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Guarantees For Civil and Political Liberties in Tunisia After the 2011 Revolution

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Abstract

The Tunisian revolution of 2011 did not come without fundamental causes, nor was it an accident. Rather, it was the culmination of a long struggle for freedom, dignity and equality. These principles are not only human rights, but closely related human characteristics and fundamental principles for all other rights and freedoms. Therefore, constitutions enacted after the fall of the regime are not expected to be created, but to be adopted and their observance guaranteed. The revolution that led to the overthrow of President Zine El Abidine Ben Ali was sparked when the young revolutionary Mohamed Bouazizi set his body on fire. Their first demand was for the rights and freedoms that had been taken away from the people by the oppression and tyranny of the regime of the time. This demand is about the guarantee of the freedoms guaranteed by the new laws and constitutions in Tunisia after the fall of the regime, as well as the extent of their interest in the application of these rights and their will to apply them in order to satisfy the revolutionaries and restore the fundamental rights and freedoms confiscated by the government before the revolution.

Keywords

Civil and political liberties, Constitutional guarantees, Freedom of opinion and expression, Tunisia, Jasmine Revolution, Arab Spring.

Introduction

The Arab constitutions were written at the beginning of the twentieth

century, and it was not possible to find in them guarantees of political liberties. The idea of guaranteeing civil and political liberties in Arab constitutions is relatively new, as it has become a major popular demand. Although the Tunisian constitution contains many guarantees for civil liberties, the policies of freedom of expression, the right to correspond, the right to belief, the right to freedom of the press, etc. has not yet reached the required level and extent due to the lack of practical application on the ground. The aim of this study is to compare the civil and political liberties in the 2014 Constitution and the new 2022 Constitution.

First-The Significance of the Study

The significance of the study lies in the following:

1. -It focuses on the reality of the guarantees of civil and political liberties in the Tunisian Constitution after 2011.
2. Adding a new academic dimension that focuses on conducting an analytical study of the main changes in the Tunisian Constitution Features of the January 2011 revolution, particularly in the area of civil and political liberties.

Second-The Problem of The Study

The study starts from the problem of examining the nature of guarantees and civil political liberties in Tunisia after the 2011 revolution.

Several sub-questions derive from this main problem, of which the following are perhaps the most important:

What are the guarantees of civil liberties in post-2011 Tunisia?

How has the Jasmine Revolution of 2010 affected guarantees and civil liberties?

What guarantees are there for freedom of religion and belief and individual freedom of life in Tunisia after 2011?

What is the status of civil rights and freedoms in the constitutions of 2014 and 2022?

Third- Hypothesis of the Study

The study hypothesizes that the 2010 Jasmine Revolution in Tunisia has had a positive impact on civil and political liberties in the Tunisian constitution, as it has become a demand and a cornerstone for the Tunisian people.

Fourth-Methods of the Study

In the context of the subject of the study, the legal method and the juridical approach are used because they are the most appropriate to investigate issues related to the constitutional guarantees related to civil and political liberties in Tunisia since 2010 until today, in addition to the use of the descriptive analytical

approach used to analyze the constitutional provisions related to civil and political liberties.

Fifth- Structure Of The Study

The study is divided into an introduction and two requirements, the first requirement concerns the guarantees of civil liberties in Tunisia, while the second requirement concerns the guarantees of political liberties in Tunisia after 2011, and the study also includes a conclusion.

The First Requirement: Guarantees for Civil Liberties

A: Guarantees for the freedom of Tunisian citizens regarding the secrecy of correspondence after 2011

