



Human rights challenges in post-uprising Egypt: political actors' reflections on the years of 2011–2013

Melek Saral

To cite this article: Melek Saral (2021): Human rights challenges in post-uprising Egypt: political actors' reflections on the years of 2011–2013, The International Journal of Human Rights, DOI: [10.1080/13642987.2021.1947807](https://doi.org/10.1080/13642987.2021.1947807)

To link to this article: <https://doi.org/10.1080/13642987.2021.1947807>



© 2021 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group



Published online: 15 Jul 2021.



Submit your article to this journal [↗](#)



Article views: 87



View related articles [↗](#)



View Crossmark data [↗](#)

Human rights challenges in post-uprising Egypt: political actors' reflections on the years of 2011–2013

Melek Saral

Research Fellow, SOAS University of London

ABSTRACT

Transitional countries where authoritarian features have long been embedded in state institutions and policies face several challenges that limit their ability to meet the expectations of citizens regarding their rights. This article focuses on the development of human rights in transitional Egypt between 2011 and 2013. It illustrates how political actors perceive and critique the establishment of the legal and institutional framework regarding human rights protection, including constitution-making and transitional justice processes, providing evidence from insights obtained from semi-structured interviews with Egyptian political actors and the analysis of secondary sources. The article demonstrates that the uprisings in 2011 and subsequent developments during the SCAF and Morsi governments show the failure of political actors to protect Egyptians' rights and meet the demands of the citizens with regard to social justice, economic opportunities, freedom, and dignity. It illustrates that weak or failing institutional capacities, an exclusive approach in establishing an institutional framework, lack of knowledge and experience concerning human rights protection, and the authoritarian features of state institutions strongly affected the promotion and protection of human rights in post-uprising Egypt.

ARTICLE HISTORY

Received 29 August 2019

Accepted 21 June 2021

New era of human rights in Egypt after the 2011 uprising

Hopes for a democratic transition in Egypt after the 2011 uprisings were short-lived, with Egypt reverting to its authoritarian structures following the military coup in 2013. Contrary to the hopes and expectations of the Egyptian protesters demanding change from Mubarak's authoritarian regime, the human rights situation in Egypt did not improve under the Supreme Council of the Armed Forces (SCAF)¹ or under the leadership of Egypt's only democratically elected president, Mohamed Morsi. The reports and position papers issued by the Cairo Institute for Human Rights Studies (CIHRS)² as well a joint statement signed by the Arab Network for Human Rights Information, the Egyptian Initiative for Personal Rights, the Egyptian Organization for Human Rights, and the Egyptian Centre for Economic and Social Rights pointed to the worsening human

CONTACT Melek Saral  ms166@soas.ac.uk

© 2021 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group

This is an Open Access article distributed under the terms of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

rights situation in Egypt during Morsi's rule, particularly concerning the right to peaceful assembly, women's rights, and the rights to freedom of belief, freedom of the press, and freedom of association.³ Following the military coup in 2013, international independent human rights organisations such as Human Rights Watch and Amnesty International published alarming reports about systematic human rights violations in Egypt.⁴ According to Human Rights Watch, Egypt has been experiencing its worst human rights crises in many decades since the coup in 2013. The authoritarian rule of the Sisi government has been entrenched through the suppression of fundamental freedoms while systematically committing grave human rights violations such as torture and enforced disappearances against protesters from all backgrounds. Egyptians have been facing institutionalised and systematic violations of human rights embedded in the procedures, policies, laws, or objectives of state policies and institutions. In particular, the nationwide state of emergency, in place since April 2017, gives security forces unchecked powers to suppress the fundamental freedoms of Egyptians.⁵

Human rights and democracy are assumed to be inherently compatible,⁶ having a fundamental connection⁷ and being mutually constitutive.⁸ As respect for human rights is necessary to succeed in the struggle for democratisation, the international community and domestic policymakers aim at improving human rights in transitional countries.⁹ The positive development of human rights depends on the creation of certain state institutions and laws, and the implementation of particular state policies leads to increased enjoyment of human rights. Several elements are necessary to promote human rights, including international treaty commitments, constitutional guarantees, and institutional frameworks. Internationally recognised human rights also impose obligations on states¹⁰ and forbid them from taking any measures that result in the violation of a given right through either their organs or their agents.¹¹ Moreover, states must enact laws, develop capacities, invest financial resources, implement policies, and develop institutions capable of fulfilling positive obligations. However, states face several obstacles that limit their ability to meet the previously mentioned obligations, such as lack of financial resources, weak or failing capacities, misinterpreted or flawed laws, lack of will and commitment among political actors, and lack of knowledge about successful human rights activities and strategies.¹² Notably, in transitional countries where authoritarian features have long been embedded in state institutions and policies, political actors may tend to uphold those authoritarian features and hesitate to reform the institutional and legal framework to pave the way for improving human rights practices.¹³

This article illustrates the development of human rights in post-uprising Egypt between 2011 and 2013, focusing on how political actors from that period perceived the issue of human rights in the course of the establishment of the institutional framework, including constitution-making processes and transitional justice. Egypt is a strong case from which to gain valuable insights into the dynamics of the development of human rights in post-uprising countries because of its long history of authoritarianism and because of its struggle for a transition following the uprisings in 2011. The focus on the constitution-making process and transitional justice is of utmost importance as transitional processes mainly involve a revision of the constitution and application of transitional justice mechanisms.¹⁴ The influence of international actors and institutions on constitutional processes has a long history,¹⁵ and after the 1990s, international assistance

for constitution-making in post-conflict crises particularly intensified and institutionalised.¹⁶ Many different actors including states, academics, international organisations, and advocacy groups offer assistance during the constitution-making process.¹⁷ The current constitution-making processes in the MENA region following the 2011 uprisings have also generated demand for outside assistance.¹⁸ As constitutions symbolise a departure from past authoritarian systems, the transitional country's constitutional framework is expected to incorporate the international standards of rule of law and human rights protection.¹⁹ Constitutions define the relationship between the nation's people and their government, impose constraints upon the government to protect individuals from abusive state actions, and draw from international law to provide a normative basis for the transformation rooted in existing principles of international law.²⁰ Constitution-making processes are linked to the discourse of transition,²¹ and the constitutional drafting processes and related negotiating processes are among the critical factors of success or defeat of the transitional process. Egypt's constitution-making processes deserve special attention as Islamic parties were allowed and participated in the constitutional process for the first time, which simultaneously signalled the recognition of the supremacy of the law. However, Egypt's opposing parties and institutions, including the military and both secular and Islamist actors, were not able to build a consensus as they preferred to protect their interests, which in turn caused a return to authoritarianism²² during the constitution-making process, with foreign organisations being shut out.²³ In addition to an inclusive constitution-making process, transitional justice is expected to contribute positively to establishing rule of law and protection of human rights in transitional countries and catalysing a reclamation of societies in political and social dysfunction.²⁴ Post-conflict countries apply a wide range of mechanisms, including trials, truth-seeking mechanisms, reparations (both material and symbolic), and administrative reforms to deal with the past human rights violations committed under authoritarian rule, to prevent the recurrence of violence, and to promote democratisation, the rule of law, and reconciliation.²⁵

Providing evidence obtained from semi-structured interviews with Egyptian political actors from various political backgrounds, this article illustrates how the human rights situation in the country and the approach of the SCAF and Morsi governments to human rights issues in post-uprising Egypt were experienced by internal actors. Fifteen semi-structured interviews were conducted in 2018 with Egyptian political elite and civil society actors living abroad, mainly in Turkey, the UK, the USA, and Canada, to give a detailed picture of human rights issues in transitional Egypt after the uprisings according to political actors. Elite interviewees were selected based on the snowballing technique, where an initial subset of interviewees of paramount quality as political actors from different backgrounds were first identified based on their relevance to the research topic. The interviews lasted for 1–1.5 h. All interviewees provided written informed consent for their interviews to be audio recorded, data to be used in this study, and names to be published. All interviewees were asked the same open-ended questions to explain the human rights developments in post-uprising Egypt and all interviews were conducted in English. The data collected were examined and organised around key themes and central questions regarding the development of human rights in transitional countries.

