

Reflections on Human Rights Understandings in light of the Arab Spring

Vida Hamd

Abstract

At the outset of the Arab Spring, human rights were more than merely popular demands emanating from mass demonstrations. They were a prelude to the ousting of heads of state and regime leaderships in Yemen, Libya, Egypt and Tunisia. They were not just a means, but also an end in themselves. Despite arguments over whether this ongoing period of mass protests and revolutions that rocked Arab Spring countries should now be seen as a ‘spring’ or a ‘winter’, its inception proved an important moment for human rights within the Arab world. This was important not so much in terms of securing human rights—as this has rapidly proven a to be a transitional period, full of uncertainty—but rather in terms of what these protests implied about our understanding of human rights, as well as the way we design human rights advocacy and enforcement strategies. This paper consists of two distinct but related arguments; (i) a theoretical one, that attempts to conceptualize the Arab Spring, and examine the ability of human rights theories to foretell it; and (ii) a pragmatic dimension that examines constructivist (bottom-up) and realist (top-down) dynamics of human rights development prior to the Arab Spring. On the basis of these two arguments, and some insight on the Arab Spring, this paper challenges prevailing national and international approaches to human rights advocacy and compliance mechanisms in Arab Spring states. The political and social contexts of Arab Spring countries have varying characteristics. Levels of activism by civil society actors also vary. As such, this paper looks at the broad common features of human rights policies and understandings in the region and how they may be reconstituted more effectively in order to reinvigorate human rights advocacy. It uses a reflective approach from a national practitioner’s perspective to theorize the Arab Spring and explore a more profound and sustainable approach to the general respect and protection of human rights post Arab Spring.

Keywords

Human Rights, Equality, Justice, Middle East



The Hague Institute
for Global Justice

WORKING PAPER 16
May 2016

Reflections on Human Rights Understandings in light of the Arab Spring

Vida Hamd

About the Author

Vida Hamd holds a PhD in International law specializing in counter terrorism. She is an academic with more than 10 years of field experience in conflict zones across the Middle East where she worked with the UN on refugee protection, national dialogues, constitutional reforms and peace processes. She lectures at the Lebanese American University and is currently the Policy Officer for Political and Humanitarian Affairs at the Embassy of the Kingdom of Netherlands in Beirut.

About The Hague Institute for Global Justice

The Hague Institute for Global Justice is an independent, nonpartisan institution established to undertake interdisciplinary policy-relevant research, develop practitioner tools, and convene experts and policymakers to facilitate knowledge sharing. Through this work the Institute aims to contribute to, and further strengthen, the global framework for preventing and resolving conflict and promoting international peace.

**The Hague Institute
for Global Justice**
Sophialaan 10
2514 JR The Hague
The Netherlands

t +31 (0)70 30 28 130
e info@TheHagueInstitute.org
w TheHagueInstitute.org
t @HagueInstitute

About The Hague Institute Working Paper Series

The aim of The Hague Institute working papers series is to provide an outlet for authors to make original, rigorous, and policy-relevant research available publically. Each Hague Institute working paper is peer-reviewed by at least two experts, one internal to and one external to the Hague Institute.

Disclaimer

The views expressed in this paper are solely those of the author(s) and do not necessarily reflect the views of The Hague Institute for Global Justice, any other individual, or any other organization.

The Arab Spring and Human Rights Theories

More than four years after the onset of mass uprisings in many Arab countries, a plethora of research has already detailed and evaluated the overall human rights situation that caused the Arab Spring, and the trajectory that human rights have taken since. This paper, rather than traversing the same ground, seeks instead to pursue an alternative, critical line of enquiry, by discussing what the Arab revolutions articulate and illustrate about Arab understandings of human rights. It takes a step back to look at our conceptual understandings of human rights, whether as natural and innate, or socially and politically constructed. It then discusses how such understandings can influence our theory of change and our human rights interventions in the wake of the Arab Spring.¹

1. On the nature of Human Rights

1.1 Arab Spring: a reclamation of the 'ideational' nature of human rights

In Arab Spring countries, human rights accorded to the majority of Arab citizens are predicated on- and derived from - the will of the state, as expressed through State policies and laws. Based on this understanding, citizens enjoy human rights only to the extent that these rights do not infringe on the state's "interests", a term that has been used abundantly in order to restrict many political and economic rights. This, in addition to state nepotism², rendered the human rights system an expression of state interests, rather than a manifestation of the underlying principles of human rights, and an (re)assertion of state supremacy rather than a guarantee for human dignity. In this sense, national legislation did not incorporate rights and values, per se, but assigned privileges, and divided shares. This turned human rights into an instrumental, interest-based system. It also created a common impression that human rights are dependent on state will, which in Arab Spring countries translates into the will of the dictator or regime elites in the halls of power. As such the original ideational nature of human rights, that treats people as worthy of freedoms and rights by the simple virtue of being human beings, was distorted and denied.

The first phases of Arab revolutions were marked by two characteristics in favor of the naturalist human rights theory; the spontaneity of the protestors' outbursts and the absence of centralized or single, top-down authority leadership of the mass movements. These characteristics constituted a compelling illustration of the principle that human beings are naturally inclined towards freedoms, irrespective of any political decision making processes or strategic bartering. The fact that human rights violations are an infringement to the core being of a person was also underscored in the very act that arguably started the first mass protests in Tunisia: the self-immolation of the humiliated vegetable-seller Bou Azizi. In many cultures, fire was used as a cathartic element to rid oneself of shame. In the past, Arab women who were raped, or who were held to have 'shamed' their families through other acts, were burned by relatives or set themselves on fire, not just as an act of punishment, but also as a reclamation of lost dignity and worthiness in the eyes of the community. The choice of fire thus connotes reclamation of human dignity and value. The naming of demonstrations, such as "Dignity Day" and "Anger Day", attests to the degree to which human rights and freedoms are not mere artificial state constructions, but instead an articulation of a human's core nature.

¹ See for example.

² Nepotism is the practice of patronage networks or bestowing favours on the basis of family relationships.

Protestors' slogans such as "Work, Freedom, Bread" reminded the regime that human rights serve human needs, dignity, and freedoms independent of any political interest, strategic calculation, or authoritarian bargain.

In this sense, the Arab Spring started a conceptual revolution that re-claimed the ideational nature of human rights not by power of international human rights law, but by the power of human beings. In this, it manifested a hope that was professed in 1933 in Tunisia, in particular by its poet Abu Al-Qasem AlShabe, in the first verse of his poem 'The Will to Life'. It begins: 'If, one day, the people will to live, then fate must obey. Darkness must dissipate, and the chain must give way.'

The theoretical conclusion that the onset of the Arab Spring reflects ideational values of dignity and freedom has more practical implications. At their outset, the demonstrations were still dismissed as a 'Facebook' protest. Shortly after, they became serious enough to merit the label 'foreign conspiracy'.³ Then, in a calculated attempt to categorically de-legitimize the protests, protestors were called 'saboteurs', then 'Islamists', and finally 'terrorists' as an attempt to suppress the humanitarian nature of their demands, and to justify the oppressive policies and excessive force used against them.

The Arab Spring was not a calling that came from clergymen, mosques, Islamic groups,⁴ intelligence agencies, or militant groups. Mass protestors that first took to the streets were not jihadists, nor were they terrorists or conspirators. The foundation of the mass protests lay in their common humanity that created cross boundary solidarity. The protests were thus a struggle to express and defend human nature and common humanity.

