

**ACCESS TO JUSTICE AFTER THE ARAB SPRING:
IS THE PROMISE FULFILLED?
(CASE OF EGYPT AND TUNISIA)**

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List of Abbreviations

ABA ROLI	American Bar Association Rule of Law Initiative
ACIJLP	Arab Centre for Independence of the Judiciary and Legal Profession
ANHRI	Arab Network for Human Rights Information
ARE	Arab Republic of Egypt
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CIHRS	Cairo Institute for Human Rights Studies
EBA	Egyptian Bar Association
ECESR	Egyptian Center for Economic and Social Rights
HMLC	Hisham Mubarak Law Center
HRW	Human Rights Watch
IBAHRI	International Bar Association's Human Rights Institute
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Jurists
LADS	UNDP Legal Aid & Dispute Settlement office project Egypt
NCCM	The National Council for Childhood and Motherhood
NGO	Non-Governmental Organization
OHCHR	United Nations Office of the High Commissioner for Human Rights
ROT	Republic of Tunisia
TBA	Tunisian Bar Association
UN	United Nations

UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Programme
UDHR	Universal Declaration of Human Rights

Table of Contents

List of Abbreviations	ii
Chapter 1: Introduction	1
1.1 Background of the Study	1
1.2 Statement of the Research Problem	2
1.3 Aims and Objectives of the Study	3
1.4 Significance of the Study	3
1.5 Research Methodology	5
1.6 Outline of the Chapters	6
Chapter II: Access to Justice in Intentional and Regional contexts.....	8
2.1 Introduction	8
2.2 International and Regional Treaties and Conventions Related to Access to Justice	8
2.1.1 Human rights treaties	10
2.1.2 Treaty provisions relating to fair trial and equal access to justice	13
2.1.3 Non-binding standards	15
2.3 Role of International and Regional Courts in upholding Access to Justice.....	18
Chapter III: Impediments and Obstacles to Access to Justice after “Arab Spring”.....	21
3.1 Introduction	21
3.2 Barriers to Justice	21
3.3 The Symbolic Component of Access to Justice.....	23
3.4 The Link between Access to Justice and Poverty Reduction	24
3.5 Incentives and Disincentives of Access to Justice	27
CHAPTER IV: Access to justice in Egyptian and Tunisian laws	29
4.1 Introduction	29
4.2 Legal framework in Egypt.....	29
4.2.1 Constitution.....	30
4.2.2 Civil procedures law.....	31
4.2.3 Criminal law	31
4.2.4 Family law	31
4.2.5 Child law	31
4.3 Legal aid law in Egypt	32

4.4	Legal framework in Tunisia	32
4.4.1	The constitution	32
4.4.2	Child law	33
4.5	Legal aid law in Tunisia.....	33
Chapter V: Towards Improving and Enhancing Access to Justice in Egypt and Tunisia ...		34
5.1	Introduction	34
5.2	Existing Projects to Improve Access to Justice in Egypt.....	34
5.3	Role of Egyptian Bar Association	35
5.4	Role of Egyptian Ombudsman’s Office.....	36
5.5	Role of Egyptian Quasi-Governmental and NGOs	37
5.6	Existing Projects to Improve Access to Justice in Tunisia	39
5.7	Role of Tunisian Ombudsman’s Office	40
5.8	Role of Tunisian Quasi-Governmental and NGOs	40
5.9	Can Informal Justice play a Role in Enhancing Access to Justice	41
Chapter VI: Conclusions and Recommendations.....		46
6.1	Summary of chapters	46
6.2	Conclusion.....	47
6.3	Recommendations	47
6.4	On the national level	48
6.5	To Bar Associations.....	49
6.6	To NGOs.....	49
6.7	To Universities	49
6.8	To International Donors	50
List of Bibliography		51

Chapter 1: Introduction

1.1 Background of the Study

The pursuit of Justice is itself the pursuit of happiness

■ Ralph Nader

Around four billion people around the world are striped of the chance to advance their lives and climb out of poverty, because they are excluded from the rule of law.² Most of the poor people do not live under the shelter of the law, and are far from the law's protection and the opportunities it affords. Hence, they may be subject to informal local norms and institutions that govern their lives and livelihoods. When they are not excluded from the legal system, they are often oppressed by it. As the poor and marginalized groups lack recognized rights, they are vulnerable to abuse by authorities. Such abuse includes: discrimination, bribery, partiality against the poor, thereby barring them from competing economically, or eviction from their own lands.³ Therefore, in the absence of access to justice, people are unable to have their voices heard, exercise their rights or challenge discrimination.

As there are no magic wands for development, for states to guarantee their citizens' right to protection, systems can, have and have had to be reformed, systemically. Legal empowerment is a central force in such reform process. It involves states delivering on their duty to respect, protect, and fulfill human rights, and the poor realizing more and more of their rights. They further gain the opportunities that flow from them, through their own efforts, and those of their supporters such as NGOs, wider networks, and governments. The elements of legal empowerment are grounded in the spirit and wording of international human rights law, and

² Commission on legal empowerment of the poor, *Making the law works for everyone* (2007).

³ *Ibid.*

particularly in Article 1 of the *Universal Declaration of Human Rights*,⁴ which declares, “All human beings are born free and equal in dignity and rights.”⁵

1.2 Statement of the Research Problem

After decades of repression and injustices, the “Arab Spring”⁶ has brought new hope to the Middle East and North African countries. However, the poor and marginalized groups, especially women, are still struggling to have better access to justice.

Several factors led to the eruption of what is called “Arab Spring” in the Middle East and North African countries. It relates to issues of human rights violations and the inability of the poor and marginalized, to seek justice through resorting to the courts.

Access to justice and effective legal remedies are crucial elements to strengthen the rule of law in any given country. Furthermore, there is a pressing need for more effective access to justice system for the poor and marginalized groups, such as women and those who suffered human rights violations before, during and after the revolution in both Egypt and Tunisia. Such high demand for justice sector services requires an effective framework to ensure efficient access to justice and to ensure that the judiciary is protecting the interests of those who seek remedies. However, many of the impediments that affected access to justice prior to the Arab spring revolutions, still exist.