Human Rights Challenges in post-Uprising Egypt

Egypt was one of the countries that played an essential role in helping draft the early UN treaties that are integral to the contemporary human rights regime²⁶ and made binding international commitments to adhere to the standards of international human rights norms; however, throughout their history, Egyptians have suffered the abuse of their fundamental rights at the hands of authoritarian rulers.²⁷ The authoritarian rulers in Egypt have disregarded or violated the international human rights treaties to which the country is a state party and have negated the previously ratified treaties.²⁸ The 2011 uprisings in the MENA region caused significant expectations for tangible reforms and change in authoritarian state policies. The ouster of the authoritarian Mubarak regime and free and fair elections in Egypt gave the first positive signal for democratic transition in the region and strengthened the hopes that post-authoritarian governments would improve human rights in Egypt. However, the transitional process of Egypt, where authoritarianism had long prevailed, could not meet these expectations, which is reflected in Egypt's rankings from Freedom House's *Freedom in the World* reports, which downgraded Egypt to 'Not Free' as of 2014.²⁹

The term transition is primarily used to describe the political change from authoritarian rule to democracy based on southern European and Latin American experiences.³⁰ The Egyptian case shows, however, that the transitional processes of authoritarian countries might not necessarily result in democracy and improvement of human rights practices.³¹ The transitional processes following the uprisings in countries in the MENA region proved to be open-ended processes of transformation providing a basis for the strengthening of the authoritarian features of those countries and continued human rights violations.³² In most cases, human rights violations in transitional countries continue because international and domestic factors favouring the maintenance of the institutional and legal frameworks causing human rights violations overwhelm the international and domestic factors favouring the establishment of institutional and legal frameworks to improve human rights.³³ Transitional countries face numerous human rights challenges and in most cases the government lacks the capacity rather than the willingness to end human rights violations and address their economic, political, or cultural root causes.³⁴ The fundamental issue of human rights violations in transitional countries is related to the change and continuity in actors, institutional frameworks, and mentalities and attitudes. Current transitional issues need to be addressed considering what has been inherited from the past authoritarian system and what can be changed. When transitional countries address the issue of human rights, they focus primarily on present and future conditions to assure the protection of human rights, ignoring the question of what has been inherited from the past authoritarian regime. This approach endangers the achievement of integrated human rights protection in transitional countries. Moreover, the enclave of actors consisting of groups, organisations, and sectors from the former authoritarian regime that may potentially plot against the transitional process might challenge human rights protection in transitional countries.³⁵ In this context, the question of which actors are favoured by the distribution of power during the transitional period is to be considered. Transitional processes are prone to the arrival of new actors to the political scene and struggles to isolate political actors from the past authoritarian regime from the political scene. The

ideological background and objectives of newly rising actors as well the degree of the continuing influence of political actors from the past regime on the transitional period are very much decisive in the success of the transition from the past authoritarian regime to a more democratic system and in the improvement of human rights. In Egypt, the rise of Islamist actors and the electoral victories of Islamist parties impacted the transitional process. The election of the Muslim Brotherhood's Mohamed Morsi in June 2012 as president of Egypt and the establishment of Islamist parties as critical players in the transition created new internal divisions and disagreements that significantly impacted the process of transformation of the institutional and legal framework in the region.³⁶ The opposing actors in Egypt could not reach a compromise and that led the Egyptian transitional process to failure.³⁷

Human rights and the strengthened position of the Egyptian military

The Egyptian military has been the most significant pillar of the Egyptian regime since 1952 and acted as the ultimate guarantor of the regime in 1977, 1981, and 1986. It has held a privileged position in the state, enjoying considerable prestige in society and far-reaching autonomy in allocating its own budget. The Egyptian military possesses a strong sense of corporatism and professionalism and has wide-ranging administrative responsibilities in the state apparatus and in securing borders.³⁸ Furthermore, it controls several commercial businesses, including those in civilian sectors such as energy, food and consumer goods production, tourism, and medical services.³⁹

Because of this privileged position, the military was a key player during the uprisings and in the transitional period that followed.⁴⁰ The Egyptian transitional process has been severely impacted by the ability of actors from the authoritarian past to influence the country's transformation. As Sultany points out, the country's counter-revolution started simultaneously with the revolutionary developments and co-existed with them.⁴¹ Sultany underlines the dialectical character of the revolution process, in which revolution and counter-revolution are intertwined. In this context, the counter-revolution in Egypt started immediately after the overthrow of Mubarak and had stabilising and destabilising forms. In the first year, the army prioritised returning to a stable order and the Muslim Brotherhood concurred. However, the army later allied with former regime officials to stop the institutionalisation of the revolution, causing destabilisation in turn. Several factors contributed to the strengthening of the counter-revolutionary movements during the short-lived Morsi government, most notably the existing political-economic order, the old organised networks of power, the inexperience of the democratically elected Morsi government, and the disagreements of the protestors on the nature of the new regime.⁴² The Egyptian military, judiciary, and security forces actively contributed to the reproduction of Egypt's pre-existing authoritarian framework and gave rise to the worsening human rights in the country.⁴³

The military, judiciary, and police tried to protect their own interests and privileged positions, which were challenged after the uprisings by Muslim Brotherhood officials and protesters.⁴⁴ Post-uprising Egypt witnessed power struggles between the military and civilians, which would come more strongly into prominence during critical periods such as the constitution-making process. In this context, the military tried to dominate the constitution-making process to ensure the continuation of its privileges.

These efforts of the military are illustrated in the Silmi document, which aimed to safeguard the army's privileges. The document gave the military financial autonomy and veto rights over any legislation concerning military affairs, and it referred to the army as the legitimate protector of the constitution.⁴⁵ Some of the central institutions such as the parliament, political parties, and other gatekeepers were destabilised and collapsed during the transitional period, whereas the military could maintain its coherence.⁴⁶ The Egyptian military could enforce its own political agenda by means of its strong position within the state,⁴⁷ which was further deepened by the post-uprising constitutions of 2012 and 2014.⁴⁸

Although the Muslim Brotherhood carefully tried on the one hand to pacify the military, on the other hand it was interested in achieving short-term political accomplishments. Thus, the Muslim Brotherhood pleased the military by confirming its special and superior rights and putting it above public oversight and accountability in the 2012 constitution.⁴⁹ Haitham Abu Khalil, an anchor with the Turkey-based satellite television channel El-Sharq, pointed out in an interview I conducted in March 2018 that the most extensive and the first mistake of the Morsi government was to allow the strong influence of the military on the constitution of 2012.