This particular characteristic of the Arab Spring protests is worth theorizing. The right to preservation of human nature is articulated in the naturalist theory of human rights, particularly in John Locke's political theories that acknowledge this right and thus, *in extremis*, the right to revolution.⁵ Locke maintained that governments exist by consent of the people and only to the extent that they are able to safeguard and guarantee the rights that people have chosen to conditionally transfer to the government through a social contract that ensures stability and enjoyment of life, liberty and property. The famous slogan, 'Al Sha'eb Yurid..' (The people want) resonated across Arab borders and became a regional expression of mass dissent and refutation of the existing social contract. Use of excessive force to crush the protests further delegitimized the political governments and invoked the "right to revolution", which by definition is quite distinctive from insurrection, coup d'etat and rebellion because it is a resistance to an unlawful power.

For some Arabs, there is no need to theorize the Arab revolutions, or to invoke John Locke or other theories of political justice. The right to resist unlawful power, whether colonial,(neo)-imperial, or dictatorial, is historically familiar to an Arab world that witnessed turbulent and violent processes of decolonization. Frequent rounds of revolutions occurred since then, albeit with limited successes for human rights⁶. For many Arabs, no matter what the arguments used at the onset of mass demonstrations were used to justify the legitimacy of the ruling

3 Abdul Aziz AlHais, *Is the Arab Spring an American Conspiracy?* Al-Jazeera, 22 January 2012. <http://www.aljazeera.net/knowledgegate/opinions/2012/1/22/> {Accessed on 15 June 2015}

4 Michael Hoffman and Amaney Jamal, *Religion in the Arab Spring: Between Two Competing Narratives*, 20 March 2013, p.2 http://aalims.org/uploads/Hoffman_and_Jamal_AALIMS.pdf. {Accessed on 12 September 2015}

5 Alex Tuckness, *Locke's Political Philosophy*, *The Stanford Encyclopedia of Philosophy*, Ed. Edward N. Zalta, Winter 2012. <http://plato.stanford.edu/entries/locke-political/>{Accessed on 3 July 2015}

6 Derya Göçer Akder, *Theories of Revolutions and Arab Uprisings: The Lessons from the Middle East*, *Ortaođu Etütleri*, Volume 4, No 2, January 2013, p. 92.

power, once blood was shed, the ruling power became unlawful. So whereas the Arab Spring might have come as a surprise to some analysts, experts and foreign governments⁷, for some Arabs it was but a matter of timing—and who could predict the exact timing of a revolution? Indeed, it was because the leaders were aware of this tension that they clung to their dictatorships and cracked down on dissidents and activists.

Nevertheless, reference to human rights and political philosophy is relevant because it counters the argument that the Arab revolution was based on conspiracy—be it ‘Islamic’, ‘American’, or ‘Iranian’. What happened later, and how peaceful protests eventually did turn into sponsored armed conflict, is a different story entirely. Revolutions have historically attracted foreign state reactions or meddling that differs according to interests and stakes. However, framing the Arab Spring revolutions through the sole lens of foreign stakes and sponsored terrorism undermines human rights abuses that were cornerstone determinants of the Arab Spring in the first place, and derails future endeavors to promote human rights.

1.2 Grounding the naturalist essence of Human Rights

While the Arab Spring protests attest to human’s natural tendency towards freedom and dignity, the protection of freedom and democratic values called for during the revolution required a certain level of socio-political organization in order to carry moral values and human rights demands from the streets to decision-making processes and institutions. During such a transitional phase, the naturalist essence and universality of human rights bumped into relativist understandings of some political parties, namely the Islamic parties that assumed power in Egypt and Tunisia for example. Taking Egypt as a demonstration, it appeared that during the drafting and vetting on the new constitution, the scope of women rights would be contingent on the political will of the ruling party, which was at that time the Islamic Brotherhood.

This is yet another moment for human rights that is worth theorizing because it invokes the historical theoretical tension between naturalist and constructivist theories of human rights. The naturalist theory claims that human rights are inherent to every person at all times and in all places, by simple virtue of their humanity. As such, they are not contingent upon laws, western imposition, or political arrangements.⁸ On the other hand, the constructivist theory makes human rights an artificial and to some extent arbitrary construct, that is contingent on state will, decision making practices, and local, national and international processes.⁹

Reflecting on the human rights debate that guided constitutional amendments post Arab Spring protests, for example on religious freedom and women rights¹⁰, it looks like securing human right demands in a more meaningful and resilient manner would require grounding

7 F. George Gause III, *Why Middle East Studies Missed the Arab Spring: The Myth of Authoritarian Stability*, *Foreign Affairs*, July-August 2011. <https://www.foreignaffairs.com/articles/north-africa/2011-07-01/why-middle-east-studies-missed-arab-spring>{Accessed on 3 August 2015}

8 Charles R. Beitz, *The Idea of Human Rights*, Oxford University Press, 2009, p. 55.

9 Benjamin Gregg, *Human Rights as Social Construction*, *American Political Thought*, Vol. 2, No 1, University of Chicago Press, spring 2013, p.166-167.

10 See for example: Nicola Pratt, *Gendered paradoxes of Egypt’s transition*, *Open Democracy*, 2 February 2015. <https://www.opendemocracy.net/5050/nicola-pratt/gendered-paradoxes-of-egypt%E2%80%99s-transition> {Accessed on 4 November 2015}

A Change of Seasons for Arab Women?, *Journal of Women and Human Rights in the Middle East*, Issue 1, Baker Institute, Fall 2013. <https://bakerinstitute.org/media/files/Research/dfe28b28/WHR-Pub-StudentJournal-101613.pdf> {Accessed on 4 November 2015}

James Michael Nosset, *Free Exercise after the Arab Spring: Protecting Egypt’s Religious Minorities Under the Country’s New Constitution*, *Indiana Law Journal*, Vol. 89, Issue 4, Fall 2014. <http://www.repository.law.indiana.edu/ilj/vol89/iss4/8/>{Accessed on 4 November 2015}

them in a foundation that is more solid than that set by societal decision makers and government majority. That would require a distinction between the nature of human rights on one hand, and the means for protecting them on the other. Human Rights are derived from human nature that is constantly striving for more dignity and more freedom. International instruments, national laws, monitoring and enforcement measures are means for the realization and protection of human rights.

There is a practical relevance to this distinction. For many years ‘human rights’ was regarded as a separate discipline that is mainly focused on promoting human rights, and reforming governmental (institutional, legislative) or non-governmental (NGOs) structures mandated with their protection. Such efforts focused chiefly on advocating for more just policies, transparency and accountability, and strengthening institutional capacity to prevent abuses and provide justice and remedies where any took place. During the power transitional phase, many Arab Spring countries ratified new international human rights instruments; nevertheless, the impact of these normative amendments remained quite limited—as one may deduce from the deteriorating human rights situation in many of these countries.¹¹

Notwithstanding the importance of these efforts, a new approach is needed to reinforce the nature of human rights and transform collective patterns of thinking and acting within the field. This approach would treat human rights violations as a symptom, and give attention to the root causes of these violations, such as socio-economic deprivation, discrimination and exclusion of “the other”¹². This approach focuses as such on transforming dysfunctional relationship patterns by replacing existing values and cultural norms that underpin exclusion patterns with values of inclusivity, non-discrimination, and human dignity. This transformation would ideally work on multiple dimensions: vertically between the people and government, and horizontally between the individual and his or her community, as well as among groups of citizens.

2. On our Conceptual Understanding of Human Rights

2.1 Cultural Relativism and Universality

Through the international human rights instruments, signed and ratified by many Arab Spring countries, these states endorsed the principle of the universality of human rights, according to which human rights are applied equally and indiscriminately to every person, irrespective of his or her race, sex, religion, ethnic or social origin, language, nationality, age, sexual orientation, disability or any other distinguishing character¹³. Nevertheless, for decades to come, universal norms laid down by these international human rights instruments were diluted or even dismissed outright as inconsistent with Arab cultural, religious beliefs and practice. Within human rights theory, and indeed within popular discourse at large, this is known as cultural relativism. Cultural relativism takes two forms: a strong one that considers culture a principle source of the validity of a right; and a weaker one that initially presumes

11 The Arab Spring on Trial Human Rights in the Arab Region 2014, Reform Issues (34), Cairo Institute for Human Rights Studies, 2015, p. 7. <http://www.cihrs.org/wp-content/uploads/2015/10/The-Arab-Spring-on-Trial.pdf> {Accessed on 11 April 2016}

12 Michelle Parlevliet, Bridging the Divide: Exploring the Relationship between Human Rights and Conflict Management, Track II (I), March 2002, p.2.