⁴ UN General Assembly [UNGA], *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

⁵ Although the Universal Declaration of Human Rights was not adopted as a convention, however, it is regarded as obligatory for all nations worldwide.

⁶ This term was first coined in MARC LYNCH, *THE ARAB UPRISING: THE UNFINISHED REVOLUTIONS OF THE NEW MIDDLE EAST*, Perseus Books Group (2012).

1.3 Aims and Objectives of the Study

The research framework is intended to study the extent to which the Egyptian and Tunisian laws are in conformity with international human rights conventions. It will further study whether the laws are able to ensure access to justice for their citizens. The general objectives of this research are:

- a) To assess the situation of access to justice after the “Arab Spring” in both Egypt and Tunisia, specifically for poor and marginalized groups, inclusive of women;
- b) To examine the current legal framework in both Egypt and Tunisia, in relation to access to justice and more precisely: the constitution, civil and criminal procedural law, personal status (family) law and child law; and
- c) To assess the extent to which the current legal framework in both Egypt and Tunisia, improves or impedes access to justice, specifically for poor and marginalized groups, including women.

This study intends to create work in an emerging, yet underdeveloped area of rule of law and human rights, that is, to shed light on the effect of a good access to justice system, in upholding the rule of law in both Egypt and Tunisia – in the aftermath of the “Arab Spring” revolution. It is hoped that the conclusions drawn from this research will be a useful guide to legislators, legal practitioners and NGOs - to enhance access to justice for the poor and marginalized groups in Egypt and Tunisia, especially women.

1.4 Significance of the Study

This study is important, as it attempts to investigate the impediments and obstacles to access to justice for the poor and marginalized, in the aftermath of the “Arab Spring”. Access to justice and effective legal remedies are crucial elements to strengthen the rule of law, in any country.

As stated earlier, there is a pressing need for more effective access to justice system for the poor and marginalized groups, inclusive of women, and those who suffered human rights violations before, during and after the revolution in both Egypt and Tunisia. This high demand for services in the justice sector requires an effective framework to ensure efficient access to justice, and to ensure that the judiciary is protecting the interests of those who seek remedies. Many of the impediments that affected access to justice prior to the “Arab spring” revolutions still exist. Hence, there is need to research and assess the situation of access to justice in some Arab spring countries in the aftermath of the revolution. Particularly, issues linger as to what are the impediments to efficient access to justice. The study attempts to provide some recommendation to ensure a better system of access to justice in Arab spring countries, in order to strengthen rule of law and human rights in the said countries.

This study should also contribute to the debate that has been generated after the democratic transition in Egypt and Tunisia. It further intends to identify avenues for rule of law manifestation through access to justice. The consideration is made as to whether the solution to enhance access to justice lies solely in legislation. It is noteworthy that, although the question of access to justice and related issues, is critical to human rights, many international organizations and traditional human rights NGOs, including Human Rights Watch (HRW) and Amnesty International (AI) - continue to link access to justice and legal aid with equality before the law and the presumption of innocence. This includes guarantees of freedom from arbitrary arrest and detention and the right to a fair and public hearing by a competent, independent and impartial tribunal, for criminal matters only.⁷ Therefore, the study will also attempt to enhance civil society’s understanding of the importance and need for expanding the spectrum of legal aid, to cater to civil matters.

⁷ See generally reports published by Amnesty international and Human Rights Watch in this regard.

Furthermore, the emergence of regional human rights conventions such as The African Charter on Human and Peoples' Rights⁸ and Arab Charter on Human Rights⁹ on which both Egypt and Tunisia had signed requires further attention as clear and deep analysis of the subject from a purely rule of law perspective, that would be available and accessible to policy-makers in ministries of justice as well as legislators, legal practitioners and NGOs. Such analysis should provide a comprehensive background to the subject. This research attempts to meet with these aims and to find tools to improve access justice specifically for the poor and marginalized.

1.5 Research Methodology

This research will utilize literature and legal components of reports that have been issued by national governmental agencies / departments and international and local NGOs and international organizations related to access to justice in both Egypt and Tunisia. Consequently, the research will rely mainly on legislative and legal methodologies to interpret international and regional agreements and covenants. This is done in an attempt to understand how the national laws treat with access to justice in Egypt and Tunisia, and the effect of the ratified international and regional agreements and covenants, on same. Further, the purpose of using historical and legal methodologies is to develop an explanation for the sequence of events leading to the inclusion of human rights and access to justice in international and regional covenants and agreements. The methodology will also facilitate awareness of the impact of such provisions on access to justice. Therefore, the goal of this study is to accumulate and interpret data for use in the provision of a solid background to explain the consequences of international agreements on access to justice.

⁸ African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (entered into force 21 Oct. 1986).

⁹ Arab Charter on Human Rights is not binding treaty yet, in order to enter into force, seven ratifications are required, five states have signed it to date — Algeria, Egypt, Saudi Arabia, Tunisia and Yemen — only Jordan has so far ratified it.

The researcher envisaged the unavailability of reliable reports from the concerned departments, due to the lack of technical expertise in some of the countries covered in this research. Thus, the writer will critically analyze the texts of national laws in relation to access to justice, particularly legal aid.

Further, the researcher will rely on the writings and opinions of local jurists, with regard to national legal aid and access to justice for the poor and marginalized. Such material will provide reliable critical legal analysis that will be used to evaluate the extent to which Egypt and Tunisia have been able to enhance accessibility to the justice system.

1.6 Outline of the Chapters

This paper comprises several chapters, which are sub-divided, as follows. There is an **introductory chapter** that explains the purpose of the study. A final sub-part will provide an explanation of the design of the study and the methodology used to collect the data for the research. The introductory chapter is intended, in its own purpose, to highlight why the study was conducted, as well as its contribution to understanding the importance of access to justice, in general, and particularly, to populations in developing countries.

The **second chapter** will discuss access to justice through the international and regional legal framework. It will focus on access to justice as a core human right. It will also highlight how the international courts and customary international law have established it as a core human right.

Chapter three will however focus on what are the impediments and obstacles to access to justice, in the aftermath of the “Arab Spring” in both Egypt and Tunisia. This chapter will also discuss the main characteristics of the impediments and obstacles to access to justice. The nature or types of impediment will be examined, be it procedural or substantive.