In the initial stage of the uprisings in early 2011, the military leadership first decided to observe the developments from a distance. However, the SCAF and Mubarak also called upon the army to help restore order in the country. The first television statement from the SCAF on 31 January 2011 declared that the army would not use force against the people, except in cases of looting and other crimes, and its first communiqué, published on 10 February 2011, proclaimed the support of the SCAF 'for the legitimate demands of the people.'⁵⁰ Immediately after that, the SCAF took power and ousted Mubarak.⁵¹ Although a subsequent communiqué on 12 February 2011 declared Egypt's commitment to its regional and international obligations and treaties and stressed the necessity of the rule of law for the freedom of the individual and the legitimacy of authority, on 30 March, a constitutional declaration was promulgated that unilaterally amended numerous articles of the constitution⁵² to give the military wide-reaching, unchecked powers in the executive and legislative spheres, strengthening its role in politics and threatening the basic rights of the Egyptians.⁵³ Moreover, the SCAF did not keep its initial promise to revoke the state of emergency. Rather, it extended the application of the emergency law, which included prohibitions against vaguely defined actions such as spreading false information and calling for or participating in strikes or demonstrations.⁵⁴ The widespread use of military courts to try demonstrators for even ordinary crimes such as theft and violence further negatively affected the human rights situation during the SCAF rule in Egypt. The number of civilian cases brought before the military courts increased considerably during SCAF rule compared to the 30 years of Mubarak's rule.⁵⁵ Under SCAF rule, more than 12,000 civilians were herded into military courts for both ordinary criminal charges and for the political arrests of protesters or critics of the military.⁵⁶ Furthermore, during its rule, the SCAF used force against demonstrators throughout the country, provoking massive demonstrations in mid-November 2011 and forcing the SCAF to move the presidential elections forward to June 2012. Although the SCAF allied itself with the Muslim Brotherhood for some time and made some concessions and tactical moves such as putting Mubarak on trial, it actually sought—from the very beginning—to capture absolute power and

control over the country.⁵⁷ Wael Qandil, a founding member of Elbaradei's Constitution Party and a journalist now based in London, expressed this with the following words:

Also before the Morsi period, SCAF made declarations to stop the parliament, and the government was under siege from the first moment ... everybody noticed from day one after Mubarak was kicked out that the military was planning to come back. Unfortunately, we taught wrongly that we can face them and that the people could stop them.⁵⁸

Human rights and new actors on the Egyptian political scene

Following the uprisings, the countries in the MENA region experienced the rise of Islamist actors. It is argued that Islamist actors had a political advantage in the post-uprising period due to their organisational capacity, ideological hegemony, and strength in providing social services.⁵⁹ More importantly, all these factors promoted the reputation of the Islamists as competent, trustworthy, and suited for good governance, supporting the electoral victories of Islamists in Egypt, Tunisia, and beyond. Due to their reputation for good governance, Islamists have gained the support of religious and various political groups comprising those least satisfied with the performance of the overthrown authoritarian government.⁶⁰ The Egyptian election in June 2012 also resulted in the appointment of an Islamist actor as president of Egypt, with the Muslim Brotherhood's Mohamed Morsi receiving 13.2 million votes (51.7 per cent of valid votes). Although there were fears about the Islamisation of the country, the first free election of a president was regarded as an opportunity to replace the old authoritarian political regime with a regime based on democracy, rule of law, and respect for fundamental rights. Following the elections, Morsi also declared: 'Egypt is now a real civil state. It is not theocratic, it is not military. It is democratic, free, constitutional, lawful, and modern.'⁶¹

The semi-structured interviews illustrate that opinions about the human rights situation and human rights protection under the Morsi government are quite mixed. Although the majority of the interviewees stressed that there were no direct or intentional violations under the short-lived Morsi government, they pointed to the failure of the government to promote and protect fundamental rights, mainly due to lack of experience and will concerning human rights protection as well as the scarcity of institutional capacities. The majority of civil society actors and oppositional political actors complained about the Muslim Brotherhood's approach, which was not in line with the expectations of the Egyptians who had rebelled against the authoritarian rulers. The Muslim Brotherhood's joint work with officials and politicians from the former regime was particularly highly criticised and caused deep distrust among Egyptians who had hoped for a positive change after the ouster of the old regime. The spokesman of the 6th of April movement, Muhammad Kamal, illustrated the Muslim Brotherhood's misguided approach using the metaphor of an old house:

The members of Muslim Brotherhood are not revolutionary people. They do not believe in revolution, they believe in making things better step by step, but this approach is very wrong during a revolutionary period. We were in a revolution, we destroyed the gate of the old state, which is Mubarak; we refused to leave Tahrir Square on 11 February, but they insisted we leave it ... you know, if this is your house, and this is a very old house, you can't live in it, because it is very dangerous, it can break down ... Egypt was like that. But when we said this

to them, they said to us, no, it is a very beautiful house. We will make a carpet, we will buy a TV, we will buy chairs, we will buy furniture and we will live here ... They did not believe in us when we said that this house must be destroyed and rebuilt again ... I am sure that if the Brotherhood listened to our advice and our warnings, we would not have all these [problems]. When they appointed Sisi as Minister of Defence, we rejected that, and we said that he was the head of the military intelligence, he is responsible for the killings of many people ... So for this period we cannot say that the Muslim Brotherhood violated human rights or they were the reason for the killings, but the people who supported SCAF and Mubarak made campaigns to fail the country.⁶²

These criticisms were also partly shared by governmental politicians from the Morsi government period. When I asked Amr Darrag, the Minister of Planning and International Cooperation for the Morsi government and the Secretary-General of the Assembly, what the government should have done differently to avoid the crisis and the coup, he criticised the weakness of the government in fulfilling the demands of the Egyptians:

You have to do what is right. People whom you know are corrupt or are against the revolution should be kept away. The main mistake was to work at a pace that was a pace for a democracy and was not compatible with the revolutionary demands. When you are in a transition, you have to make sure that you consider what were people complaining about, what pushed them to revolution, and how to meet their demands.⁶³

However, he also added—in their defence—that they were trying to establish the necessary institutions to stop the anti-revolutionary forces, but he agreed that the outcome proved that this was not the right approach for the revolutionary period:

The Brotherhood was just trying to focus on one thing, which is establishing institutions, mainly the constitution, the parliament, the presidency through elections and democracy. So they were trying to avoid any other minor issues and the objections of some people to pass this critical period of having these establishments. The idea was that if we manage, if the Brotherhood, with the help of the Egyptian people, manages to establish elected institutions, this would create the buffer against the anti-revolution, but it turned out that this concept was not the proper one at that time.⁶⁴

Institutionalisation of human rights protection during the Morsi government

Constitutions, as the highest legal and political act, define the relationship between the nation's people and their government and impose constraints upon the government to protect individuals from abusive state actions. The actual influence of constitutions on human rights protection, however, might be limited and dependent on many factors, such as regime type, economic development, and population size.⁶⁵ Moreover, the promotion of human rights requires more than drafting rights in a constitution, including the state's commitment to protecting human rights, the promotion of an individual's awareness of these rights, and enhancement of the state's administrative infrastructure.⁶⁶ The constitution-making process is particularly worth analysing in transitional countries because the ways in which constitutions are made, discussed, and implemented are decisive in the durability and stability of an established institutional framework.⁶⁷

The Egyptian constitution-writing process is essential to explore because it was not simply an act of framing citizen rights in a written document; it was a discursive platform

and a decisive landmark where various political actors tried to voice their interests. However, in Egypt, the most critical aspect of human rights protection, namely establishing a well-equipped administrative infrastructure to ensure the correct implementation of all laws, was neglected. One can say that the Egyptians were, to some extent, able to include fundamental rights in the constitution in line with international human rights law, but they could not establish the necessary supervisory organs for assessing compliance with legal obligations.⁶⁸ In this context, the majority of the individuals I interviewed—not only the oppositional actors but also the supporters of the Morsi government—pointed to the negligence of the Morsi government in establishing a transitional justice committee, which would have been a vital institution in post-uprising Egypt concerning human rights protection and would in turn have positively contributed to the transitional process of the country. The transitional justice process is vital for a successful transition as its mechanisms do not only help post-conflict societies address large-scale past abuses and ensure accountability and serve justice. They also have psychological aspects and healing powers in establishing truth, educate the public about the nature of past abuses, and help to reinforce moral norms.⁶⁹ 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 was stopped by political figures from the Ben Ali era), was not facilitated in Egypt and the possibility of serving justice, achieving reconciliation, and healing past wounds was missed. The failure to establish a transitional justice process was criticised by several interviewees in the context of human rights development in post-uprising Egypt. The spokesman of the 6th of April movement, Muhammad Kamal, illustrated the approach of Morsi's government concerning transitional justice:

They did not neglect it, but they did not want the revolution to spread ... Many people were killed and put in prison for tens of years during the Mubarak era. They refused all the proposals. We as a movement had a proposal for a law project on transitional justice, and we proposed this to the Muslim Brotherhood; they refused ... Now the Muslim Brotherhood is calling for transitional justice. Why? Because their members were killed, they were forced to leave, they were in danger, but in the past, the danger was not only directed to them but to all the Egyptians.⁷⁰

However, the transitional government cited the limited period of its rule, which was dominated by severe crises and powerful actors from the former regime, as the reason for its failure to meet the protesters' demands, particularly concerning human rights. Politicians from Morsi's government refuted the criticisms of their negligence in establishing an institutional and legal framework and pointed to their efforts to establish the necessary institutions. For instance, Oussama Rusdhi noted the following:

We made recommendations to make amendments to the law on the National Council for human rights, the law number 94, to increase the authority of the council under the Paris Regulation for the National Council for Human Rights. We were at the last step before the military coup.⁷¹

Oussama Rusdhi also pointed to his efforts and the disinterest of the government in establishing a transitional justice committee like that in Tunisia, explaining:

I was very interested in transitional justice; I led the project to create a committee for transitional justice within the National Council for Human Rights. I talked several times with my

colleagues to convince them about this. On the first of May, we agreed to create the transitional justice committee, and we cooperated with the Minister of Justice, universities, and NGOs to prepare the transitional justice law ... I was one of the first people who prepared a transitional justice program. I had a meeting with Morsi. I gave him my project on an independent committee for truth and justice and explained transitional periods from various countries. However, the members of Brotherhood are not revolutionary people. They thought opening a new page with the military is a good way ... I also spoke several times with the chairman of the National Council for Human Rights about facilitating a transitional justice process as in Tunisia, but his point of view was that this job is more extensive than our ability. I tried hard because transitional justice was one of the primary responsibilities of this council.⁷²

Similarly, Wael Qandil pointed to the intervention of the old regime and security forces in the process of transitional justice and illustrated how they stopped the protection of victims' rights:

With regard to the victims of revolution, we were very concerned with showing the fact-finding report. Morsi signed this and ordered to publish it, but the old regime and police prevented it. If they let it be published and to work, its results should make a very nice atmosphere, everybody would feel relaxed. That was the main problem ... victims' rights were neglected ... I am sure that these issues touched Dr. Morsi, but they did not allow, or they did not let any time for him to work on human rights problems.⁷³

Furthermore, the Egyptian constitution-making process was not successful in producing consensus when compared with the constitution-making process of Tunisia, and this problem deepened the polarisation and division in Egyptian society, undoubtedly negatively affecting the actual influence of the constitution on human rights protection. During constitution-making processes, the questions of who will be included in the drafting process and how the negotiations will be structured are vital.⁷⁴ As the constitution-making process in transitional countries is a contested one, these questions become more urgent and pressing. Constitutions are stamped by and illustrate the interests of the actors responsible for drafting and approving them. Thus, the degree of the inclusiveness of the drafting and approval stages of a constitution is a decisive factor for the duration and strength of the constitution.⁷⁵ Research shows that the inclusiveness of a constitution-making process is very much decided by the extent of ideological polarisation of society. The more polarised a society is, the narrower the range of factions represented during the constitution-making process will be. The inclusiveness of a constitution-making process also impacts its ability to constrain the government and the extent of rights provisions and better enforcement mechanisms.⁷⁶

As in Tunisia, the ideological polarisation in Egypt was between secular and Islamist actors debating the role of religion in the legal and political system, giving rise to the exclusion of liberals by the Muslim Brotherhood. In Tunisia, too, the dominant actors after the ouster of Ben Ali were Islamists who mainly favoured a more significant influence of religion in politics. However, the Tunisian constitution-making process, in contrast to the Egyptian process, is primarily described as a constant search by all parties for consensus, during which Ennahda also made many concessions regarding the previously accepted ideologies for the sake of consensus,⁷⁷ such as renouncing any mention of Sharia in the constitution and accepting the inclusion of women's 'equality' and the right to freedom of conscience and belief in the constitution.⁷⁸ Ghannouchi

played a key role in facilitating these concessions during the constitution-making process and was able to convince the Ennahda members of the merits of reaching a consensus among different ideological parties during the transitional period,⁷⁹ which caused a smoother constitution-making process in Tunisia compared to Egypt. Omar Ashour argues that a theologically knowledgeable and credible religious leader could handle the deradicalisation process of Islamists and convince them to make concessions.⁸⁰ Ghannouchi's efforts during the constitution-making process to reach a consensus and to convince the party members to make some concessions were beneficial for the peaceful constitution-making process in Tunisia. However, in Egypt, Morsi lacked the above-mentioned qualities of charismatic leadership to handle the deradicalisation process of Islamist group members, which negatively influenced the development and outcome of the Egyptian constitution-making process.

As already mentioned, Islamists were the winners of the 2012 elections in Egypt, where the Freedom and Justice Party (a political party stemming from the Muslim Brotherhood movement) and the Salafist Nour Party received about 70 per cent of the seats in the parliament. The 2011 Constitutional Declaration of the SCAF required that the constitution be drafted by 100 members chosen by the parliament. As the Islamists had the majority of the seats in the parliament, the constituent assembly to draft the constitution was also dominated by the Islamists. Although the first constitutional assembly was declared unconstitutional by the State Council in April 2012 because half of its members had been chosen within the legislative assembly,⁸¹ the following assembly selected in June was also dominated by Islamists and 66 of 100 members of Egypt's constituent assembly were Islamists, associated with the Muslim Brotherhood or Al Nour Party. Therefore, the concerns of secular actors were high regarding the establishment of their interests in the new constitution of the country.⁸²

The tension between the secular and Islamist actors grew continuously during the constitution-making process, and debates on the role of religion in the constitution, religious minority rights, and women's rights exacerbated the conflict.⁸³ The composition of the assembly was rejected by secular and oppositional parties and the exclusion of the opponents caused such a deep polarisation that Christian, socialist, and liberal members of the two constituent assemblies formed during 2012 walked out to protest the dominance of Islamists in the assembly.⁸⁴ At the same time, several secular parties were threatening to establish a parallel constituent panel to draft a new constitution.⁸⁵ The judiciary tried to adjust the composition of the constituent assembly, which was met with decrees by the Morsi administration. The Supreme Constitutional Court declared the law organising a second constituent assembly unconstitutional but underlined at the same time that this declaration did not pose a challenge to the validity of the constitution as it was approved by the people in referendum.⁸⁶ The failure of the leading political institutions to define the rules of the constitution-making process and the centrality of the military were major institutional factors in Egypt that negatively impacted the outcome of Egypt's constitution-making process.⁸⁷ However, the exclusivist approach of the Morsi government in composing the constitutional assembly further worsened the situation, making a consensus between different parties almost impossible and profoundly influencing the constitution-making process. The composition of the committee drafting the constitution,

as a successive, closed, and non-public body, is mainly held responsible for the deepened polarisation in Egypt.