13 Universal Declaration of Human Rights, article 1.

universality of rights but uses culture as a secondary source to allow some local variations to the scope of rights.¹⁴ In the past, cultural relativism was repeatedly used by Arab states to escape or subvert their human rights commitments derived from these instruments¹⁵, as well as by religious figures to maintain control over legislation. Human rights were regarded as a western/imperialist invention. This discourse resonated what the famous author Edward Said called the creation of ‘the Orient’ in European and American literature, that distinguished between the West and the rest of the world through perceived geographical and cultural barriers—thereby codifying differences among people.¹⁶

To some observers, the slogans and chants used in the Arab Spring demanding dignity, release of prisoners, labor rights, freedom from torture, etc. marked a ‘distinction between the concept of human rights and the politics behind its practice.’¹⁷ It appeared as if years of systematic violation of human rights have only strengthened the relevance of the international human rights regime to the Arab people who seemed, at least at the onset of the mass protests, to depart from the long standing “anti-imperialist” and cynical discourse on human rights.

More than five years after this significant moment, one may reflect on whether there has indeed been a sustainable shift away from cultural relativism and towards an acknowledgment of the universality of human rights. Though it is very difficult to draw a conclusive picture for all the Arab Spring countries, there were some mixed signals coming, particularly during the transitional phases when new constitutions were drafted and voted upon. These signals were loud and clear in constitutional debates on women’s rights and religious interpretations of human rights. It could be seen in Egypt, for instance, in debates over the consultative role of al-Azhar in the interpretation of legislation pertaining to Shari’a, as well as over references to the Quran, and the use of principal sources of Shari’a as a controlling element in the interpretation and exercise of rights and freedoms.¹⁸ In Tunisia, Al-Ghannouchi and other party representatives did, for example, express their support for the reservations on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁹ Therefore, the general drift of constitutional debates on human rights denoted a tug between, in the phrasing of Daniel Brumberg: “those who want to define human rights more closely based on international standards and based on individual rights versus those who prefer or gravitate toward a more communal or collective notion of human rights or believe that personal or individual rights should be subject to certain kinds of communal notions of identity.”²⁰

The influence of Islamist thinking was limited in the Tunisian Constitutions and the 2014 version of the Egyptian constitution, so in this way, at least, the new, post-Arab Spring

14 Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd Ed., Cornell University Press, 2003, p. 90.

15 *Ibid.* p. 87.

16 Edward Said, *Culture and Imperialism*, Vintage Books, 1993, p. 108-109. See also Edward Said, *Orientalism*, Vintage Books, 1979.

17 See for example: Shadi Mokhtari, *The Middle East and Human Rights: Inroads Towards Charting its Own Path*, *Northwestern Journal of International Human Rights*, Vol. 10, No. 4, summer 2012, p.195.

18 JörgFedtke, *Comparative Analysis between the Constitutional Processes in Egypt and Tunisia- lessons learnt- Overview of the Constitutional Situation in Libya*, European Union, Belgium, April 2014, p. 15. [http://www.europarl.europa.eu/RegData/etudes/note/join/2014/433840/EXPO-AFET_NT\(2014\)433840_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/433840/EXPO-AFET_NT(2014)433840_EN.pdf) {Accessed on 2 July 2015}

19 Moataz El Fegier, *A Tyranny of the Majority? Islamists’ Ambivalence about Human Rights*, FRIDE, 2010, p. 8. http://www.academia.edu/5757217/Islamists_and_Human_Rights_in_Egypt_and_Tunisia{Accessed on 3 July 2015}

20 *Tunisian Debate Over Islam, Rights in Constitution Illustrated at USIP Event*, US Institute for Peace, 15 May 2013. <http://www.usip.org/publications/tunisian-debate-over-islam-rights-in-constitution-illustrated-usip-event> {Accessed on 2 July 2015}

constitutions did score some gains for human rights.²¹ Nevertheless, community views and practices that reinforce the relativity of human rights persist, and so does the ‘qualification’ of human rights by states. Hence, human rights understandings in Arab Spring countries are still evolving. At the national level, some improvements manifested after the Arab Spring, in the form of state accession to human rights instruments, prosecution of some heads of State and State apparatus, elections and referenda in four countries, release of some prisoners of conscience, etc. Yet, there are many more national and international challenges to a more sustainable acceptance and acknowledgement of the universality principle, and hence to ascertaining the *force* of rights.

The theoretical obstacles that prevent a more widespread and assertive force of human rights fall into three categories which are captured in the following three hypotheses: (i) Human Rights are a Western concept; (ii) cultural objections are exclusively Non-Western; (iii) cultural relativism is the only threat to universality.²² These arguments against human rights have been repeated across the Arab world for a long time. To move towards a more sustainable universality of human rights means to work at the nexus of these challenges through academic, political and cultural debates that place Arab culture, identity, and religion *within* the human rights paradigm²³ and not in opposition to it.

Human rights are not a Western Notion

During the historic debates around the Universal Declaration of Human Rights and the Human Rights Covenants that followed, Arab countries, notably Lebanon and Syria, were active participants along with other (then) third-world countries. These instruments were passed by this majority rather than solely by American or European power representations. The Arab revolutions demonstrated that the division between the ‘Western’ and ‘Non-Western’ origins of human rights is a political language used to rationalize non-compliance, rather than the language of the people, at least those who took to the streets.

Nevertheless, the political relativist rhetoric could not be eradicated by popular slogans and mass demonstrations only, even if they are a strong testimony to the universality of human rights. In fact, enacting some human rights in new constitutions post-Arab Spring revolutions proved challenging when perceived as contradictory to Sharia law or Arab culture. This poses a question as to how Arab Spring countries could possibly uphold international commitments to the principle of universality of human rights without tackling religion and culture first?

The key consideration in this question is not so much religion and culture per se, but rather how religious and cultural arguments are framed. The question then becomes: to what extent can it be argued that the relativist norms and standards portray human rights without any discrimination as to gender, political opinion, social status, location, etc? Addressing religious and cultural arguments from within this rights based paradigm gives room to expand the concept of ‘humanity’ and ‘equal entitlements’ in cultural and religious texts in order to find higher grounds for human value and standards. Such a paradigm shift would eventually give more force to human rights.

21 See for example: MoushiraKhattab, *Women's Rights under Egypt's Constitutional Disarray*, Viewpoints No. 15, Woodrow Wilson International Center for Scholars, January 2013.

http://www.wilsoncenter.org/sites/default/files/womens_rights_under_egypts_constitutional_disarray.pdf {Accessed on 2 July 2015}

22 Catherine Powell, *Locating Culture, Identity, and Human Rights Symposium in Celebration of the Fiftieth Anniversary of the Universal Declaration of Human Rights: Introduction*, 30 *Columbia Human Rights Law Review* 201, 1998-99, p. 203.

23 *Ibid*, p. 202

Cultural objections are not exclusively Non-Western

The fact that some ‘Western’ States have better records of upholding human rights does not automatically imply that they are culturally neutral or that they are not susceptible to relativist behavior. While failures of non-western countries to uphold human rights are explained by cultural and religious relativist objections, Western countries base similar failures on constitutional, religious or free market objections.²⁴

Leti Volp provides an example of how dowry murders in India are perceived as ‘culture backwardness’ while domestic violence murders in the USA are not, even though death toll by domestic violence is equal in both countries. As Volp frames it: “They burn their women there {in India}..as opposed to we shoot our women here{in the USA}” suggesting that in non-western countries, it is “death by culture”.²⁵

It is as such imperative to disentangle the cultural relativism and universality theoretical arguments from geographical west and non-west locations and look more thoroughly at how relativist behavior is being rationalized in general.