Further, the **fourth chapter** will commence by analyzing the legal framework of both Egypt and Tunisia, through a uniformed and structured approach. This approach identifies the main issues of concern and explains the concept behind each issue. It will examine the position of access to justice in the national context and the situation in the context of international and regional agreements and obligations. There is further, a discussion on their implication to the poor and marginalized citizens – in the hope of better access to justice in both Egypt and Tunisia.

The fifth chapter will provide an in-depth analysis of how the governments of Egypt and Tunisia could approach enhancing and improving the situation of access to justice in their country. This chapter will further attempt to shed light on the current governments' efforts in this regard. Moreover, it will highlight the available tools for use by the governments, to enhance access to justice. Finally, this chapter will attempt to explain the potential role of “customary law” to enhance access to justice for the poor and marginalized groups, especially, women.

Accordingly, **chapter six** will provide an overall summary of the previous chapters and will provide suggestions and recommendations of applicable policy measures that may be considered by the Egyptian and Tunisian governments - to enhance access to justice, by utilizing existing laws or by recommending a new legal framework, for the countries.

Chapter II: Access to Justice in Intentional and Regional contexts

2.1 Introduction

This chapter is divided into two parts. The first section will provide an overview on the existing international treaties and conventions, in relation to justice in general, and in particular, those provisions in international and regional agreements, which relate to access to justice.

Subsequently, this chapter will discuss the international regional standards laid down by the said treaties and conventions concerning justice, while focusing on access to justice. This chapter will end with a discussion of the role of the international courts and customary international law, which treats access to justice as a core human right.

2.2 International and Regional Treaties and Conventions Related to Access to Justice

Justice has been and still is one the major concerns of the international community. It necessitates dealing with the issue of ensuring that the poor is able to achieve justice, either through the national or international courts. In an attempt to achieve such a goal, the international community adopted a set of international and regional treaties and conventions.

Nevertheless, it is not yet possible to claim that a normative “international procedural standard” exists, due to the fact that such standards are yet to be “codified” by the United Nations or any other International Organizations dealing with the issue of justice. However, there are some international sources from which a body of international principles is drawn. These principles seek to provide a fair system of justice. Jurists have therefore spoken of an internationally valid, common “procedural law.”¹⁰

¹⁰ See generally, SERGE GUINCHARD, MONIQUE BANDRAC ET AL, DROIT PROCESSUEL DROIT COMMUN DU PROCÈS, Dalloz (2001).

That notwithstanding, there are many international sources of a binding legal nature. They include: Universal Declaration of Human Rights,¹¹ which was adopted in 1948; International Covenant on Civil and Political Rights;¹² UN Convention on the Rights of the Child;¹³ UN Convention on the Elimination of All Forms of Discrimination against Women;¹⁴ UN Convention on the Elimination of all forms of Racial Discrimination;¹⁵ and UN Convention Against Torture and Other Cruel and Inhuman Treatment or Punishment.¹⁶ On the other hand, there are set of universal instruments of non-binding nature such as, UN Basic Principles on the Independence of the Judiciary,¹⁷ UN Basic Principles on the Role of Lawyers,¹⁸ and UN Guidelines on the Role of Public Prosecutors.¹⁹

Moreover, there are regional treaties governing the provision of justice, such as, the African Charter on Human and Peoples' Rights,²⁰ and the Arab Charter on Human Rights.²¹ There are also non-binding regional principles such as Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.²²

It is worth mentioning that, there are a number of declarations and recommendations issued by conferences that were convened by non-governmental organizations as well as declarations issued by professional bodies, such as Beirut Declaration: Recommendations of the First Arab

¹¹ *Supra* note 3.

¹² UN General Assembly [UNGA], *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999

¹³ UN General Assembly [UNGA], *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577.

¹⁴ UN General Assembly [UNGA], *Declaration on the Elimination of Discrimination against Women*, 7 November 1967, A/RES/2263.

¹⁵ UN General Assembly [UNGA], *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660.

¹⁶ UN General Assembly [UNGA], *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465.

¹⁷ General Assembly res. 40/32.

¹⁸ U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).

¹⁹ U.N. Doc. A/CONF.144/28/Rev.1 at 189 (1990).

²⁰ OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

²¹ League of Arab States, *Arab Charter on Human Rights*, 2004 (not yet in force).

²² A. U. Doc. DOC/OS(XXX) 247(2005).

Conference on Justice,²³ Cairo Declaration on Judicial Independence, the Second Arab Justice Conference,²⁴ International Association of Judges: Universal Charter of the Judge,²⁵ and International Association of Prosecutors: Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors.²⁶

Finally, NGOs and other bodies have published additional manuals relating to the right to a fair trial. These manuals seek to define international standards. The manuals relating to fair trial are: Amnesty International: On-Line Fair trials Manual²⁷ and UN High Commission on Human Rights: Manual on Human Rights in the Administration of Justice.²⁸

All of the above principles, declarations, treaties, and manuals constitute international standards of credible, equitable and independent justice. Such standards attempt to provide roadmap for the countries that want to transform their justice system to be in line with international standards and best practices.

2.1.1 Human Rights treaties

In ratifying international treaties concerning human rights, states become bound by international law, and have an obligation to integrate and implement them into their domestic laws. Failure so to do, amounts to a violation of rights and could result in an array of political consequences.²⁹

²³ Beirut Declaration: Recommendations of the First Arab Conference on Justice, June 1999. Available at http://apps.americanbar.org/rol/docs/judicial_reform_beirut_declaration_1999_english.pdf (last visited July 27, 2013)

²⁴ Cairo Declaration on Judicial Independence, the Second Arab Justice Conference, February 2003. Available at http://apps.americanbar.org/rol/docs/judicial_reform_cairo_declaration_judicial_independence_2003_english.pdf (last visited July 27, 2013).

²⁵ Available at <http://www.hjpc.ba/dc/pdf/THE%20UNIVERSAL%20CHARTER%20OF%20THE%20JUDGE.pdf> (last visited July 27, 2013).

²⁶ Available at <http://www.iap-association.org/> (last visited July 27, 2013).