However, Amr Darrag refuted these criticisms of the composition of the constitutional committee, stating that the composition of the committee was manipulated by the counter-revolutionary strategies of the SCAF:

Actually, there was an initial attempt to formulate the assembly based on the representation in the parliament and with the participation of some of the parliament members, and the constitution of this assembly more or less reflected percentages of the political masses inside the parliament, but many people didn't like that. They said that constitution-writing is different from a parliamentary process and everybody has to be represented, and if we give the majority 'to Islamists' they will control everything. So, the Islamists accepted these arguments and the first assembly was dissolved, and another one—with the basic agreement of everybody involved—was reached. We knew later that the SCAF was trying to ruin the process of forming this assembly. Of course, SCAF was interested during this time ... to establish their authority from behind the scene and give themselves undisputable power regardless of what is in the constitution.⁸⁸

Mohamed Gamal Heshmat, a former parliamentarian and a prominent leader of the Muslim Brotherhood, further described the constitution-making process in 2012 as an inclusive one, comparing it to the 2014 constitution as follows: '2012 constitutions were discussed by the specialists and university members. However, the 2014 constitution was not discussed by anybody. Only 51 members, which were chosen by a military investigation, made the constitution, and even this constitution is not respected by the military.'⁸⁹

One of the most controversial issues during the constitution-making process, as mentioned above, was how to balance the interests of Islamist and secular actors, and this issue was mirrored in the debate about the place of Sharia in the constitution, which in turn concerned the protection and promotion of human rights in the country.⁹⁰ The principles of Sharia as a main source of legislation were introduced for the first time in Article 2 of the Egyptian Constitution of 11 September 1971. In its 1980 Constitution, Egypt amended Article 2 and made Sharia the main source of legislation rather than a main source of legislation. This amendment of Sharia from a principal source to the principal source was interpreted as meaning that all law must be in conformity with Islamic law.⁹¹ However, this was only a symbolic gesture⁹² and actually produced no radical changes in terms of the previous legislation.⁹³ The question of the role of the principles of Sharia as a major source of legislation acquired renewed importance in political debates in Egypt following the January revolution.⁹⁴ Particularly important is the new provision with regard to the position of Sharia, Article 219, which states that 'the principles of Islamic Sharia include its general evidence and its fundamental and doctrinal rules, as well as its sources considered by schools of the People of tradition and consensus.' This was regarded critically, as it potentially limited the power of the Supreme Constitutional Court in defining the term 'Sharia principles' as formulated in Article 2.⁹⁵

The approach of the Muslim Brotherhood during the constitution-making process, wherein it reached no consensus and placed no importance on establishing the institutions vital for the protection of human rights, was one of the main hindrances to

the development of human rights in transitional Egypt. In this regard, Morsi's government was criticised by political actors for appointing only its own supporters regardless of their experience in the field or qualifications to fulfil their responsibilities. Wael Qandil expressed this as follows:

With regard to the Human Rights Council, they did the same, they selected some people who were supporting Ikhwan, and they didn't have any experience. They didn't know how to work on human rights. They never needed this before. They did not have any skills or experience.⁹⁶

As outlined here, the main failure of the government was that it did not heed its obligations to establish the necessary institutional framework foreseen by the constitution as essential for the promotion of human rights.

The polarised constitution-making process in 2012, which constrained the participation of oppositional voices and excluded different groups, resulted in a constitution that consolidated the influence of religion and military in politics and strengthened the executive branch of the government. More importantly, the controversial process gave rise to violent protests and caused the military coup of July 2013. That coup, in turn, led to Morsi's ouster and a serious backsliding in the transitional process. Under the military government, constitutional institutions were weakened and institutionalised human rights violations became state policy.⁹⁷ As described above, throughout the history of Egypt, the military has enjoyed a privileged position and has been at the centre of the political scene. However, after the coup, the military achieved an absolute power gain, enabling it to impose its own political agenda and shape the country's political outcomes. The legitimacy of the military was also strengthened by the difficulties of the transitional period from 2011 to 2013. The failure of Morsi's government to address the structural problems that generated the uprisings in 2011 and the citizens' expectations of a better socio-economic situation and improved security not only strengthened the legitimacy of the military but also led to the election of army leader Abdel Fattah Al-Sisi as president in 2014, against the backdrop of brutal repression of the Muslim Brotherhood. In the context of the military coup and the high degree of exhaustion in Egyptian society, the military government was able to demobilise the Egyptian political space.⁹⁸

The Sisi government appointed a commission of experts in charge of drafting a new constitutional text that was approved by referendum in January 2014.⁹⁹ This new constitution was described by the interviewees as a good constitution or even as much better than the first constitution with regard to human rights. Amr Darrag, for instance, considered the constitution of the Sisi government—concerning human rights—to be better than the constitution of the Morsi government. He stated in our interview that:

There is not much difference when it comes to the basic rights and freedoms. Some articles are even better in the new constitution. Of course, there are some issues related to the military, which are the main concerns. The military tried to push through the constitution-making process ... and managed to push what it was interested in. It even secured the immunity for the position of Minister of Defence ... The main impact of human rights is not related to the articles in the constitution, but it is related to their practice ... For instance, according to the Constitution of 2014 and 2012 torture is a crime, but nobody respects this constitutional article. The constitution is treated like toilet paper. This is the main problem.¹⁰⁰

Khalaf Bouyami, an Egyptian lawyer and the manager of the Alshahab Human Rights Center, also compared the two constitutions with the following words:

Regarding the content of both constitutions, there are no big differences between 2012 and 2014 constitutions. Essentially the 2014 constitution of the coup is full of human rights provisions, which are very good. More than 14 provisions are talking about human rights. So, the point is, it is not relevant if the constitution has specific provisions about human rights, if these provisions are not applied. Actually, nothing from this constitution is applied ... for example, the right to life, 1000 Egyptians were killed, violating the most fundamental right of Egyptians.¹⁰¹

Thus, the constitution could not secure the protection of human rights, as the government intentionally neglected its obligations concerning human rights protection and institutionalised human rights violations to secure its power over citizens. Accordingly, Sisi's government ignored Article 241 of the constitution on transitional justice, which required the parliament to issue a transitional justice law in its first session that 'ensures revealing the truth, accountability, proposing frameworks for national reconciliation, and compensating victims, in accordance with international standards.' However, the parliament choose to protect the officials accused of severe human rights violations and disregarded this obligation.¹⁰²

Following the military coup, Egyptians experienced very aggressive forms of human rights violations. The interviewees mainly described this period as incomparable to any other period in the history of Egypt and illustrated the human rights violations as a tool of the post-coup government to create fear and gain absolute control over the state. Maha Azzam, the president of the Egyptian Revolutionary Council, described this atmosphere in the following words:

If you ask Egyptians or members of the Brotherhood who have experienced incarcerations in the past, they will say that the level of human rights violations is unprecedented. All these features are features of an extremely revengeful regime. This regime is particularly revengeful. I think because it is a regime that has been seriously challenged. They want to ensure that January 25th and that uprising and the change will never happen again because they believe that their own lives would be at risk.¹⁰³

Similarly, Wael Qandil illustrated how the Sisi government intentionally facilitated massacres against the demonstrators:

They make massive penalties against these people, by the court, by police, hundreds of people have been killed by judges. Why did they make Rabia like this in a very dirty way? They wanted to end the power of people asking for change. They send this message to the people. So they intentionally made Rabia a massacre, it was not by luck, no, it was decided to make a lake of blood, to make an example for everyone who thinks about protesting the regime.¹⁰⁴

With the legislature having been dissolved by the Supreme Constitutional Court, president Abdel Fattah Al-Sisi was free to issue several laws and decrees targeting NGOs, journalists, and public protests that undermined the fundamental rights and freedoms of Egyptians.¹⁰⁵ The institutions that were supposed to protect human rights in Egypt became tools in the hands of the government to systematically abuse the rights of citizens. To punish the opponents of the government and strengthen its rule, the military intensively repressed independent voices, including those of NGOs and the media. Security-

sector institutions (the military, police, and intelligence services), which are accountable only to the president, have been fiercely violating the human rights guaranteed to Egyptian citizens in the constitution.¹⁰⁶

As a result, concerning human rights, during the period following the coup, Egyptians experienced severe violations of their fundamental rights and freedoms. The interviewees pointed out that human rights violations have been an issue throughout Egypt's history because of the country's authoritarian regimes. However, after the coup, the nature of violations changed in terms of their quantity, range, objectives, and victims. The violations were widespread and targeted all opponents of the regime, without any borders or red lines. The goal was absolute control of citizens through systematic and institutionalised human rights violations. The changing nature of human rights violations after the coup was described by Maha Azzam as follows:

Essentially, we had a dictatorship in Egypt for 60 years; the only time during which that was reversed was in 2012 under President Morsi's government. The coup of July 3, 2013, was a blatant act of violence, which was, from the very beginning, an act of open violence against citizens ... I don't want go into detail about that, but what you have is a systematic act against citizens, who were protesting or seemed to be protesting non-violently. This was obviously accompanied by detentions, arrests in prisons, and the numbers escalated from the hundreds to thousands to the tens of thousands ... The whole issue of forced disappearances is again a feature that has become associated somewhat with the coup. I think another is the systematic resort to torture. Yes, the Egyptian prisoners were tortured particularly under Nasser and even after that, but I think it is the systematic level of torture ... the denial of visits, the denial of medication, the systematic use of what people referred to as slow death.¹⁰⁷

Conclusion

The uprisings in 2011 and subsequent developments show a failure of political actors to promote and protect the human rights of Egyptians and to meet their expectations. Semi-structured interviews conducted with political actors illustrate that from the very beginning, the counter-revolutionary forces tried to gain the upper hand and control of Egyptian politics by fiercely violating human rights and/or neglecting the demands of the protesters. In this context, not only military governments but also the short-lived Morsi government were unable to meet the expectations of Egyptians. Interviewees pointed to the scarcity of time and the influence of the military and other political figures from the former authoritarian regime as the cause of the failure of the Morsi government in realising its goals on the one hand; on the other hand, they underlined that human rights and meeting the demands of the protesters were not at the top of the Morsi government's agenda. Indeed, political actors from the Freedom and Justice Party were inexperienced and lacked knowledge about human rights issues and transitional processes; however, instead of compensating for the violation of human rights, they also preferred to make compromises with state actors, hoping for a smoother transition. Moreover, the exclusivist approach of the Morsi government during the constitution-making process constrained the participation of oppositional voices and different groups in the process, resulting in strong polarisation of the country and a weak institutional framework regarding human rights protection. The military coup in 2013 fundamentally changed the political scene in Egypt, giving the military tremendous and

absolute power that far surpassed the power of Egypt's previous military governments. The Egyptian case illustrates the significance of the continuity of actors in the transitional process. Egyptian military and political actors from the Mubarak era played a critical role in the failure of the transitional process in Egypt and turned Egypt into a more authoritarian regime. Moreover, the failure of the political actors to build a political agreement between the most significant opposing parties and institutions together with the negligence of the application of transitional justice processes shifted the direction of the Egyptian transition towards a more authoritarian regime, which in turn negatively affected the development of human rights and gave rise to an extreme level of human rights violations. However, the interviews illustrate that the extreme level of human rights violations also caused an extremely high level of awareness of human rights in post-uprising Egypt. As human rights violations have reached unprecedented levels, with seemingly everyone in Egypt being targeted, Egyptians have become more aware of their rights, even when they cannot always speak loudly about them. This, perhaps, represents a small ray of hope for the future possibility of better human rights protection in Egypt through ongoing resistance against the repressive regime.

Notes

1. A body of about nineteen senior military officers convened only in cases of war or great internal emergencies and under the chairmanship of the Minister of Defence, Field Marshal Muhammad Husayn Tantawi.
2. 'After President Mohamed Morsi's First 100 Days: Worrying Indications for Future of Human Rights, Major Crises Remain Unresolved', Cairo Institute for Human Rights Studies, October 2012, <https://cihrs.org/after-president-mohamed-morsys-first-100-days-worrying-indications-for-the-future-of-human-rights-major-crises-remain-unresolved/?lang=en>; 'Egypt: 8 Months after Dr. Mohamed Morsi Assumed the Presidency, the Rapid Deterioration of the State of Human Rights in Egypt Must Be Halted' (Cairo Institute for Human Rights Studies, 21 February 2013), <https://cihrs.org/egypt-8-months-after-dr-mohamed-morsi-assumed-the-presidency-the-rapid-deterioration-of-the-state-of-human-rights-in-egypt-must-be-halted/?lang=en>.
3. 'Joint Appeal by Egyptian Human Rights Organizations to the UN OHNCHR', Cairo Institute for Human Rights Studies, April 2013.
4. 'Egypt, Events of 2014', World Report (Human Rights Watch, 2015), <https://www.hrw.org/world-report/2015/country-chapters/egypt>; 'Egypt, Events of 2018', World Report (Human Rights Watch, 2019), <https://www.hrw.org/world-report/2019/country-chapters/egypt>; 'Egypt' (Amnesty International, 2017/18), <https://www.refworld.org/docid/5a9939113.html>.
5. 'Egypt, Events of 2019', World Report (Human Rights Watch, 2020), <https://www.hrw.org/world-report/2020/country-chapters/egypt>.
6. Todd Landman, *Human Rights and Democracy - The Precarious Triumph of Ideals* (Bloomsbury Academic, 2013), <https://doi.org/10.5040/9781472544643>.
7. David Beetham, 'Linking Democracy and Human Rights', *Peace Review* 9, no. 3 (1 September 1997): 356, <https://doi.org/10.1080/10402659708426076>.
8. Daniel W. Hill, 'Democracy and the Concept of Personal Integrity Rights', *The Journal of Politics* 78, no. 3 (21 April 2016): 822–35, <https://doi.org/10.1086/685450>.
9. Shale Horowitz and Albrecht Schnabel, 'Human Rights and Societies in Transition: International Context and Sources of Variation', in *Human Rights and Societies in Transition: Causes, Consequences, Responses*, ed. Shale Horowitz and Albrecht Schnabel (Tokyo: United Nations University Press, 2004), 3–27.

10. Jack Donnelly, *Universal Human Rights in Theory & Practice* (Ithaca and London: Cornell University Press, 2003), 34.
11. Frederic Megret, 'Nature of Obligations', in *International Human Rights Law*, ed. Daniel Moeckli, Sangeeta Shah, and Sandesh Sivakumaram (Oxford: Oxford University Press, 2010), 130; Eva Maria Lassen, 'Factors Which Enable or Hinder the Protection of Human Rights' (The Danish Institute for Human Rights, 2017), 19, https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/frame_-_factors_which_enable_or_hinder_the_protection_of_human_rights.pdf.
12. 'Enhancing Access to Human Rights. International Council on Human Rights Policy' (Versoix, Switzerland: International Council on Human Rights Policy ICHRP, 2004); Lassen, 'Factors Which Enable or Hinder the Protection of Human Rights'.
13. Wenlin Tian, 'Middle East Geopolitical Situation in Transition' 8, no. 2 (2014): 99.
14. Silvio Colombo, *Political and Institutional Transition in North Africa: Egypt and Tunisia in Comparative Perspective* (Routledge, 2018).
15. Hanna Lerner and Amir Lupovici, 'Constitution-Making and International Relations Theories', *International Studies Perspectives*, 2019, 1–23.
16. Zaid Al-Ali and Philipp Dann, 'The Internationalized Pouvoir Constituant – Constitution-Making Under External Influence in Iraq, Sudan and East Timor', *Max Planck Yearbook of United Nations Law Online* 10, no. 1 (2006): 423–63, <https://doi.org/10.1163/187574106X00100>; Tereza Jermanová, 'Before Constitution-Making: The Struggle for Constitution-Making Design in Post-Revolutionary Egypt', *Acta Politica* 55, no. 4 (1 October 2020): 648–69, <https://doi.org/10.1057/s41269-019-00137-4>; Tom Ginsburg, 'Constitutional Advice and Transnational Legal Order', *UC Irvine Journal of International, Transnational, and Comparative Law* 2, no. 5 (2017).
17. Ginsburg, 'Constitutional Advice and Transnational Legal Order'.
18. Ginsburg, 23.
19. Catherine Turner, 'Transitional Constitutionalism and the Case of the Arab Spring', *International and Comparative Law Quarterly* 64, no. 2 (2015): 268.
20. Turner, 267–71.
21. Ibid., 268.
22. Senen Florensa, 'Building Democracies in the Light of International Experiences: A Critical and Demanding Challenge for the Arab World', in *The Arab Transitions in a Changing World. Building Democracies in Light of International Experiences*, ed. Senen Florensa, 2016, 9–37.
23. Ginsburg, 'Constitutional Advice and Transnational Legal Order', 23.
24. Makau Mutua, 'What is the Future of Transitional Justice?', *International Journal of Transitional Justice* 9, no. 1 (2015): 1–9.
25. Francesco Panizza, 'Human Rights in the Processes of Transition and Consolidation of Democracy in Latin America', *Political Studies*, 1995, 171–73; Kora Andrieu, 'Confronting the Dictatorial Past in Tunisia: Human Rights and the Politics of Victimhood in Transitional Justice Discourses since 2011' 38, no. 2 (2016): 262.
26. Susan E. Waltz, 'Universal Human Rights; The Contribution of Muslim States', *Human Rights Quarterly* 26, no. 4 (2004): 799–844; Anthony Tirado Chase, *Human Rights, Revolution, and Reform in the Muslim World* (Boulder, [Colo.]: London: Lynne Rienner Publishers, 2012), 18,26; Ann Elizabeth Mayer, *Islam and Human Rights. Traditions and Politics* (Philadelphia: Westview Press, 2013), 21; Neil Hicks, 'Transnational Human Rights Networks and Human Rights in Egypt', in *Human Rights in the Arab World*, ed. Anthony Tirado Chase and Amr Hamzawy (Philadelphia: University of Pennsylvania, 2006), 66,68.
27. 'Egypt', Countries in Crossroad (Freedom House, 2005), <https://www.refworld.org/docid/4738690c2.html> ; 'Egypt', Countries in Crossroad (Freedom House, 2007), <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4738692364&skip=0&query=countries%20at%20the%20crossroads&coi=EGY>; 'Egypt', Countries in Crossroad (Freedom House, 2011), <https://www.refworld.org/docid/4ecba64fc.html>.