Cultural Relativism paradigm is not the only threat to universality

Challenges to universality do not lie solely in societal conceptual understandings of human rights, but also in the failure of newly formed governments to protect their citizens against harmful cultural practices and beliefs such as female genital mutation, child brides, punishment of faith converters, etc. The dichotomy between universalism and cultural relativism also lies in treaty reservations, as expressed by both western and non-western states, albeit under different rationales, and in the selective enforcement of human rights.

So influencing Arab conceptual understandings of human rights towards more universality would also require working on treaty reservations as expressions of relativism and addressing these reservations on a case by case basis.

2.2 Regional and International Contributions to our Understandings

In the past, Human rights were sometimes portrayed as a western ‘colonial’ understanding aimed at invalidating Arab identity and disrupting the internal stability of Arab states.²⁶ The principle of universality of human rights was, as such, ensnared in an ‘anti-imperialist’ discourse. More recently, positive change for human rights was marketed as a by-product of geopolitical changes that the ‘war on terrorism’, and ‘fight for democracy’ would bring. The Arab Spring itself was viewed by some Arab analysts as a prologue for Condoleezza Rice’s

²⁴ Ibid. p. 204, 205.

²⁵ Leti Volp, *Feminism versus Multiculturalism*, Columbia Law Review, Vol. 101, No. 5 (June 2001) pp 1181-1218, at p. 1187.

²⁶ Abdel Baset Ben Hussein, *A culture of Human Rights Skepticism {in Arabic}*, Amnesty International. <http://www.amnestymena.org/ar/Magazine/Issue10/Acultureofskepticisminhumanrights.aspx?media=print> {Accessed on 28 December 2015}

‘New Middle East’²⁷ and at times went as far as labeling the Arab Spring as just another ‘Western Import.’²⁸

The inherent power of human rights was further undermined by selective use of human rights in foreign policy and multilateral institutions. The double standards of policies by the UN Security Council vis a vis the Arab-Israeli conflict, and the controversy within states around bidding on statehood for Palestine, challenged the human rights universalist regime with a simple question arising from the streets of Cairo all the way to Beirut: What about Palestine? Another blow to Arab faith in human rights was delivered by the strategic interests that seemed to determine when and where human rights concerns are mobilized regionally and internationally. It appeared that certain violations in certain places merited unilateral or coalition “humanitarian interventions” whereas other did not. For example, NATO intervened in Libya and Saudi Arabia in Yemen, but not so in Gaza.²⁹

Also, when state reactions towards human rights abuses are based on the identity of the victims, this potentially weakens the universality of human rights because it re-affirms ‘identity politics’ and differences.³⁰ Foreign policy responses that are more nuanced with the integral concept of *equal citizenship* would re-affirm humanity instead of identity while still succeeding in defending rights of Copts in Egypt, Yezidis and Kurds in Syria, Sabians and Christians in Iraq, or any other minorities.

3. Relevance of Theoretical Understandings to Policies: An Integrated Framework for Change

Almost four years after the Arab Spring, the situation of human rights is still far from sustainable, especially in light of the deteriorating human rights situation in some countries that do enjoy a certain level of stability after the Arab revolutions. Mass demonstrations have receded as ill-humored puns on Arab ‘winters’ increased, and countries like Syria, Yemen and Libya slipped into armed conflict. Demonstrators left ‘Tahrir Square, ‘Rabi’a, and other public spaces, but where to? Where does the struggle for human rights continue and how?

Past revolutions that took place in the Arab world in the 50s and 60s proved that a regime change, in and of itself, is not likely to create long lasting positive human rights paradigm shifts, and neither does replacing one law with another. Affecting human rights thus requires a more integrated approach that takes into consideration assumptions and conceptual understandings of human rights as discussed in the first part of this paper, as well as the most pertinent features of the Arab revolutions, and how they can help in re-shaping human rights interventions.

3.1 Ideologically: Re-thinking Individualism and Identity

Understandings of human rights in the Arab world are affected by past prevalent ideologies including, for example, nationalism, socialism, capitalism and liberalism. The link between

27 SassineAssaf, Arab Reality and the Issue of the National State {In Arabic}, Annahar Newspaper, 23 July 2015.

28 Paul Danahar, *The New Middle East: The World After the Arab Spring*, Bloomsbury Publishing, London 2013, p. 17.

29 Supra note 17 at 221.

30 RutiTeitel, *The Universal and the Particular in International Criminal Justice*, 30 Columbia Human Rights Law Review 285, 1998-1999, p. 299-302.

these ideologies and human rights principles lies in how these ideologies depict the individual and his relationship with society. Nationalism overemphasized the importance of the nation and the state's function as protector of the nation, hence amplifying the social characteristics of human beings. Socialism stressed the economic needs and hence the basic survival aspect of man. Liberalism, on the other hand, stressed the importance of an individual, but inflated it to the extent of eccentricity, leading to individual interests overriding other collective social and economic considerations. Nationalism translated into transgressions against man under the pretext of 'protecting the nation' through emergency laws and the sacrifice of civil and political rights for the 'higher public good'. The socialist ideology of the ousted regimes placed economic reforms at the top of their agendas in the 80s and 90s. However, it side-tracked reform and produced crony economies and cartels such as a dominant group of Bin Ali entrepreneurs in Tunisia, and a dominant Supreme Council of Armed Forces that controlled over 40% of the Egyptian economy.

Irrespective of the successes and failures of these ideologies, they managed to inflate a particular attribute of a human being to the extent that it overshadowed all other attributes. By doing so they distorted the essence of what it means to be a human being, as is succinctly captured in a commonplace comment in the Arab Spring countries: "Here, the human being has no value" and further aggravated the conceptual tension between human rights as individual universal rights owed to every person.

The Arab Spring is another historical moment to contemplate what counter narratives were put forth. Notwithstanding the significance of ousting authoritarian regimes, the Arab revolutions were criticized for lacking "contemporary revolutionary ideologies' that bind the various civil movements, and for having little sense of what an alternative order would look like.³¹ There was, nevertheless, a counter narrative that expressed itself clearly in slogans of mass demonstrations, music of the Arab Spring³², and programmatic post- regime agendas for human rights. Though this counter narrative was not all-uniting and was itself countered with other narratives - notably that of political Islam - its prominent aspect lied in its call for placing the universality principle of human rights and concepts of dignity, equality, liberty, and justice at the center of all social, economic, civil and political strategies.

However, a more sustainable paradigm shift for human rights in the Arab World would still need to address the more profound notions about the value of a person and to re-think individualism and identity from a human rights perspective.

Debating identity at this point in time coincides with the establishment of a so called 'Islamic State' in the heart of the "Arab nation", and with the accelerated re-rising of political Islam. This indicates a shift in the identity of the Middle East from an Arab Nationalist identity to a religious and sectarian identity with little room for tolerance and co-living with religious minorities. Human rights as a legal safety net is, as such, being circumvented by a religious identity discourse. The norms of how things are being done and whether they are done in compliance with Sharia law are gaining leverage over basic human rights rules. This adds to the urgency of re-thinking ideology and identity post Arab Spring. It also makes the discussion very difficult and dangerous because it is quite difficult to positively define identity. What is Arabism? Nationalism? Islam? Westernism? An easier definition would be

31 Toby Dodge, *Conclusion: the Middle East After the Arab Spring*, LSE IDEAS. http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR011/FINAL_LSE_IDEAS__ConclusionsTheMiddleEastAfterTheArabSpring_Dodge.pdf{Accessed on 12 September 2015}

32 The Rap Songs of the Arab Spring, 9 June 2011. <http://www.npr.org/sections/therecord/2011/06/09/137067390/the-rap-songs-of-the-arab-spring>{Accessed on 12 September 2015}

“What is not Muslim, National, Western”, thus turning the whole identity rhetoric into a process of labeling and exclusion.³³ Framing identity this way reinforces fear and exclusion of “the other” making it very difficult to acknowledge “the other” as a person equally entitled to rights, and consequently very difficult to establish the fundamental basis of human rights such as equity, non-discrimination, inclusion.

