diminishing the trust between citizens and the post-revolutionary government. Civil society actors condemned the bill, but political actors from Nidaa Tounes and Ennahda tried to justify it, arguing that it would positively contribute to the country's economy as officials benefiting from the amnesty were supposed to refund the stolen money. In spite of the resistance from oppositional and civil society actors, the bill was approved in September 2017. One of the main consequences of this approval was the strengthening of the perception of Nidaa Tounes as an extension of the Ben Ali era, and this also caused a strong questioning of the sincerity of Ennahda as a coalition partner of Nidaa Tounes (Yardımcı-Geyikçi and Tür, 2018, p. 794; Saral, 2019, pp. 17-21).

The image of Nidaa Tounes was similarly damaged by its role in weakening the IVD's capacity to complete the transitional justice process. The IVD was established to investigate human rights violations of the past authoritarian regime and to offer compensation to the victims of grave human rights violations (Yardımcı-Geyikçi and Tür, 2018, p. 794). Nidaa Tounes tried to hinder the work of the IVD by not attending the public hearing, which strengthened the belief that the political actors remaining from the past authoritarian system were trying to stop the transitional justice process in Tunisia. Finally, in March 2018, the Tunisian parliament deactivated the Truth and Dignity Commission by rejecting the proposal for a seven-month extension of its mandate. This was a clear signal that Nidaa Tounes, in voting against the extension of the IVD's mandate, had slowed down the transitional justice process and weakened the institutional framework needed for the protection of human rights. However, even before that, the work of the IVD was hindered by several state institutions and officials and the transitional justice process was slowed down in various ways, which caused a grave backsliding of human rights protection in Tunisia (Amnesty International, 2018).

Conclusion

Human rights protection is strongly linked to transitional processes and is regarded as one of the most significant factors in the success of such processes. This article has looked at the development of human rights in Egypt and Tunisia in the course of their transitional processes following the 2011 uprisings in the region. The article has also focused on analyses of continuity and change in these transitional countries with regard to institutional frameworks and actors critical for the outcome of the transitional process and for the development of human rights protections in transitional countries. Particular attention has been paid here to constitution-making and transitional justice processes. It has been demonstrated that for a successful transition to human rights, all of these areas must be treated comprehensively. Failure to do so will leave the transition incomplete and the protection of human rights weak.

The Tunisian and Egyptian cases illustrate how the continuing strong influence of actors from a former regime can negatively impact transitional processes. With regard to the establishment of institutional and legal frameworks, the constitution-making process particularly proves the importance of the break from the past and transformation to a new regime in a peaceful way. The cases of Egypt and Tunisia are also good examples of the key role of civil society and the international community in providing the legal basis for the rule of law and human rights protection. As both cases show, the process of drafting the constitution is decisive in the failure or success of the transitional justice process and, in turn, of the protection of human rights. In Egypt the transitional process was negatively influenced by the struggle between opposing parties as they failed to reach a consensus, whereas in Tunisia diverse actors from different ideological backgrounds were able to reach a consensus and establish a constitutional framework incorporating international human rights standards, which positively contributed to the success of the Tunisian transitional process. Moreover, this article

has shown the significance of transitional justice in providing ethical and material support for victims of human rights violations and preventing the continuation of human rights violations by newly established regimes. In the case of Egypt, transitional justice was neglected from the beginning of the transition as the need to compromise with the military elite overruled the necessity of justice and compensation. In the case of Tunisia, the transitional justice process began with great hopes and had the potential to contribute to a successful transition. However, the continued influence of actors from the former regime in the political sphere similarly slowed down or hindered the transitional justice process.

With these two case studies, this article has confirmed that the transitional processes do not inherently lead to the protection of human rights. Egypt's transitional process was a backward transition that illustrates how a transition may end in a system that is more authoritarian than the previous one due to features inherited from the former authoritarian regime and polarisation among political actors. Although Tunisia is regarded as one of the rare success stories of the region in terms of its transitional process, it also reflects the main challenges and dilemmas of transitional processes due to features inherited from the past authoritarian regime and stunted institutional frameworks. This is a troubling outcome due to the significant impact that human rights protection has on both democratisation and conflict resolution in transitional settings.

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