²⁷ Available at <http://www.amnesty.org/en/library/info/POL30/002/1998> (last visited July 27, 2013).

²⁸ Available at <http://www.ohchr.org/Documents/Publications/training9Titleen.pdf> (last visited July 27, 2013).

²⁹ Sian Lewis- Anthony & Mohamed Mouqait, *Justice in the South and East Mediterranean Region* (2004).

Both Egypt and Tunisia have ratified the International Covenant on Civil and Political Rights (ICCPR), guaranteeing, *inter alia*, the rights to liberty, security³⁰, fair and public hearing before an independent and impartial tribunal established by law.³¹ The ICCPR further requires states to respect and ensure all individuals in the territory of a state party, all the rights contained in the treaty, without discrimination on any ground.³²

Additionally, Egypt and Tunisia have also ratified the African Charter on Human and Peoples Rights,³³ guaranteeing, *inter alia*, the right to liberty and security,³⁴ the right to be tried by an impartial court, the right to equality before the law,³⁵ and to the equal enjoyment of rights under the Charter, without discrimination on any grounds.³⁶ Finally, the said Charter requires also that states guarantee the independence of courts.³⁷

Furthermore, Egypt and Tunisia have ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In ratifying the ICCPR and African Charter, each member party must protect rights not only of its citizens, but also of all persons within the territory of that state.³⁸

In 2004,³⁹ the Human Rights Committee issued a general comment on the nature of the general legal obligation imposed on states parties to the Covenant. It clearly stated that States' obligations are not limited to persons within their own territories. It states that member parties are obliged, by virtue of Article 2 of ICCPR, to:

³⁰ Article 9 of ICCPR.

³¹ Article 14 of ICCPR.

³² Article 2 of ICCPR.

³³ Government of Egypt had ratified the convention on 20 March 1984, while government of Tunisia had ratified the convention on 16 March 1983.

³⁴ Article 6 of ACHPR.

³⁵ Article 3 of ACHPR.

³⁶ Article 2 of ACHPR.

³⁷ Article 26 of ACHPR.

³⁸ Article 2 of ICCPR and Article 2 of ACHPR.

³⁹ See Human Rights Committee, General Comment no. 31 CCPR/C/21/Rev.1/Add.13. (2004).

“...respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party. the enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons who may find themselves in the territory or subject to the jurisdiction of the State Party.”⁴⁰

There are also existing regional human rights treaties, one of which is, the Arab Charter on Human Rights, 2004. That Charter replaced a treaty of the same name, which was adopted in 1994, but was never ratified by any of the parties (The provisions of the 1994 Charter were weak and fell short of international standards in significant ways).⁴¹ The new Charter, adopted by the Arab League in Tunis in May 2004, is more in line with international standards,⁴² but has no legal force yet, since it needs at least seven (7) states to ratify it, in order to enter into force. However, the mere adoption of this document with its detailed provisions that requires, *inter alia*: (i) member states to guarantee independence of the judiciary;⁴³ (ii) equality before the law and before courts and tribunals;⁴⁴ (iii) protection of the magistracy from all interference, pressures or threats⁴⁵; (iv) the right to a fair hearing before an independent and impartial tribunal⁴⁶; (v) liberty and security;⁴⁷ and (vi) the provision of minimum guarantees by the state to persons accused of criminal offences - illustrates the fact that member States of the Arab League do accept internationally recognized human rights standards, in relation to justice.

⁴⁰ *Id.* [emphasis added].

⁴¹ Mohammed Amin Al-Midani & Mathilde Cabanettes, *Arab Charter on Human Rights 2004*, 24B.U. Int'l L.J.147 (2006).

⁴² Tunis Declaration of 16th Arab Summit, 23 May 2004.

⁴³ Article 12 of The Arab Charter on Human Rights.

⁴⁴ Articles 11 and 12 of The Arab Charter on Human Rights.

⁴⁵ Article 12 of The Arab Charter on Human Rights.

⁴⁶ Article 13 of The Arab Charter on Human Rights.

⁴⁷ Article 14 of The Arab Charter on Human Rights.

Further, it is particularly noteworthy that the new Charter goes further than current international standards with regard to derogations.⁴⁸

The question of how states must implement the provisions of international treaties in domestic law is dependent upon each state's arrangements for the implementation of treaties. In some states, such as Egypt, treaties ratified by head of state, are automatically given the status of domestic law,⁴⁹ in which case, national courts are bound to give effect to their provisions. In Tunisia however, treaties that are ratified by the head of state need to be incorporated into domestic law by the legislature in order to have the force of law.⁵⁰

In instances where the quality of justice being delivered by these or any courts, falls short of international standards, civil society could usefully engage in applying pressure on the governments concerned. This could work to ensure that they take remedial actions, such as: amending laws, providing additional courts, providing legal aid, eliminate discriminatory practices and enhance judicial independence. As long as domestic courts bear all the hallmarks of independence and impartiality, and so long as they guarantee fair hearings, such courts are in keeping with the requirements of international human rights law, regardless of how they are organized.⁵¹

2.1.2 Treaty provisions relating to fair trial and equal access to justice

The guarantee of the right to a fair hearing applies to both civil and criminal proceedings. For example, in criminal proceedings, this right begins from the point a person is arrested, since the way the accused person is treated during the investigation phase has a direct impact on the

⁴⁸ Article 4(b) of The Arab Charter on Human Rights.

⁴⁹ Article no. 151 of 1971 Egyptian Constitution as amended in 2007 and Article no. 145 of 2012 Constitution.

⁵⁰ Article nos. 67 and 76 of the Tunisian draft constitution.

⁵¹ Lewis-Anthony and Mouqit *supra* note 30, at 24.

conduct of the trial. Failure to permit access to a lawyer or an interpreter, where applicable, at an early stage, may have adverse consequences for the conduct of the defense.

The guarantee to a fair trial ends, upon the exhaustion of all available avenues of appeal. The right of access to a court, which will be examined later, is an inherent element of the right to fair hearing and applies both to civil and criminal proceedings. Article 9 of the ICCPR and Article 6 of the African Charter guarantee the right to liberty and security. They provide that no one shall be denied their liberty except on certain grounds and in accordance with such procedures as are established by law. However, ICCPR also provides additional guarantees to those who are detained, including the right to be informed at the time of arrest, and being informed as to the reasons for the arrest. The Arab Charter of 2004 guarantees the right to liberty and security in a manner that follows the pattern that ICCPR guarantees.