Tunisia was known worldwide before the revolution as one of the countries where the internet and communications were most frequently and systematically blocked and confiscated. The secrecy of correspondence was enshrined in the constitution for Tunisian citizens in order to recognize the right of individuals to the secrecy of correspondence and to prevent the disclosure of correspondence between individuals, as this constitutes an attack on the private freedom to conceal the content of such correspondence and affects the exercise of freedom of thought and expression and its violation. Revolutionaries are free to exercise one of the most important means of expression and communication, as the Constitution states in chapter(24): "The State shall protect private life, the inviolability of the home, the secrecy of correspondence and personal data" and Chapter 49 states that "The law shall determine the control of the rights and freedoms guaranteed in this Constitution and their exercise in a manner that does not affect their essence, and such controls shall be established only when necessary in a civil and democratic State. In order to protect the rights of others or the requirements of public safety, national defense, public health or public morality, it shall be the duty of the organs of justice, while maintaining proportionality between such controls and their obligations, to protect rights and freedoms from any infringement, and no amendment shall impair the enjoyment of the human rights and freedoms guaranteed by this Constitution".¹ Freedoms, including freedom of correspondence and various freedoms.

In the 2022 Constitution, chapter (30) guarantees the freedom of correspondence of Tunisian citizens as follows: ***"The State shall protect private life, the inviolability of the home and the confidentiality of correspondence, communications and personal data. Every citizen has***

The freedom to choose his residence and to move within the country, and he has the right to leave the country." And Chapter (55) which states that "The rights and freedoms guaranteed in this Constitution may be restricted by law only to the extent necessary for reasons of national defense, public safety, public health,

the protection of the rights of others or public morality. Such limitations shall not impair the essence of the rights and

¹ Republic of Tunisia, Constitution of Tunisia, 2014, Part Two, Chapters 24-49

Freedoms guaranteed in this Constitution and shall be justified by their objectives and compatible with their motives. No revision shall impair the achievements of the human rights and freedoms guaranteed in this Constitution. All judicial bodies must protect these rights and freedoms from any violation".² According to this text, the Tunisian Constitution has closed the chapter of freedoms and various rights, and nothing may restrict them unless a justification is given for the interference with these rights.

B: Guarantees for Freedom of Residence and Housing in Tunisia after 2011

Regarding freedom of residence and housing and its guarantees, this freedom is considered the fundamental starting point and beginning of various freedoms, as it protects individuals and their families from any harm and allows anyone to live or build a house anywhere in the country to find protection and refuge, which refers to freedom of residence and housing in Tunisia. It was suppressed before the revolution and the new government must consider what the Tunisian family has suffered. The new constitution guarantees citizens freedom of residence and accommodation, as follows: Article (21) of the 2014 Tunisian Constitution guarantees freedom of residence. It states: ***"Male and female citizens are equal in rights and duties and are equal before the law without discrimination. The state guarantees citizens individual and universal rights and freedoms and provides them with the means to live in dignity."*** The State provides citizens with the means to live with dignity, and Chapter (41), which guarantees citizens' freedom of property, states: ***"The right to property is guaranteed and may be infringed only in cases and with guarantees regulated by law, and intellectual property is guaranteed"***.

The 2022 Constitution also enshrined freedom of residence and private property in Chapter (29): ***"The right to property is guaranteed and may be restricted only in cases regulated by law and with guarantees established by law. Intellectual property is guaranteed."***³ and Chapter (30), which states: ***"The State shall protect private life, the inviolability of the home and the secrecy of correspondence and telecommunications and personal data. Every citizen shall have the freedom to choose his place of residence and to move freely"***.⁴

² Official Gazette of the Republic of Tunisia, Constitution of Tunisia 2022, 30 June 2022, Chapters 30-55

³ Republic of Tunisia, Constitution of Tunisia, 2014, Part Two, Chapters 21-41

⁴ Official Gazette of the Republic of Tunisia, Constitution of Tunisia 2022, 30 June 2022, Chapters 29-30

C: Guarantees for freedom of movement in Tunisia after 2011

On the issue of freedom of movement, it can be said that the Tunisian constitutions and the governments that dominated the political scene after the revolution have guaranteed and legitimized freedom of movement, freedom of the morning and freedom of life in Tunisia, as it is one of the most important civil liberties of the individual that the state must protect by law, as this was the main demand of the revolutionaries, the transitional government has worked to ensure compliance with Article 12 of the International Covenant on Civil and Political Rights, which states: **"Everyone lawfully within the territory of a State has the right to move freely and to choose his place of residence, and everyone has the right to leave his country." And free access thereto, and none of these rights shall be arbitrarily restricted, nor shall the foregoing rights be limited by restrictions other than those prescribed by law and necessary in a democratic assembly for the protection of national security, public safety, public health, public morals, or the rights and freedoms of others**".⁵