Alternatively, defining identity would need to start with the person or the individual. Individualism would also not be defined by a purely political, economic or cultural ideology, but rather as a process that has the ability to transform the framework of human life without reference to any particular worldview³⁴. This requires making a clear distinction between individualism in this sense and identity, be it political, social, cultural or religious. Identity is more of a social construct or a constructed expression of persons, whereas individualism stands on its own as the values that are inherent in these persons, such as conscience, dignity, tendency towards liberty, but without eliminating cultural, religious and other collective references³⁵. To nuance individualism in this sense and distinguish it from previous ideological interpretations that lead to an authoritarian vision of cultural identity, it is perhaps better to use the term “human being-ism” or rather “humanism”.

In conclusion, an ideology that incorporates “humanism” and neither eliminates nor controls identities, but rather acknowledges them as collective references that are pluralist and open, may fill in the hollowness of normative human rights frameworks in Arab Spring countries and lay the foundations of a more sustainable shift towards universality of human rights. As such, a sustainable movement for human rights does not stop once the masses are mobilized; it requires integrating various elements together for human rights to become a popular ideology. Under different circumstances, such a discourse might come as an intellectual indulgence. However, given the increasing wave of extremism and the alarming number of conscripts to radical organizations, the concept of individualism and human value assumes a more practical and important dimension. Years of repressive policies, physical and mental humiliation and neglect of basic needs annihilates the values that an individual stands for and defeats any purpose to live. On the other hand, earning the status of jihad heroes and martyrs promises personal significance and a sense of purpose. It denotes being noticed, mattering, and deserving honor and esteem.³⁶ Placing humanism at the core of ideology, politics, and socio-economic programs thus becomes part of a terrorism prevention strategy.

3.2. Political parties and non-government organizations: re-thinking structures and approaches to human rights

Prior to the Arab Spring, social movements mobilized across specific fault lines - gender, wages, etc- and were often harshly suppressed. Political and institutional constraints limited chances for socio-economic reform ‘from within’, with very few “revolutionary” initiatives that were curbed quickly. In Egypt for example, the judiciary declared the 2005 parliamentary

³³ Superman, Islam and the Tyranny of Identity, a lecture given in Cairo by professor Maurits Berger of Leiden University on 25 November 2010.

³⁴ Vincent Depaigne, Individualism Human Rights and Identity, Human Rights Law Commentary, Vol. 1, 2005, University of Nottingham, p. 1-2.
<https://www.nottingham.ac.uk/hrlc/documents/publications/hrlcommentary2005/individualismandidentity.pdf>
 {Accessed on 15 September 2015}

³⁵ Ibid. p. 4

³⁶ Arie W. Kruglanski, Psychology Not Theology: Overcoming ISIS’ Secret Appeal, E-international Relations, 28 October 2014. <http://www.e-ir.info/2014/10/28/psychology-not-theology-overcoming-isis-secret-appeal/>{Accessed on 15 October 2015}

elections void for reasons of fraud.³⁷ In August 2005, members of the Association des Magistrats Tunisiens (AMT) were barred from their offices, under orders from the Ministry of Justice and Human Rights after calling for greater judicial independence in Tunisia.³⁸ The Arab Spring came with notable features and conclusions for the human rights ‘movement’, per se, namely for political parties and non-government organizations (NGOs). The simple fact that people took to the streets to demand human rights was indicative of a failure to accommodate human rights demands within existing political parties and civil society structures.

Prior to the Arab Spring, the means for protecting human rights created a formula that allowed civil society to challenge government practice and abuse. The Arab Spring reframed this struggle to that of the People versus the Regime, as captured in the slogan ‘the people want the fall of the regime’. It thus brought on board novel political and societal factions, such as youth and marginalized rural citizens that were not previously accommodated or engaged within the civil society/government dynamic.³⁹

Political parties and civil society organizations are, as such, part of the human rights crisis that led to the Arab Spring. The history of political party development differs from one Arab Spring country to another with the common feature of abolishing some political parties on the pretext of ideological motivations, and de-politicizing or rendering other parties quiescent. This pre Arab Spring reality made the idea of democracy, multi-parties and political participation meaningless or even impossible in countries like Libya where Gaddafi condemned the parliament as a misrepresentation of the people. The hierarchal structure of the political parties also limited the chance for dissenting voices and inclusive power sharing.

The fall of the regimes led to a surge of political parties participating in elections with more than 100 parties in Tunisia and as many as 142 new parties in Libya.⁴⁰ Most only exist on paper.⁴¹ This increase in the number of political parties does not automatically entail a better representation of popular demands. It also does not automatically give the ability to translate Arab Spring public demands for freedom and democracy into public policies. This is mainly due to the internal structures and policies of political parties.

Meaningful representation post Arab Spring would require political parties to look at more efficient and innovative strategies and policies to represent people’s concerns and hopes. Representation needs to be within government, as well as within internal structures of the political party and vis-a- vis voters to find peaceful and democratic participation within the party itself.⁴²

The human rights challenge for political parties lies not just in expressing the views and values of the individual and his/her relationship with the state, it also lies in putting human rights on their political agendas without entrenching them in antagonistic political processes.

37 Nathan J. Brown and Hesham Nasr, *Egypt’s Judges Step Forward The Judicial Election Boycott and Egyptian Reform*, Carnegie Endowment, May 2005, p.5.

<http://carnegieendowment.org/files/PO17.borwn.FINAL.pdf> {Accessed on 15 August 2015}

38 Tunisia Submission to the UN Universal Periodic Review, First Session of the UPR Working Group, 7-11 April 2008, p. 1

39 Fawwaz Traboulsi, *Revolutions without Revolutionaries* {in Arabic}, Riyadh AlRayyes Books, January 2014, p 28-32, 59.

40 Marwan Muasher, *The Path to Sustainable Political Parties in the Arab World*, Carnegie Endowment for International Peace, 13 November 2013. <http://carnegieendowment.org/2013/11/13/path-to-sustainable-political-parties-in-arab-world> {Accessed on 27 October 2015}

41 Supra note 42.

42 Supra note 39 at 60.

This is because the strength and credibility of a human rights rhetoric that distinguishes it from political rhetoric lies in its protecting principles without associating these principles to particular candidates or partisan politics. Political neutrality in the Arab world is an illusion and so separating human rights from political promises that are automatically deemed untrustworthy requires a party structure that relies less on individual party leaders and personalities. It also requires more pluralism, tolerance, respect for different points of view, and critical thinking.⁴³ An approach that adopts civil society causes and allows for consultation with constituents develops a more sturdy connection with the people. Such an approach would be needed. It may also prove more effective than designating a pool of party experts who may indeed be committed to the protection of human rights, but fail to push for rights and freedoms in a way that is independent of adversarial electoral processes.

On the other hand, civil society organizations (CSO) played a positive role before, during and after the Arab Spring. However, there are some shortcomings. Being harassed and persecuted by authoritarian regimes may account for CSO failure to build a more solid and representational movement for human rights. Notwithstanding, after years of working on a broad range of rights and freedoms for the people, they had to justify their human rights demands during the transition period, not just to their adversaries, i.e. the government, but also to the people whom they were defending. This was evident in the debates that accompanied constitutional re-writing in Tunisia and Egypt. Efforts to enshrine some rights, notably women's rights, had to be justified to the grassroots that supported the Islamist parties who held power during the transition phase.