Article 14 of the ICCPR and Articles 7 and 26 of the African Charter - guarantee the right to a fair trial before an independent and impartial tribunal. The ICCPR additionally requires that the courts are established by law, and that hearings are public, except in specified circumstances provided for in Article 14(1). Additionally, Article 2 of both treaties guarantee the right of equal enjoyment of the rights contained therein, without any discrimination on grounds of race, color, sex, political or other opinion, social or national origin, etc. Furthermore, Article 2 of the ICCPR and the African Charter require equal access to justice. Hence, laws or practices that restrict access to courts to certain groups, or operate to exclude certain groups, violate Article 2 of the said treaties.

Likewise, article 12 of the 2004 Arab Charter on Human Rights, guarantees equality before the law as it requires member states to guarantee the independence of the judiciary and to protect “magistrates” against any form of interference, pressure or threats. Article 13 of the Charter,

however, guarantees a fair trial before a competent independent and impartial court constituted by law. The Charter further requires that trials be held in public, except in “exceptional cases”, which are not specified.

The particular significance of the right to fair trial, as contained in the Arab Charter, although not yet in force, is that the right to liberty, security, and a fair trial are listed in Article 4 as non-derogation rights. This is not the case in any other human rights treaty. It means that, for member states, these crucial rights may never be abandoned, even during a state of emergency. Inclusion on the list of non-derogation rights illustrates the weight such rights are accorded by the member states of the Arab league.

The right to liberty, security and fair trial, coupled with prohibitions against discrimination, can be found in many human rights treaties such as, the European Convention on Human Rights and the American Convention on Human Rights.⁵² The said treaties have generated a large body of case law. The case law offers authoritative interpretations of states’ obligations and may be used to hold states accountable for their violations of human rights.

2.1.3 Non-binding standards

Regional standards

In addition to the treaties already mentioned, there are a number of non-binding instruments relevant to justice that are of particular relevance to the region. They include the African Union Principles and Guidelines on the Right to a Fair Trial, Legal Assistance in Africa, adopted in July 2003,⁵³ the Beirut Declaration, Recommendations of the First Arab Conference on Justice, June

⁵² A treaty covering the Americas.

⁵³ *Supra* note 21.

1999, and the Cairo Declaration on Judicial Independence, the Second Arab Justice Conference in February 2003.⁵⁴ Both conferences represent a broad consensus from jurists across the region.

The African Union Principles details the obligations of the right to a fair trial, as guaranteed by the African Charter. While the principles of the African Union are not a legally binding instrument, they reveal a strong consensus among political leaders in Africa on the requirements of the right to a fair trial, which is consistent with developing international standards. The extremely detailed provisions have drawn from, among other sources, the European Convention on Human Rights, whose case law provides a powerful illustration of the relevance of human rights instruments from other regions. Hence, it is possible for the African Commission on Human and Peoples' Rights, to apply the principles and guidelines in all its work – in relation to detention and fair trial.⁵⁵

Universal instruments

There are a number of universal non-binding instruments in existence, viz.: the UN Body of Principles on the Independence of the Judiciary, the UN Basic Principles on the Role of Lawyers, and the UN Guidelines on the Role of Prosecutors, 1990. The aforementioned instruments provide useful guidance on the interpretation of treaty provisions, as applicable in each country and represent an international consensus on issues concerning judges and prosecutors.

⁵⁴ Beirut and Cairo Declarations were adopted following two conferences convened by the Arab Center for the Independence of the Judiciary and Legal Profession to consider judicial independence in the Arab region.

⁵⁵ The case law will be used by the Commission in examination of State reports, in examination of individual or collective complaints and by all Commission's Special Rapporteurs.

Declarations of NGOs, heads of state, etc.

Other instruments, including declarations made by heads of states, declarations of the UN General Assembly, and statements produced by international NGOs, among others, offer useful guides as to the direction of development of human rights standards. Indeed, many of them have drawn heavily on the jurisprudence of human rights treaty bodies and courts. Accordingly, they may be usefully relied upon in the course of legal proceedings or in political dialogue with state authorities.

Declarations of professional bodies, such as the International Association of Prosecutors and the International Association of Judges,⁵⁶ are also influential as they establish a shared understanding of the obligations and responsibilities of these professions in the administration of justice. A number of manuals relating to justice and the right to a fair trial are useful tools; they serve to shed light on the meaning of the nature of States' obligations. Of particular importance are the Amnesty International Fair Trials Manual,⁵⁷ the UN High Commission on Human Rights Manual on Human Rights in the administration of Justice,⁵⁸ and the USA Office of Democracy manual on the Independence of the Judiciary.⁵⁹

⁵⁶ The text of the Universal Charter of the Judge was unanimously approved by the delegations attending the meeting of the Central Council of the International Association of Judges in Taiwan on 17 November 1999.

⁵⁷ An online manual, available at <http://www.amnesty.org/en/library/info/POL30/002/1998> (last visited July 27, 2013).

⁵⁸ Office of the High Commissioner for Human Rights, *Professional Training Series, Human Rights in the Administration of Justice, A Manual on Human Rights for Judges, Prosecutors and Lawyers*, (2003).

⁵⁹ USA Office of Democracy and Governance, *Guidance for Promoting Judicial Independence and Impartiality*, (2002).

2.3 Role of International and Regional Courts in upholding Access to Justice

The right of access to justice is not explicitly enshrined in international treaties. However, the said right has been universally recognized by the human rights courts and treaties governing bodies as an integral part of the right to a fair hearing. Both the Human Rights Committee and the European Court of Human Rights have stated clearly that the right to a fair trial is dependent upon effective access to court being guaranteed, in law and in practice.⁶⁰

The right of access to a court is also enshrined in the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.⁶¹ Failure to guarantee access to a court by the state is regarded as a denial of the right to a fair hearing and regarded as a violation of a person's human rights. Furthermore, the right of access to a court imposes both positive and negative obligations on the state. The negative obligation on the state is to ensure that there are no obstacles to potential litigants, which are denying or impeding their access to a court. While the positive obligations require that states take all necessary actions to ensure that all persons and groups have effective access to a court. This might require the state to ensure the erecting and equipping of new courts or the commission of mobile courts to serve remote areas. It may also require the state to take positive measures to assist groups who have traditionally suffered discrimination and provision of free legal aid.