In the Tunisian Constitution of 2014, chapter (24) stipulates freedom of movement: **"The State shall protect the inviolability of privacy, the inviolability of the home and the confidentiality of correspondence, communications and personal data. Every citizen shall have the right freely to choose his place of residence, to move freely within the country and to leave the country."** And Chapter (25) to: **"It shall be prohibited to deprive a citizen of his nationality, to alienate him, to extradite him or to prevent him from returning to his country of origin."** And Chapter (29) to: **"A person shall not be arrested or detained unless there is a case of flagrante delicto or a judicial decision and he shall be notified immediately"**.⁶ It is clear from this text that arrest is a violation of the citizen's freedom of movement, unless he was arrested in flagrante delicto or the arrest was made pursuant to a judicial order.

And in the new Tunisian constitution, which also guaranteed freedom of movement and movement, chapter (30) was deleted, which stated: **"The state shall protect private life, the inviolability of the home and the secrecy of correspondence and telecommunications, as well as personal data. Every citizen has the freedom to choose his place of residence and to move within the country, and he has the right to leave the country"**. (31) It says: **"It is forbidden to deprive a citizen of Tunisian nationality, to expatriate him, to extradite him orto prevent him from returning to his country of origin"**.⁷

⁵ Lotfi Bilal, Amira Al-Shawish, a previously mentioned source, p. 24

⁶ Republic of Tunisia, Constitution of Tunisia, 2014, Chapter Two, Chapters 24-25-29

⁷ Official Gazette of the Republic of Tunisia, Constitution of Tunisia 2022, 30 June 2022, Chapters 30-31

D: Guarantees for the Free Life of Individuals and Their Security in Tunisia after 2011

When we talk about constitutional guarantees for citizens in Tunisia after the Jasmine Revolution, we start with the text of the 2014 Tunisian Constitution, because chapter (22) of the 2014 Constitution states: **"The law is sacred and may not be violated except in the most extreme cases established by law."** The new Tunisian regime retained the previous post- revolutionary legislation abolishing the death penalty, as Chapter (23) states that **"The State shall protect human dignity and the inviolability of the body and shall prohibit moral and physical torture, as well as the right of every prisoner to humane treatment that preserves his or her dignity. The crime of torture has no statute of limitations, and the state considersthe interests of the family in the execution of the sentence and makes efforts to rehabilitate the prisoner and integrate him into society".**⁸ One of the most important actions taken by the Tunisian government in September 2017 was to reject the recommendations of the Human Rights Council on the death penalty.⁹

Perhaps it is useful in this context to recall the prohibition of the death penalty under the international conventions that Tunisia has ratified, such as the International Covenant on Civil and Political Rights in its Article 7 and the International Convention against Torture and Other Cruel, Degrading or Inhuman Treatment, as in this The prohibition is one of the principles of general international law, which considers these crimes to be prohibited regardless of the context in which they were committed.¹⁰

The 2022 Constitution enshrines the freedom of life and security of the individual. The Constitution reaffirms this guarantee in Chapter (24), which states: **"The right to life is sacred. It may be violated only in extreme cases established by law". Article 25 states that "The State shall protect human dignity and the inviolability of the body and shall prohibit moral and physical torture".**¹¹

⁸ Republic of Tunisia, Constitution of Tunisia, 2014, Chapter Two, Chapters 22-23

⁹ Lotfi Bilal, Amira Al-Shawish, a previously mentioned source, p. 19

¹⁰ Ali El-Din Helal, Nevine Massad, Arab Political Systems: Issues of Continuity and Change, (Beirut: Center for Arab Unity Studies, 2005), p.144

¹¹ Official Gazette of the Republic of Tunisia, Constitution of Tunisia 2022, 30 June 2022, Chapters 24-25