Once again, the Arab Spring poses a moment of introspection for CSO to assess and review their strategies and approaches to human rights. To begin with, the term civil society or *mujtamaá madani* is usually used in narrow terms to refer to NGOs, with lesser emphasis on labor unions and other social movements. These social groups played an integral role in the promotion and protection of human rights and have been in the front lines of the struggle for human rights to the extent that some claim that work unions paved the way for the Arab Spring through their strikes and mass demonstration since 2008 in Tunisia, and 2006 and 2009 in Egypt.⁴⁴ Even though advocacy agendas of NGOs do intersect with that of unions, NGO advocacy approaches are mostly detached from work unions.

The issue of forging linkages and mutually reinforcing relations gives rise to yet another challenge that relates to NGOs approaches toward the people. Whether by accident or intention, NGOs tend to categorize people into "violators", "victims" and "bystanders" and accordingly to view themselves as the "liberators" who are able to use earnest normative language to defend "others". This leads to isolated elitist thinking and a rather patronizing way of telling people what is good for them,⁴⁵ usually through capacity building and awareness campaigns. Such campaigns do have their own merits; however, Arab Spring countries that witnessed the rise of political Islam particularly emphasize the need for new approaches to engage the grassroots in conceptual understandings of human rights.

The traditional attitude of 'educating' people would be replaced by active listening to grassroot local interpretations of human rights. Communities would need to be actively engaged in debates on human rights and public policies that are often viewed as elitist business. In other words, NGOs should enable discussions of what it means to be human, how

43 Supra note 42.

44 Mustapha Bassioni, *Why Some Revolutions Succeeded and Others Failed* (in Arabic), AlAkhhbar, 25 May 2011. <http://www.al-akhbar.com/node/13233>{Accessed on 15 August 2015}

45 David Kennedy, *The International Human Rights Movement: Part of the Problem*, Harvard Human Rights Journal, Vol. 15, 2002, p. 112.

humans relate to one another and to the State rather than providing ready-made moral condemnations and legal adjudication.⁴⁶ This approach promotes inclusivity by dialoguing interfaith, inter-generations, and inter-identity understandings of equality, dignity, liberty and other human rights principles to find common denominators around which human rights standards and understandings gradually evolve. Also, strengthening the linkages between NGOs and work unions in the future better connects the former with grassroots struggles.

Traditional NGO approaches also divide goals and causes across various themes: women, freedom of expression and digital expression, right to assemble, freedom from torture, right to education, etc, often connecting themes with a mere “and.”⁴⁷ A more integrated framework is needed to build a coherent infrastructure of inter-dependent and inter-sectional rights that are mutually reinforcing. Critical to this integrated approach is the Arab Spring realization that human rights do not operate in a political and economic void. Therefore, deepening the impact of NGOs necessitates working on regime structures and relations that obstruct the protection of human rights. Some NGOs who have forged good relations with government and security apparatus use the “back door” method to score wins for individual human rights cases. Whereas this can prove efficient especially in emergency human rights cases such as refoulement or arbitrary detention, it does not address the root cause of the problem that is entrenched in the regime architecture and dynamics. NGOs must thus engage more in institution building, focusing on democratic elections, independent judiciary, monitoring and accountability of the executive, and other structural reforms.

It is not intended that an integrated approach would replace focused thematic initiatives, but rather that NGO initiatives are better connected internally as well as externally vis- a-vis other NGOs in order to be able to formulate pressure groups that are broader than existing consortiums, and that can affect bottom-up change.

Another challenge that is articulated by NGOs themselves is that of being perceived as western enclaves. This perception partly relates to ideological complications of the human rights movement being rooted in the west in general, as explained in the first part of this paper. It also relates to the way NGOs themselves operate. In an inter-disciplinary discussion held in Cairo in 1998 on International Aspects of the Arab Human Rights Movement, human rights activists admitted some fault lines. The first is conveying a sense of being “western” by claiming universality of rights using reference to universal instruments, only without substantiating universality by reference to Arab heritage, culture and politics. The second fault line is styling human rights structures, mandate and modus operandi after international organizations like, for example, Amnesty International and Human Rights Watch.⁴⁸ The issue is not so much the advocacy methods chosen, such as shadow reporting, complaints to UN human rights, etc. It lies, rather, in benchmarking the strength of an NGO against proximity to INGO mandates and methodologies instead of across grassroots struggles and needs. This creates even more distance between NGOs and the everyday struggle of people.

Funding is also an old challenge for NGOs. It is a delicate issue as well due to the real, as well as the imputed influence exerted by some funders. In fact, one favorite accusation to discredit an NGO or a protest movement is that of “receiving foreign funds” and consequently of “implementing foreign agendas.”⁴⁹ In Egypt’s Arab Spring, this accusation emerged with

46 Ibid. p. 111.

47 Supra note 42 at 33.

48 International Aspects of the Arab Human Rights Movement, Harvard Law School Human Rights Program & The Center for the Study of Developing Countries, 2000, p.34.

49 Kristina Kausch, ‘Foreign funding’ in post-revolution Tunisia, AFA, Fríde and Hivos, 2013, p.5. http://fride.org/descarga/WP_Tunisia.pdf {Accessed on 31 March 2016}

vengeance and many NGOs were shut down following accusations of receiving foreign funding.⁵⁰ In July 2015, the Egyptian Ministry of Social Solidarity finalized a new draft NGO law that contains numerous excessive restrictions, particularly related to foreign funding for NGOs and foreign organizations operating in Egypt.⁵¹ In recent years, Arab governments themselves began establishing human rights and humanitarian institutions headed by government officials or member of royal families. These institutions also receive huge sums of money, unlike some of their non-governmental counterparts. The private sector contributes to NGO funding but may be too scared to go against governments. Some NGOs receive funding from international organizations, but find themselves at times adjusting their agendas and mandates to align with that of the international organization. While this may be a feasible modality, there is a risk of losing awareness of other less funded national priorities. Therefore, most funding and support scenarios comprise some sort of interference.

The whole issue of funding is that of perception rather than reality. An organization that receives local or private sector funding may appear more legitimate and reliable but why would national donors be less manipulative than foreign donors? The argument then is not so much who is providing the funding in as much as it is how the funding is solicited and used, making transparency the principle criteria that matters for public legitimacy, reliability and credibility.

There should also be other well defined and reasonable support criteria for public legitimacy of NGOs, otherwise there would be very limited recourse for NGOs to carry out their goals without jeopardizing their independence and credibility. Volunteer work may be one form of support that creates local buy-in and increases grassroots support accordingly.⁵²

3.3. At the Structural and Normative level: Expanding the role of human rights

Human rights violations constituted a major cause for instigating civil unrest and revolutions in the Arab world, and it would appear logical for the Arab Spring countries to seek remedies for such violations by intensifying commitment to international human rights law. Many Arab Spring countries rushed to ratify human rights treaties and create national as well as regional institutions in an effort to expand the protection of human rights and provide remedies to violations, at least officially and on paper. Ironically, the ratifications of international instruments, the creation of the Arab Court for Human Rights, the mission of the UN Inquiry Commission (in Bahrain) and Arab Inquiry Commission (in Syria) was taking place as governments and leaders of these countries were simultaneously kidnapping dissidents and activists, using excessive force against demonstrators and bombarding civilians with illegal weapons. It seems that this dichotomy was visible to all except the political elites who are part of the regime or supportive of it, and who insisted that by adopting the laws and setting up the institutions, the violations would be addressed.