The elements of the right of access to a court, include the right to free legal assistance where required in the interests of justice.⁶² There are some circumstances that require the provision of legal aid to a poor litigant. In a judgment rendered by HRC stated that “where a challenge is made regarding to the legality of the death penalty, the conditions on death row, and the length

⁶⁰ See, e.g., *Oló Bahamonde v. Equatorial Guinea*, (1993) Vol. II H.R.C.183

⁶¹ See *Right to a Fair Trial and Legal Assistance in Africa*, Principle number K, Access to Justice, A. U. Doc. DOC/OS(XXX)247(2005).

⁶² See *Airey v. Ireland*, (1979) Eur Ct HR Ser A 32.

of time spent on death row, the interests of justice requires the provision of legal aid to ensure access to a court.⁶³

The right of effective access to a court also includes the right to have confidential meetings with a lawyer, away from the supervision of the police, in order to eliminate the possibility of pressure or intimidation being brought to bear on the defense.⁶⁴ Effective access to justice also requires the right to unhindered postal communication with a lawyer.⁶⁵

However, the European Court has stated that there may be special features of an investigation requiring the restriction of the right to confer privately with a lawyer. There must, however, be proper justification for restricting this right and such restriction must not operate so as to deny the accused of the right to a fair trial.⁶⁶ Definitely, any practice that routinely denies the right to confidential meetings with a lawyer violates the right of effective access to a court. Effective access to a justice also includes enforcement.⁶⁷ Therefore the execution of judgments must be regarded as an integral part of a fair trial.⁶⁸

On the other hand, the issue of the allocation of costs in civil proceedings raises the question of providing effective access to a justice when a private individual seeks to enforce their rights in a local court. A rigid application of a rule imposing costs on the losing party may violate the right of access to a justice. If the reasons for such rigid rules do not take into account the implications for the litigant they will have a deterrent effect on the ability of any person claiming a right to pursue a remedy before the courts. Therefore, effective access to a justice requires the

⁶³ See, *Henry v. Trinidad and Tobago*, (1998) Vol. II H.R.C 238.

⁶⁴ See, e.g., *Öcalan v. Turkey* (2005). ECHR VI

⁶⁵ See, e.g., *Campbell and Fell v. United Kingdom* (1984) Application nos. 7819/77 and 7878/77

⁶⁶ *Id.*

⁶⁷ See, e.g., *Hornsby v. Greece*, (1997) Application no. 18357/91

⁶⁸ *Id.*

implementation of rules that are sufficiently flexible for the trial court to take such matters into consideration when awarding costs.⁶⁹

Furthermore, the right of access to a justice must be guaranteed to all without discrimination on any grounds. No obstacles may be placed in the way of a detainee from gaining access to a lawyer, in order, for example, to consider legal action against the prison authorities.⁷⁰ Laws or practices that effectively bar certain groups from litigating, such as women, violate the right of access to a justice. In situations where women are prevented from gaining access to courts on the grounds of lack of financial means, the state is obliged to take action to ensure that free legal assistance is provided to them. This may mean supporting the establishment of law centers or other advice mechanisms, competent to give free legal advice and representation to women so in need.

⁶⁹ See, e.g., *Aarela and Nakkalajarai v. Finland*, (2000) Application No 779/1997, CCPR/C/73/D/779/1997

⁷⁰ See, e.g., *Golder v. United Kingdom*, (1975) EHRR VOL I 524.

Chapter III: Impediments and Obstacles to Access to Justice after “Arab Spring”

3.1 Introduction

The first part of this chapter will commence with a discussion of the main characteristics of the impediments and obstacles to access to justice in general. It will further examine the nature and type of impediments, be them procedural or substantive.

3.2 Barriers to Justice

Access to justice is regarded as the cornerstone of the justice sector institutions, in both developed and developing world. The availability of resources and their allocation affect how access to justice may be prioritized in some countries. In the formal justice system, access is generally limited by a number of factors outside the control of ordinary citizens. The informal sector is perceived as more accessible to the poor, though it often does not adhere to international human rights standards.⁷¹

As the World Development Report, 2006, clearly states, *“people’s legal rights remain theoretical if the institutions charged with enforcing them are inaccessible,”* and further states that institutions are inaccessible when *“they are incompatible with local norms and customs and they are physically or economically inaccessible, or because people lack the knowledge or capacity to navigate the system.”*⁷²

Furthermore, in a report issued by the Asian Development Bank, based on its programming, it identified the main constraints on access to justice by the disadvantaged as: (1) lack of economic independence, (2) minimal knowledge of the law and the rights that it confers, (3) limited access to affordable legal services, (4) declining standards of legal education and

⁷¹ Role of informal justice system will be discussed in greater detail in the fifth chapter below.

⁷² The World Bank, *World Development Report 2006* (2007).

professional integrity, (5) lack of knowledge, incentives, and resources among government officials, (6) limitations in the outreach and capacity of civil society organizations, (7) a flawed system of laws and regulations, (8) inconsistency between formal and traditional values, (9) a lack of legal implementation, (10) patronage, extreme personalism, and indifference, (11) law used as a historical instrument of control, (12) corruption, and (13) learned helplessness.⁷³

Similarly, the UNDP from an indigent user's perspective, has identified the most common weaknesses of the justice system as: (1) long delays, (2) severe limitations in existing remedies, (3) gender and wealth-based bias, (4) lack of *de facto* protection for vulnerable populations, (5) lack of adequate information on the law, (6) lack of adequate legal aid systems, (7) limited public participation in reform programs, (8) an excessive number of laws, (9) formal and expensive legal procedures, and (10) avoidance of the legal system due to economic reasons, fear, or a sense of futility of purpose.⁷⁴

Furthermore, according to the 2004 Arab Human Development Report, a major obstacle to access to justice in the Middle East and North Africa is an increasing court case load, which "obstructs the administration of justice and exercise of the human right to litigation to a considerable degree."⁷⁵ The report also declares that "in Arab countries where there are millions of lawsuits and no more than several thousand sitting judges, court cases are delayed for years before they are settled [and] litigants' rights are set aside, particularly the rights of defense."⁷⁶

⁷³ Asian Development Bank, *Law and Policy Reform at the Asian Development Bank* (2001). Available at: <http://www.adb.org/sites/default/files/pub/2001/lpr-adb.pdf> (last visited July 26, 2013)

⁷⁴ UNDP, *Access to Justice: Practice Note* (2004)

⁷⁵ UNDP, *Arab Human Development Report 2004* (2005).