28. June Roy, 'Human Rights Protection and the Rule of Law: Case Studies in Israel and Egypt', in *Rule of Law in the Middle East and the Islamic World*, ed. Eugene Cotran and Yamani Mai (I.B. Tauris, 2000), 50.
29. See the 2014–2021 *Freedom in the World* reports from Freedom House, available online at <https://freedomhouse.org>.
30. Larry Diamond et al., 'Reconsidering the Transition Paradigm', *Journal of Democracy* 25, no. 1 (2014): 86–87.
31. Colombo, *Political and Institutional Transition in North Africa: Egypt and Tunisia in Comparative Perspective*; Guillermo O'Donnell, C. Philippe Schmitter, and Laurence Whitehead, eds., *Transitions from Authoritarian Rule: Comparative Perspectives* (Baltimore: The Johns Hopkins University Press, 1986).
32. Muriel Asseburg and Heiko Wimmen, 'Dynamics of Transformation, Elite Change and New Social Mobilization in the Arab World' 21, no. 1 (2016): 1–22; Malika Bouziane, Anja Hofmann, and Cilja Harders, 'Analyzing Politics beyond the Center in an Age of Transformation', in *Local Politics and Contemporary Transformations in the Arab World: Governance beyond the Center*, ed. Malika Bouziane, Anja Hofmann, and Cilja Harders (Palgrave Macmillan, 2013).
33. Horowitz and Schnabel, 'Human Rights and Societies in Transition: International Context and Sources of Variation', 3.
34. Melek Saral, 'The Protection of Human Rights in Transitional Tunisia', *Muslim World Journal of Human Rights* 16, no. 1 (2019): 1–26.
35. Manuel Antonio Garreton, 'Human Rights in Process of Democratisation', *Journal of Latin American Studies* 26, no. 1 (1994): 222–23.
36. Tian, 'Middle East Geopolitical Situation in Transition', 100–101.
37. Mazen Hassan, Jasmin Lorch, and Annette Ranko, 'Explaining Divergent Transformation Paths in Tunisia and Egypt: The Role of Inter-Elite Trust', *Mediterranean Politics*, 2019.
38. Philippe Droz-Vincent, 'Changes in Civil Military Relationships after the Arab Spring', in *Constitutionalism, Human Rights and Islam after the Arab Spring*, ed. Rainer Grote and Tilmann J. Röder (Oxford University Press, 2016), 342; Philippe Droz-Vincent, 'Authoritarianism, Revolutions, Armies and Arab Regime Transitions', *The International Spectator* 46, no. 2 (2011): 18.
39. Tilmann J. Röder, 'State Control over the Military or Military Control over the State A Comparison of Selected Arab Constitutions', in *Constitutionalism, Human Rights and Islam after the Arab Spring*, ed. Rainer Grote and Tilmann J. Röder (Oxford: Oxford University Press, 2016), 292.
40. Nimer Sultany, *Law and Revolution: Legitimacy and Constitutionalism after the Arab Spring*, First edition, Oxford Constitutional Theory (Oxford, United Kingdom: Oxford University Press, 2017).
41. Sultany, 116; Hussein Agha and Robert Malley, *The Arab Counterrevolution* (The New York Review of Books, 2011); Joe Stork, 'Egypt Human Rights in Transition', *Social Research. An International Quarterly* 79, no. 2 (2012): 463–86.
42. Sultany, *Law and Revolution*, 116–18.
43. Ibid. 116
44. Nathan J. Brown and Michelle Dunne, 'Egypt's Draft Constitution Rewards the Military and Judiciary', *Carnegie Endowment for International Peace*, 4 December 2013, <https://carnegieendowment.org/2013/12/04/egypt-s-draft-constitution-rewards-military-and-judiciary-pub-53806>.
45. Irene Weipert-Fenner, *The Autocratic Parliament. Power and Legitimacy in Egypt. 1866–2011* (Syracuse University Press, 2020).
46. Droz-Vincent, 'Changes in Civil Military Relationships after the Arab Spring', 342; Droz-Vincent, 'Authoritarianism, Revolutions, Armies and Arab Regime Transitions', 17.
47. J. Tilmann Röder, 'State Control over the Military or Military Control over the State A Comparison of Selected Arab Constitutions', in *Constitutionalism, Human Rights and Islam after*