The importance of legal and institutional frameworks for the protection and enforcement of human rights is undisputed. The problem starts when there is a fixation on formalizing rights in normative and structural frameworks as the *only* approach to the protection and enforcement of human rights. This is due to several reasons. Mainly, a strictly normative

⁵⁰ Lin Noueihed, Human rights on trial in Egypt as NGO funding case revived, Reuters, 25 March 2016. <http://www.reuters.com/article/us-egypt-rights-idUSKCN0WQ20X> {Accessed on 31 March 2016}

⁵¹ Sarah El-Sheikh, New NGO draft law worse than previous laws due to National Security interference: Gamal Eid, Daily News Egypt, 3 April 2016. {Accessed on 12 April 2016}

⁵² Supra note 42 at 63.

approach is usually adversarial, and emphasizes outcome with little consideration to process.⁵³ As such, it results in an ‘upgrade’ in the humanitarian situation without addressing the root causes of human rights abuses, violations, and inequity. For example, the imbalance between civil and political rights on the one hand and the social and economic rights on the other cannot be remedied by merely intensifying commitment to legal instruments. These imbalances are indicators for internal conflict. Using human rights from a strictly normative perspective decontextualizes them, and hence separates them from the political and socio-economic systems through which they are protected or enforced. This not only limits the impact of normative and institutional human rights frameworks, it dismisses the role of human rights in transforming conflict and maintaining peace and stability. In fact, the Arab Spring revealed the deep interconnectedness between human rights and the regime as a whole in the sense that piecemeal approaches to human rights has limited impact and that a more rigorous change for human rights needs to address the political and socio-economic regime background of the state, albeit without jeopardizing neutrality and universality of human rights.

Another challenge that the normative approach faces is the deliberate or unintentional lack of attention to sociological and political backgrounds that makes the interpretation of human rights vulnerable to distorted and biased outcomes. There is often a background of other numerous laws and regulations that don’t explicitly condone the violations but nevertheless affect their occurrence, or exacerbate political and socio-economic imbalances. These regulations and policies are left untouched.⁵⁴ The Egyptian Constitution upholds freedom of religion and equality among all Egyptians. It also provides that Islam is the state religion. Its Penal Code also protects against the violation of constitutional principles respecting freedom of religion, yet there are important limitations on Egyptian freedom of religion, particularly regarding conversion from Islam, that arise from another provision of the Penal Law that prohibits any person from "degrading or disdaining any of the holy religions or any of its religious sects" with "the intention of harming national unity and social peace." This is interpreted as forbidding the conversion of Muslims and conviction is punishable by imprisonment.⁵⁵

The strictly normative approach to human rights also allows for states to superficially preserve respectability vis a vis human rights observers by increasing signature and ratification while maintaining reservations that serve as a hide out for political and socio-economic challenges to universality of human rights. Thus, by working more rigorously on diminishing reservations, the legislative approach for human rights would ideally be also working on the political and socio-economic imbalances and backgrounds that undermine legislative reform aimed at promoting and protecting human rights.

At the structural level, independence of the judiciary arose as a cross regional demand in the countries of the Arab Spring. Needless to say, the judiciary has a critical role in upholding human rights and the rule of law. The Arab Court for Human Rights emerged post Arab Spring as a more controversial one with little potential to effectively address human rights violation. The international legal expert, Cherif Bassioni, says: “{The Arab Court for Human Rights is} a fake institution designed only to impress people. The drafting process lacked transparency and broad-based consultations with experts from the region, as well as experts from existing human rights tribunals. Also, it was clear from the beginning that it was a governmental process, and those drafting the statute were not legal experts, but government

⁵³ Supra note 12 at 3.

⁵⁴ Supra note 47 at 110.

⁵⁵ Study of the Present Egyptian Constitution and the Law Articles that Conflict with minority Rights, OHCHR <http://www.ohchr.org/Documents/Issues/Minorities/WG/11/AI-Kalema-3A.pdf> {Accessed on 25 October 2015}

representatives.”⁵⁶ Apart from the non-consultative process, the Arab Court for Human Rights is criticized for the inability of individuals and NGOs to petition the Court, the lack of protections for applicants and witnesses, the potential for government interference of judicial appointments and the absence of enforcement mechanisms.⁵⁷ The Arab Court for Human Rights, as such, poses a typical example of how a normative and structural approach can serve as a face-lift for human rights compliance without any ability to provide access to justice and an effective remedy to victims of human rights violations.

Failure to create a trust-worthy and efficient regional structure to combat impunity exacerbates the already weak connection between human rights in the Arab world and monitoring and enforcement mechanisms, further undermining normative approaches to human rights. Restoring meaningful linkages between international human rights and transitional justice should, as such, be a priority area for future normative and structural approaches.

3.4. At the foreign policy level: preventive policies and more consistency

When talking to citizens about upholding international human rights conventions and declarations, the first set of defensive questions asked are: What about Palestine? What about Iraq? Why intervention in Libya and not Syria? Evidently, unilateral and multilateral humanitarian interventions have pitched the international community into a credibility crisis vis a vis the grassroots of Arab countries. Also evident from these questions is that the people expect international governance to do what national governments and regional institutions cannot or failed to do.

Four years after the Arab Spring, it is obviously not just about human rights. Foreign policies are formulated on strategic interests, and the argument here is not on determining foreign policy on the basis of human rights. It is, rather, about a more in-depth look at how foreign policy affects the promotion of the universality of human rights post Arab Spring. It is also about ensuring that collective responses by the international community are not harmful to the principle of universality of human rights.

Selective international responses to human rights violations undermine the principle of universality because the criteria that determine when and where armed interventions take place are informed not just by strategic interests, but also common culture, and collective identity. A rather symbolic statement around the issue was made by one of the 34 thousand Iraqis displaced from Al-Ramadi by attacks from Daesh: “If we were Yezidis or Christians, the whole world would have mobilized to reveal our suffering. Countries would have greeted us and opened their borders to receive us, but we don’t see those who cried for Koubari crying for Anbar.”⁵⁸ Armed humanitarian intervention is also used unilaterally or by narrow coalitions that are sometimes pursued without a UN mandate. This, in itself, undermines faith in collective diplomacy that is urgently required to stop human rights violations.⁵⁹ It may even lead to a unilateral intervention by another super power state to assert its own interests, as is the case in Syria with the recent Russian airstrikes.

56 Rebecca Lowe, Bassiouni: New Arab Court for Human Rights is fake ‘Potemkin tribunal’, International Bar Association, 1 October 2014. <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=c64f9646-15a5-4624-8c07-bae9d9ac42df> {Accessed on 26 October 2015}

57 Ibid.

58 Omar Ali, Al-Ramadi Displacement: A Human Catastrophe Ignored by the World {in Arabic}, AlTagreer, 25 May 2015.

59 Supra note 22 at 221.

Humanitarian responses may take many forms beyond either sitting down and watching mass slaughters or dropping bombs on parties to the conflict. The question would then be which of these forms would reinforce the principle of universality of human rights, or at least wouldn't risk demoralizing it. Though military operations do deliver quick wins to stop a definite and imminent threat to defenseless communities, these should not overshadow a non-armed preventive approach. In fact, non-armed preventive interventions need to gain as much political and popular traction as armed interventions, if not more. Deep reforms of the structure and role of multilateral institutions, especially regional institutions such as the Arab League, and efficient peace-keeping missions are needed to be able to diffuse tension before it escalates into a full-fledged armed conflict. Stopping the spread and use of illegal weapons including landmines, barrel bombs, and other weapons of mass destruction is also paramount, as they weaken chances for peaceful intervention. Ending the impunity of perpetrators committing war crimes and crimes against humanity is of equal importance, especially given the strong linkages between justice and human rights. In its 10th report, the UN Human Right Inquiry Commission on Syria blamed the deteriorating situation in Syria to the failure of international diplomacy to end impunity in the war in Syria.⁶⁰ The UN Security Council was urged to take an international justice approach either by creating an international tribunal for Syria or deciding on a referral to the International Criminal Court.