⁷⁶ *Id.* at 122.

Finally, classical scholars have identified six visible barriers to access to formal justice system, namely: geographical barriers, language problems, complexity of procedures, cultural norms and delay.⁷⁷

3.3 The Symbolic Component of Access to Justice

Laws can impact significantly on social relations. This reality has not received enough recognition by legally trained access to justice scholars and analysts. Law's impact on social relations can be traced in several ways. For example, studies of various jurisdictions suggest that formal legal systems can influence informal dispute resolution processes, even where the laws are not binding and the mechanisms for enforcement are not present.⁷⁸ Furthermore, law acts as a social mirror in that, it is both constitutive and declarative of prevailing social norms.⁷⁹ Finally, developments within the law can sustain social and political dialogue even where the direct impact of the legal change remains relatively minute.⁸⁰

Symbolic access to justice therefore serves as an important indicator for social progress for those concerned about rule of law and its impact on development. Yet, symbolic access to justice often proves difficult to measure. It is also difficult to define a cause and effect relationship between changes in the laws in the books, and parallel changes in the social and political sphere. Such changes can take decades to be visible and the connections are usually too hard to trace and document. Hence, the value of pursuing social change through litigation or class action cannot easily be measured.⁸¹ In many ways, the pursuit of symbolic access to justice requires further

⁷⁷ MAAIKE DE LANGEN & MAURITS BARENDRECHT, *THE STATE OF ACCESS: SUCCESS AND FAILURE OF DEMOCRACIES TO CREATE EQUAL OPPORTUNITIES* (2008).

⁷⁸ Birzeit University, *Informal Justice: Rule of law and Dispute Resolution in Palestine* (2006). Available at <http://lawcenter.birzeit.edu/iol/en/project/outputfile/5/a391785614.pdf> (last visited July 29, 2013).

⁷⁹ Reem Bahdi, *Background Paper on Women's Access to Justice in the MENA Region*, (2007).

⁸⁰ For example, amendments to Egyptian personal status law that regulates divorce may prove significant beyond the impact that these changes may have on a relatively small group of women who take advantage of no fault divorce.

⁸¹ Bahdi, *supra* note 78, at 39.

research to assess the direct cause and effect relationships between legal reform and social change, which cannot be precisely defined.

In the Middle East and North Africa (MENA), research on issues related to access to justice revealed that, although the constitutions of the majority of countries in the region enshrine the principle of gender equality and non-discrimination,⁸² these constitutional guarantees are often undermined by conflicting and discriminatory laws.⁸³ Besides, even where beneficial laws exist, their implementation can be a major challenge. According to the UNDP, one of the most prevalent obstacles to women's access to justice in MENA, is that existing legal systems fail to protect women, whether *de jure*, through inadequacies in laws or *de facto*, through limitations in judicial or other remedies provided in practice.⁸⁴

3.4 The Link between Access to Justice and Poverty Reduction

Apart from the legal obligations by states to strengthen access to justice, it has become increasingly clear of the existence of a strong link between access to justice, poverty reduction, and human development.

The UNDP's Guide to Access to Justice clearly identifies this link. Since the poor and disadvantaged are more likely to be vulnerable to illegal acts, such as discrimination, violence, theft or economic exploitation, these illegal acts often have greater impact on the poor and disadvantaged. This is also the case, as this group has limited resources with which to seek redress.⁸⁵ In light of these factors, justice systems can be "used as tools to overcome deprivation by ensuring, for instance, access to education ... or by developing jurisprudence on access to

⁸² Discussed in Chapter 4 in greater detail.

⁸³ MOUNIRA CHARRAD. STATES AND WOMEN'S RIGHTS: THE MAKING OF POSTCOLONIAL TUNISIA, ALGERIA, AND MOROCCO. Berkeley, CA: University of California Press,(2001).

⁸⁴ UNDP, *Arab Human Development Reports* (2003).

⁸⁵ UNDP, *Programming for Justice: Access for All*

food, health or other economic, cultural or social human rights.”⁸⁶ Finally, “fair and effective justice systems are the best way to reduce the risks associated with violent conflict,” ensuring that claims are addressed through the courts and that no crime goes unpunished.⁸⁷

The United Nations Education, Scientific and Cultural Organization (“UNESCO”) also details the link between access to justice and poverty reduction, by stating that: “Poor people are particularly vulnerable to human rights violations and abuses by governmental authorities and private individuals. The most important tool to defend themselves against these abuses is court protection. Usually, for economic or other reasons, poor people lack the capability to obtain court protection. Even if free legal aid is available, they may lack the necessary information and self-confidence to seek redress through the courts. Thus, States should actively promote the free access of poor people to courts, tribunals and other dispute resolution mechanisms as a remedy against human rights violations.”⁸⁸

Access to justice is regarded as a method to reduce poverty that affects the marginalized and most vulnerable groups of the society. By empowering disadvantaged citizens to use the justice system, they are better able to help themselves and to seek redress for the wrongs they have suffered.

Further, a report issued by the World Bank states that, attacking poverty is associated with better overall economic performance and poverty reduction in that it creates “a predictable and secure environment for economic agents to engage in production, trade and investment, thereby expanding poor people’s employment opportunities and incomes.”⁸⁹ The rule of law is

⁸⁶ UNDP, *Access to Justice: Practice Note* (2004).

⁸⁷ UNDP, *supra* note 85 at 3.