The Second Requirement: Guarantees of Political Freedoms

A: guarantees for Freedom of Political Participation in Tunisia After 2011

Freedom of political participation is one of the main demands of Tunisian

citizens who rose up against and overthrew the regime, as political participation was only formal or almost non-existent. The government of change has made efforts to achieve this, and the decrees issued after the revolution have clarified the right of Tunisian citizens to participate in political life and their entitlement to do so on the basis of their citizenship. This includes chapter (25) of the International Covenant on Civil and Political Rights, to which Tunisia is a signatory.¹²

As for the decrees that were in line with the spirit of the revolution, which called for the effective representation of Tunisian citizens and the embodiment of freedom of political participation, Decree No. (14) of 2011, issued on 23/3/2011, was issued in relation to the organization of public authorities, and its first chapter states that the establishment of the election of a National Constituent Assembly. The law on the provisional organization of public authorities was also issued and then adopted by the National Constituent Assembly.¹³

The chapters of the 2014 Tunisian Constitution are in line with international human rights conventions and include the right of citizens to run for office and be elected. Chapter (21) of Part Two states that **"The State guarantees citizens individual and universal rights and freedoms and provides them with the means to live in dignity."** This is an indication that the Constitution recognizes all individual and public freedoms, whether civil or political. In chapter (3), the chapter on equality, the term "Tunisian women" is not used, but it says: "All Tunisians are equal before the law", and chapter (4) states: **"The right to vote and stand for election is guaranteed by law and the state is committed to ensuring that women are represented in elected councils"**, in addition to what we discussed earlier about the freedom to form parties and trade unions, which is included in chapters (35-36) and in chapter (47) where it says: **"Every voter has the right to run for the Chamber of Deputies"**, and in chapter (67) it says: **"Every Tunisian voter can run for president"**. The third chapter deals

¹² Lutfi Bilal and Amira, *The Revolution, The Revolution, The Revolution, The Palestinian Authority*. (Stockholm: International Institute for Democracy and Aid, 2017), pp. 26-27

¹³ Republic of Tunisia, Decree No. (14) of 2011 issued on 3/23/2011 regarding the organization of public authority, Chapter(1)

with the freedom of citizens to participate in public life. This chapter includes sections (50-70) explaining the electoral mechanisms and conditions.¹⁴

The 2022 Constitution also guarantees free political participation for all and the sovereignty of the Tunisian people. Chapter (3) states that **"The Tunisian people exercise their sovereignty in the manner established in this Constitution"** and Chapter (23) states that **"Citizens are equal in their rights and duties and equal before the law without any discrimination"**. Chapter (39) reads as follows: **"The right to vote and to stand for election shall be guaranteed in accordance with the law. The State is committed to the representation of women in the elected councils"**.¹⁵

All Tunisian constitutions and decrees after the Jasmine Revolution have

thus paid attention to the free participation of citizens and their interest in public affairs through the constitutional provisions that allow them to participate. The mechanisms and conditions for the right to vote and stand for election were also established.

B: Guarantees for Freedom of Opinion, Expression and a Free Press in Post- Revolutionary Tunisia

Elections were held on 23 October 2011, resulting in a National Constituent Assembly whose main task is to draw up a constitution for the new political system, to rid itself of everything related to the previous political system and its repression of freedoms, and to build a system based on freedom, equality and dignity. It also lays down the first rules that make the National Assembly, as the constitutional authority, a supreme authority above all other legal authorities. Freedom of expression, press and media is a cornerstone of the system of fundamental rights and freedoms, the rule of law and democracy in post-revolution Tunisia.