- the Arab Spring*, ed. Rainer Grote and J. Tilmann Roder (Oxford: Oxford University Press, 2016), 292.
48. Stephan Roll, 'Managing Change: How Egypt's Military Leadership Shaped the Transformation', *Mediterranean Politics* 21, no. 1 (2016): 23–43.
 49. Maren Koss, *Resistance, Power and Conceptions of Political Order in Islamist Organisation: Comparing Hezbollah and Hamas* (New York, NY: Routledge, 2018); Yasmine El Rashidi, 'Egypt: Whose Constitution?', 2013, <https://www.nybooks.com/daily/2013/01/03/egypt-whose-constitution/>; Brown and Dunne, 'Egypt's Draft Constitution Rewards the Military and Judiciary'.
 50. Koss, 'Resistance, Power and Conceptions of Political Order in Islamist Organisation'; El Rashidi, 'Egypt: Whose Constitution?'; Brown and Dunne, 'Egypt's Draft Constitution Rewards the Military and Judiciary'.
 51. Droz-Vincent, 'Changes in Civil Military Relationships after the Arab Spring', 331–32.
 52. Sultany, *Law and Revolution*, 133.
 53. Röder, 'State Control over the Military or Military Control over the State A Comparison of Selected Arab Constitutions', 290.
 54. *The Road Ahead: A Human Rights Agenda for Egypt's New Parliament* (Washington, D.C: Human Rights Watch, 2012), 9, 38, <https://www.hrw.org/sites/default/files/reports/egypt0112webwcover.pdf>.
 55. Stork, 'Egypt Human Rights in Transition', 471–72.
 56. *The Road Ahead*.
 57. Droz-Vincent, 'Changes in Civil Military Relationships after the Arab Spring', 333–37.
 58. Interview conducted with Wael Qandil in August 2018.
 59. Melani Cammett and Jones Luong Pauline, 'Is There an Islamist Political Advantage?', *Annual Review of Political Science* 17 (2014): 199–202.
 60. Cammett and Pauline, 190–191.
 61. Rainer Grote and Roeder Tilmann, 'The Constitutional Legacy of the Arab Spring', in *Constitutionalism, Human Rights and Islam after the Arab Spring*, ed. Rainer Grote and Roeder Tilmann (Oxford: Oxford University Press, 2016), 908.
 62. Interview conducted with Muhammad Kamal in March 2018.
 63. Interview conducted with Amr Darrag, Minister of Planning and International Cooperation and Secretary General of the Assembly, April 2018.
 64. Ibid.
 65. Cap Linda Keith, 'Constitutional Provisions for Individual Human Rights (1977-1996): Are They More Than Mere "Window Dressing"?', *Political Research Quarterly* 55, no. 1 (2002): 122.
 66. Said Mahmoudi, 'International Human Rights Law as a Framework for Emerging Constitutions in Arab Countries', in *Constitutionalism, Human Rights and Islam after the Arab Spring*, ed. Rainer Grote and Roeder Tilmann (Oxford University Press, 2016), 538.
 67. Jermanová, 'Before Constitution-Making: The Struggle for Constitution-Making Design in Post-Revolutionary Egypt', 651.
 68. Ibid. 544
 69. Kora Andrieu, 'Political Liberalism after Mass Violence: John Rawls and a "Theory" of Transitional Justice', in *Transitional Justice Theories*. Routledge, ed. Susanne Buckley-Zistel et al. (Routledge, 2016), 91.
 70. Interview conducted with Muhammad Kamal in March 2018
 71. Interview conducted with Oussama Rusdhi in March 2018.
 72. Ibid.
 73. Interview conducted with Wael Quandil in August 2018.
 74. Ester Cross and Jason Sorens, 'Arab Spring Constitutionmaking: Polarisation, Exclusion, and Constraints', *Democratisation* 23, no. 7 (2016): 1294.
 75. Cross and Sorens, 1294.
 76. Justin Blount and Tom Ginsburg, 'Participation in Constitutional Design: Asian Exceptionalism', in *Comparative Constitutional Law*, ed. Rosalind Dixon and Tom Ginsburg

- (Cheltenham, UK: Edward Elgar, 2014), 25; Cross and Sorens, 'Arab Spring Constitution-making: Polarisation, Exclusion, and Constraints', 1295.
77. Duncan Pickard, 'Al-Nahda: Moderation and Compromise in Tunisia's Constitutional Bargain', in *Political and Constitutional Transitions in North Africa. Actors and Factors*, ed. Justin Frosini and Francesco Biagi (London: Routledge, 2015), 4–5.
 78. Kasper Netterstrom, 'The Islamists Compromise in Tunisia', *Journal of Democracy* 26, no. 4 (2015); Monika Marks, 'Convince, Coerce or Compromise? Ennahda's Approach to Tunisia's Constitution', Brookings Doha Center Research Paper, 2014; Laura Guazzone, 'Ennahda Islamists and the Test of Government in Tunisia', *The International Spectator* 48, no. 4 (2013): 38–39.
 79. Interview conducted with Mahrezia Libadi, February 2018.
 80. Omar Ashour, 'Lions Tamed? An Inquiry into the Causes of De-Radicalization of the Egyptian Islamic Groups' 61, no. 4 (2007): 596–627; Jillian Schwendler, 'Can Islamists Become Moderates? Rethinking the Inclusion-Moderation Hypothesis', *World Politics* 63, no. 2 (2011): 356–57.
 81. Nathalie Bernard-Maugiron, 'State Powers and Constitution Drafting Processes in Post-Revolutionary Transitions in North Africa', in *The Arab Transitions in a Changing World. Building Democracies in Light of International Experiences*, ed. Senen Florensa (IEMED, 2016), 120–21.
 82. Cross and Sorens, 'Arab Spring Constitutionmaking: Polarisation, Exclusion, and Constraints', 1308.
 83. Duncan Pickard, 'Al-Nahda: Moderation and Compromise in Tunisia's Constitutional Bargain', in *Political and Constitutional Transitions in North Africa. Actors and Factors*, ed. Justin Frosini and Francesco Biagi (London: Routledge, 2015), 4–5.
 84. Cross and Sorens, 'Arab Spring Constitutionmaking: Polarisation, Exclusion, and Constraints', 1296.
 85. Imen Gallala-Arndt, 'Constitutional Reforms in Tunisia, Egypt, Morocco and Jordan: A Comparative Assessment' (Panorama, 2012), 144.
 86. Bernard-Maugiron, 'State Powers and Constitution Drafting Processes in Post-Revolutionary Transitions in North Africa', 121.
 87. Amal Jamal and Anna Kensicki, 'A Theory of Critical Junctures for Democratization: A Comparative Examination of Constitution-Making in Egypt and Tunisia', *The Law & Ethics of Human Rights* 10, no. 1 (1 May 2016): 200–201, <https://doi.org/10.1515/lehr-2016-0007>.
 88. Interview conducted with Amr Darrag in March 2018.
 89. Interview conducted with Mohamed Gamal Hashmet in July 2018.
 90. Cross and Sorens, 1245.
 91. Moustafa Tamir, 'The Islamist Trend in Egyptian Law', *Politics and Religion* 3 (2010): 617–18.
 92. Ann Elizabeth Mayer, 'Law and Religion in the Muslim Middle East', *The American Journal of Comparative Law* 35, no. 1 (1987): 138.
 93. Maurits Berger and Nadia Sonneveld, *Sharia and National Law in Egypt. Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*. (Leiden University Press, 2010), 69.
 94. Mustapha Kamel Al Sayyid, 'Rule of Law, Ideology and Human Rights in Egyptian Courts', in *Islam and Constitutional Politics in Egypt and Iran*, ed. Said Amir Arjomand and Brown J. Nathan (State University of New York Press, 2013), 230.
 95. Baudouin Dupret, 'The Relationship between Constitutions, Politics and Islam. A Comparative Analysis of the North African Countries', in *Constitutionalism, Human Rights and Islam after the Arab Spring*, ed. Rainer Grote and Roeder Tilmann (Oxford University Press, 2016), 240.
 96. Interview conducted with Wael Quandil in August 2018.
 97. Sultany, *Law and Revolution*.
 98. Droz-Vincent, 'Changes in Civil Military Relationships after the Arab Spring', 351–52.

99. Dupret, 'The Relationship between Constitutions, Politics and Islam. A Comparative Analysis of the North African Countries', 240.
100. Interview conducted with Amr Darrag in March 2018
101. Interview conducted with Khalaf Bouyami in March 2019
102. Ragab Saad, 'All the President's MP's. The Egyptians Parliament's Role in Burying Human Rights and Silencing Dissent', POMED Project on Middle East Democracy (POMED, 2017), https://pomed.org/wp-content/uploads/2017/06/Ragab_170612_FINAL.pdf.
103. Interview conducted with Maha Azzam in April 2018.
104. Interview conducted with Wael Qandil in August 2018.
105. Sultany, *Law and Revolution*, 120.
106. Johnson, 'Beyond Constituent Assemblies and Referenda: Assessing the Legitimacy of the Arab Spring Constitutions in Egypt and Tunisia'.
107. Interview conducted with Maha Azzam in April 2018.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This project has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No. 703223.

Notes on contributor

Melek Saral is a research associate at SOAS, University of London and Assistant Professor at Istanbul Sabahattin Zaim University. Melek received her Ph.D. from the Ludwig Maximilian University of Munich in the field of political science. She studied political science, law, and history at the Ludwig Maximilian University of Munich, the University of Bradford, and the European University Institute. Her research interests include the MENA region, human rights, minority rights, and transitional justice.