Conclusion

In conclusion, the Arab Spring remains a historical stop for human rights given the lessons it underscores on Arab understandings and approaches to human rights. Despite the improvements in civil and political rights scored in some countries, through elections, formation of political parties, new constitutional laws, ratification of human rights instruments, and other post Arab Spring reforms, the struggle for human rights continues. Its challenges run deeper than violations, impunity and non-compliance because they are rooted in our own self-perception. It is thus important to address self-doubt in our own Arab human rights movement.

The conceptual revolution that emerged during the Arab Spring should be developed and sustained in order to transform human rights into a popular ideology and ascertain that its roots are in us and with us, instead of ascribing human rights to the west or to liberalism or any other excuses that obscure our shortcomings. This requires a profound change in the way that human rights are promulgated in Arab countries by local as well as international actors. A better connection between social movements and the grassroots is critical to influence paradigm shifts and rally mass support through new approaches that encourage local initiatives and foster national ownership.

Enhancing the role of human rights in conflict transformation as well as enhancing the role of national institutes and Arab transnational advocacy networks is also paramount in order to position human rights at the center of public policy.

60 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/30/48, 13 August 2015
http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A.HRC.30.48_AEV.pdf
{Accessed on 15 September 2015}

Works Cited

A Change of Seasons for Arab Women?, *Journal of Women and Human Rights in the Middle East*, Issue 1, Baker Institute, Fall 2013.

AlHais, Abdul Aziz, Is the Arab Spring an American Conspiracy, *AlJazeera*, 22 January 2012.

Ali, Omar, Al-Ramadi Displacement: A Human Catastrophe Ignored by the World {in Arabic}, *AlTagreer*, 25 May 2015.

Akder, Derya Göçer, Theories of Revolutions and Arab Uprisings: The Lessons from the Middle East, *OrtadoğuEtütleri*, Volume 4, No 2, January 2013.

Assaf, Sassine, Arab Reality and the Issue of the National State {In Arabic}, *Annahar Newspaper*, 23 July 2015.

Bassioni, Mustapha, Why Some Revolutions Succeeded and Others Failed {in Arabic}, *AlAkhbar*, 25 May 2011. Beitz, Charles R., *The Idea of Human Rights*, Oxford University Press, 2009.

Ben Hussein, Abdel Baset, A culture of Human Rights Skepticism {in Arabic}, *Amnesty International*.

Brown, Nathan J. and Hesham Nasr, *Egypt's Judges Step Forward The Judicial Election Boycott and Egyptian Reform*, Carnegie Endowment, May 2005

Danahar, Paul, *The New Middle East: The World After the Arab Spring*, Bloomsbury Publishing, London 2013.

Depaigne, Vincent, Individualism Human Rights and Identity, *Human Rights Law Commentary*, Vol. 1, 2005, University of Nottingham.

Dodge, Toby, *Conclusion: the Middle East after the Arab Spring*, LSE IDEAS.

Donnelly, Jack, *Universal Human Rights in Theory and Practice*, 2nd Ed., Cornell University Press, 2003.

El Fegiery, Moataz, *A Tyranny of the Majority? Islamists' Ambivalence about Human Rights*, FRIDE, 2010.

Fedtke, Jörg, *Comparative Analysis between the Constitutional Processes in Egypt and Tunisia- lessons learnt- Overview of the Constitutional Situation in Libya*, European Union, Belgium, April 2014.

Gause III, F. George, *Why Middle East Studies Missed the Arab Spring: The Myth of Authoritarian Stability*, *Foreign Affairs*, July-August 2011.

Gregg, Benjamin, *Human Rights as Social Construction*, *American Political Thought*, Vol. 2, No 1, University of Chicago Press, Spring 2013.

Hoffman, Michael and Amaney Jamal, Religion in the Arab Spring: Between Two Competing Narratives, 20 March 2013,

International Aspects of the Arab Human Rights Movement, Harvard Law School Human Rights Program & The Center for the Study of Developing Countries, 2000.

Kennedy, David, The International Human Rights Movement: Part of the Problem, Harvard Human Rights Journal, Vol. 15, 2002.

Khattab, Moushira, Women's Rights under Egypt's Constitutional Disarray, Viewpoints No. 15, Woodrow Wilson International Center for Scholars, January 2013.

Kruglanski, Arie W., Psychology Not Theology: Overcoming ISIS' Secret Appeal, E-international Relations, 28 October 2014.

Lowe, Rebecca, Bassiouni: New Arab Court for Human Rights is fake 'Potemkin tribunal', International Bar Association, 1 October 2014.

Mokhtari, Shadi, The Middle East and Human Rights: Inroads towards Charting its Own Path, Northwestern Journal of International Human Rights, Vol. 10, No. 4, summer 2012.

Muasher, Marwan, The Path to Sustainable Political Parties in the Arab World, Carnegie Endowment for International Peace, 13 November 2013.

Nosset, James Michael, Free Exercise after the Arab Spring: Protecting Egypt's Religious Minorities Under the Country's New Constitution, Indiana Law Journal, Vol. 89, Issue 4, Fall 2014.

Ogbonnaya, Ufiem Maurice, "Arab Spring in Tunisia, Egypt and Libya: A Comparative Analysis of Causes and Determinants," The Arab Spring: Comparative Perspectives and Regional Implications, ed. Philipp O. Amour, Special issue, Alternatives: Turkish Journal of International Relations, Vol. 12, No. 3, Fall 2013.

Özekin, Muhammed Kürşad and Hasan Hüseyin Akkaş, An Empirical Look to the Arab Spring: Causes and Consequences, Alternatives: Turkish Journal of International Relations, Vol 13, No. 1-2, Spring- Summer 2014.

Parlevliet, Michelle, Bridging the Divide: Exploring the Relationship between Human Rights and Conflict Management, Track II (I), March 2002.

Pratt, Nicola, Gendered paradoxes of Egypt's transition, Open Democracy, 2 February 2015.
Powell, Catherine, Locating Culture, Identity, and Human Rights Symposium in Celebration of the Fiftieth Anniversary of the Universal Declaration of Human Rights: Introduction, 30 Columbia Human Rights Law Review 201, 1998-99.

Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/30/48, 13 August 2015

Said, Edward, Culture and Imperialism, Vintage Books, 1993.

Sevat, Thomas, “The Arab Spring and Degrees of Change in Human Rights Conditions: examining the cases of Libya and Tunisia” Masters Thesis, Leiden University, 2014.

Study of the Present Egyptian Constitution and the Law Articles that Conflict with minority Rights, OHCHR .

Superman, Islam and the Tyranny of Identity, a lecture given in Cairo by professor Maurits Berger of Leiden University on 25 November 2010.

Teitel, Ruti, The Universal and the Particular in International Criminal Justice, 30 Columbia Human Rights Law Review 285, 1998-1999.

Tunisia Submission to the UN Universal Periodic Review, First Session of the UPR Working Group, 7-11 April 2008.

The Arab Spring on Trial Human Rights in the Arab Region 2014, Reform Issues (34), Cairo Institute for Human Rights Studies, 2015.

The Rap Songs of the Arab Spring, 9 June 2011.

Traboulsi, Fawwaz, Revolutions Without Revolutionaries {in Arabic}, RiyadhAlRayyes Books, January 2014.

Tuckness, Alex, Locke's Political Philosophy, The Stanford Encyclopedia of Philosophy, Ed. Edward N. Zalta, winter 2012.

Tunisian Debate Over Islam, Rights in Constitution Illustrated at USIP Event, US Institute for Peace, 15 May 2013.

Universal Declaration of Human Rights.

Volp, Leti, Feminism versus Multiculturalism, Columbia law Review, Vol. 101, No. 5, June 2001.