The National Commission, composed of a group of media and legal experts, was entrusted with the task of reforming the media and communications. A group of international and local experts took the first steps to promote and support freedom of opinion and expression in Tunisia. The Commission issued three decrees to reform the media, focusing on the old system and building newly developed structures, benefiting from the experience of successful countries. Decree No. (41) of 2011 dealt with **"access to government documents and disclosure of their content"**, Decree (115) of 2011 dealt with the "repeal of the former press

¹⁴ Republic of Tunisia, Constitution of Tunisia, 2014, Part Two, Chapters 21-34-35-36

¹⁵ Official Gazette of the Republic of Tunisia, Constitution of Tunisia 2022, 30 June 2022, Chapters 3-23-39

Law" and Decree (116) of 2011 dealt with the **"creation of an independent communications authority"**.¹⁶

In the Tunisian Constitution of 2014, the second chapter is entitled "Rights and Freedoms". Chapter (30) states: **"Freedom of opinion, thought, expression, media and publication is guaranteed. No prior censorship shall be exercised on these freedoms."** And Article (31) says: **"The State shall guarantee the right to information and the right of access to information"**. In the field of scientific research and guaranteeing the freedom of scientists, Article (32) states: **"Academic freedoms and the freedom of scientific research shall be guaranteed. The state shall provide the necessary resources for the development of scientific and technological research"**.¹⁷

In President Qais Saad's draft constitution, which is about protecting rights and freedoms, including the right to protest and the right to form political parties, as well as guaranteeing freedom of expression, publication and belief, Article 55 states that **"rights and freedoms shall not be restricted" unless required by law and necessary for national defence or public security"**.

And in the Tunisian Constitution for 2022, Chapter (37) states as follows: **"Freedom of opinion, thought, expression, media and publication is guaranteed. Pre-censorship of these freedoms is inadmissible".**¹⁸

And Chapter (38) states: "The State guarantees the right to information and the right of access to information. The State shall endeavour to guarantee the right of access to communication networks".

The Constitution also guarantees freedom of research in Chapter (45): **"Academic freedoms and freedom of scientific research are guaranteed. The state shall provide the necessary resources for innovation and the development of scientific research".**¹⁹

¹⁶ Fatima El-Issawi, Tunisian Media in Transition, Malcolm Kerr-Carnegie Middle East Center, 10/7/2012, available at the following link: <https://carnegiemec.org/2012/07/10/ar-pub-48923>

¹⁷ Republic of Tunisia, Constitution of Tunisia 2014, Chapters 30, 31, 32

¹⁸ What are the most important provisions and features of the proposed constitution of Tunisia? DW website, 27/5/2022, available at the following link: <https://www.dw.com/ar/%D9%85%D8%A7-%D9%87%D9%8A-%D8%A3%D9%87%D9%85-%D8%A8%D9%86%D9%88%D8%AF-%D9%88%D8%B3%D9%85%D8%A7%D8%AA-%D8%AF%D8%B3%D8%AA%D9%88%D8%B1-%D8%AA%D9%88%D9%86%D8%B3-%D8%A7%D9%84%D9%85%D9%82%D8%AA%D8%B1%D8%AD/a-62583212>

¹⁹ Official Gazette of the Republic of Tunisia, Constitution of Tunisia 2022, 30 June 2022, Article 37

C: Guarantees for Freedom of Assembly and Association in Tunisia after 2011

What happened in Tunisia was the nucleus of popular protest, i.e. the result of using freedom of protest and demonstration to end injustice and tyranny. After the success of the revolution, the Tunisian people recognized their right to demand rights and the possibility of obtaining them. A report by the Office of the High Commissioner for Human Rights in February 2012 noted positive cases regarding the freedom of protest of Tunisian citizens when, after the formation of the National Union government on 27.12. 2011, Demonstrators again took to the streets, demanding the removal of symbols of the former court government.²⁰

The 2014 Tunisian Constitution states in Article (35): "Freedom to form parties, trade unions and associations is guaranteed. Parties, trade unions and associations shall be bound in their statutes and in their activities by the provisions of the Constitution and the law, by financial transparency and by renunciation of violence." Chapter (36) states: "The right to assemble and demonstrate peacefully is guaranteed".²¹

As for the 2022 draft constitution, its statements on freedoms and rights are summarised in Article (55), which states that *"rights and freedoms shall not be*

restricted" except by law or for reasons of national defence or public security".²²

In the Tunisian Constitution of 2022, freedom of expression is explicitly enshrined in chapter (40): "**Freedom to form parties, trade unions and associations is guaranteed. Parties, trade unions and associations shall be bound in their statutes and in their activities by the provisions of the Constitution and the law, by financial transparency and by the rejection of violence.**" And Chapter (41)) which states, "**The right of trade unions, including the right to strike, is guaranteed, and this right does not apply to the national army,**" and Article (42) which states, "**Freedom of peaceful assembly and demonstration is guaranteed**".²³

20 Report of the United Nations Mission to Evaluate the Office of the High Commissioner for Human Rights in Tunisia, United Nations: Human Rights, Office of the High Commissioner, February / 2011, pp. 8-9

21 Republic of Tunisia, Constitution of Tunisia 2014, Chapters, 35, 36

22 What are the most important provisions and features of the proposed constitution of Tunisia? a previously mentioned source

23 Official Gazette of the Republic of Tunisia, Constitution of Tunisia 2022, 30 June 2022, Chapters 40-41-42

D: Guarantees for Freedom of Religion and Belief in Tunisia after 2011:

Freedom of religion and belief is an important concern for Tunisian citizens as it allows a person to adopt a particular religion, so the state is working to guarantee freedom of religion and belief and freedom to practice religious rites, so the issue of political will in the implementation of this freedom remains the crucial limit in this matter, and in the transitional period, the government after the revolution emphasized this freedom and the practice of religious rites in Tunisia, he issued Decree no. (14) of 2011, which did not explicitly establish freedoms and rights, but regulated the work of the authorities and councils, and also suspended the work of the 1959 Constitution.²⁴

In the 2014 Constitution, freedom of religion and belief was explicitly included and considered a motto of the state. Chapter (6) states: "**The State is a guardian of religion, a guarantor of freedom of belief and conscience and of the practice of religious rites. It is a guarantor of the neutrality of mosques and places of worship towards partisan political recruitment. The state is obliged to spread the values of moderation and tolerance and to protect the shrines. It is also obliged to prevent and counteract calls for fakir and incitement to hatred and violence.**"²⁵

It was also mentioned in Chapter (20) on equality of citizens in rights and duties, which states that "**male and female citizens are equal in rights and duties and are equal before the law without discrimination**".²⁶

The 2022 Constitution, as mentioned earlier, guarantees and fully upholds various freedoms and rights, as in Chapter (26), which states that "**Individual**

freedom is guaranteed"," and Chapter (27), which states that *"The State guarantees freedom of belief and conscience",*" and Chapter (28), which states that *"The State protects the freedom to perform religious rituals as long as they do not affect public security".*²⁷ Thus, the Constitution recognizes the freedom to perform all minimum rituals as long as they do not affect the public security of the State.

24 Republic of Tunisia, Decree (14) of 2011 issued on 3/23/2011 25
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27 Official Gazette of the Republic of Tunisia, Constitution of Tunisia 2022,
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Conclusion

Based on the above, it can be said that Tunisia has a pioneering and historical legacy in codifying civil and political freedoms since the era of security and subsequent constitutions that preserved these laws to guarantee civil and political freedoms during the period of political change and transition from a dictatorial regime to a democratic regime, so that Tunisian constitutions after the revolution included these freedoms. One of the paradoxes that Tunisian society experienced was the fear of the deprivation of freedoms it felt after the Islamists took power, but moved in a more democratic direction than during the rule of the democratic parties. The Ennahda movement worked with the other movements and parties during the transition period. It also made efforts to draft a consensual constitution that met the wishes and demands of the demonstrators and supporters of change in Tunisia. The most important measures included activating dialogue between the different movements and social forces, opening the way to international organizations and local civil society organizations and strengthening their role in monitoring the process. The transition process and the extent to which Tunisian constitutions include a guarantee of freedoms and the mechanisms for their implementation. Work was also done to preserve the social cohesion that characterized Tunisia and distinguished it from the other Arab countries where revolutions and political changes took place.

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