⁸⁸ *Id.*, at 2.

⁸⁹ United Kingdom Department for International Development (“UKDID”), *Safety Security and Accessible Justice* (2002).

established when “a country’s formal rules are made publicly known and enforced in a predictable way through transparent mechanisms”, so that “the rules apply to all citizens and the state is subject to the rules.”⁹⁰ A main component of the rule of law is access to justice, in that the poor “have few private means of protecting their rights.”⁹¹ The link between an accessible and fair justice system, as an element of the rule of law, and poverty reduction is not just theoretical. As shown in the following Governance Matters Index, there is a positive correlation between rule of law adherence and a high level GDP per capita.⁹²

In a World Bank judicial reform project performed an in-depth study of the effects of legal aid.⁹³ The project supported three legal aid clinics for poor women in a Latin American country, and then compared the outcome of cases involving poor women provided legal aid by the clinics against those involving a control group of women.⁹⁴ The results revealed that the legal aid clinics successfully improved the results of the women who received clinical services. Legal aid clients were 20 percent more likely to obtain child support awards than non-clients, and were 10.4 percent more likely to actually receive child support payments.⁹⁵ Legal aid clients were also 17 percent less likely to experience severe physical violence, and their children were 4.8 percent more likely to attend school.⁹⁶ Legal aid clients were also more likely to assert their rights and have a more positive

⁹⁰ *Id.* at 36.

⁹¹ World Bank, *supra* note 71, at 158.

⁹² See International Bar Association, *Pro Bono and Access to Justice Committee*. Available at: http://www.ibanet.org/publicprofinterest/Access_to_Justice.cfm (last visited July 29, 2013).

⁹³ The World Bank, Latin American and Caribbean Regional Office, *Implementation Completion Report on a Loan in the Amount of US\$10.7 Million to the Republic of Ecuador for a Judicial Reform Project*, Report No. 26259-EC (2003). Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2003/07/08/000012009_20030708152143/Rend ered/PDF/262590EC01CR.pdf (last visited July 29, 2013).

⁹⁴ The World Bank, Legal Vice Presidency, *Impact of Legal Aid: Ecuador*, No. 26915 (February 2003), at 10. Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2003/10/08/000012009_20031008144152/Rend ered/PDF/269150English01of0Legal0Aid0scode09.pdf (last visited July 29, 2013).

⁹⁵ *Id.* at 11.

⁹⁶ *Id.*

outlook on the judicial system. Finally, legal aid “lowered the transaction costs of asserting a claim” and led to more empowered women, with improved self-esteem.⁹⁷

3.5 Incentives and Disincentives of Access to Justice

When proposing a reform to any legal system, it is important to assess the incentives and disincentives that may affect the actions of stakeholders and actors. There are five primary actors involved in promoting access to justice, namely: the government, courts, bar associations, civil society, and citizens, who are the ultimate beneficiaries.⁹⁸

Governments have an incentive to ensure that all people benefit from access to justice, in part, through an effective legal aid system. Efficient legal aid often leads to a more positive public perception of the government, as “all persons and groups subject to the jurisdiction of the state can understand their rights and obligations and obtain the protection of the law.”⁹⁹ Greater access to justice also means less poverty and more economic development. Additionally, governments that promote access to justice benefit from positive international public opinion resulting from their compliance with their international obligations.

On the other hand, states may be reluctant to provide access to justice, especially if they are governed by authoritarian regimes, given the monetary hardships that many governments face, access to justice programs can be viewed as a drain on already scarce resources as access to justice more funds allocated to make them tangible.

Additionally, for courts, access to justice programs generally promotes effective judicial administration as such programs can increase public satisfaction with the courts and confidence

⁹⁷ *Id.*

⁹⁸ See generally Inter-American Development Bank, *Justice Beyond Our Borders: Judicial Reforms for Latin America and the Caribbean* (1999).

⁹⁹ *Id.*

in justice in general. To the contrary, court administrators may be concerned about the potential strain on their already inadequate resources from growing caseloads.

Bar associations are also regarded as essential partner in any access to justice program and their support is very crucial. There are many incentives for the bar, in access to justice projects, such as promoting pro bono work among lawyers. Likewise, they provide opportunity for professional development and are a source of professional fees. However, some bar associations perceive access to justice projects, especially those administered by non-lawyer legal professionals, as a threat to their monopoly on legal services.

Further, civil society organizations have incentives to support access to justice programs because they provide a means for interest groups to seek judicial rulings on the issues which they advocate. Citizens, as ultimate beneficiaries of legal services, usually have the greatest incentive to support access to justice projects; as such projects provide them with affordable legal services, thereby, enabling them to seek redress of their legal needs.

While certain groups may focus on the disincentives of access to justice programs, it is essential that the incentives are stressed, and that access to justice projects be developed with participation and support from all stakeholders and actors in the legal and judicial sectors.

Lastly, Sen emphasized the importance of access to justice within a country's comprehensive development framework. This is the case, as legal systems play a central role in the advancement of political and economic development. It is also considered an essential backbone of a system in which everyone's voice is heard and everyone's needs are taken into account.¹⁰⁰

¹⁰⁰ AMARTYA SEN, WHAT IS THE ROLE OF LEGAL AND JUDICIAL REFORM IN THE DEVELOPMENT PROCESS?, World Bank (2000).

CHAPTER IV: Access to Justice in Egyptian and Tunisian laws

4.1 Introduction

This chapter will commence by analyzing the legal framework of Egypt and Tunisia, in a uniformed and structured approach. The approach is to identify the main issues of concern and explain the concepts behind each issue. Access to justice in the national context will be examined, as well as the situation under the international and regional context. The implication of these provisions on the citizenry, specifically the poor and marginalized groups, will be outlined. Finally this chapter will discuss the legal aid mechanisms/systems in both countries.

4.2 Legal framework in Egypt

4.2.1 Constitution

Constitution of 1971

Basic rights and freedoms of citizens, without discrimination on the basis of sex, ethnicity, language or religion, were enshrined in the abolished Egyptian Constitution of 1971.¹⁰¹ The abolished Constitution also provided for the right to litigation and to a fair trial, including the right to defense and access to counsel, specifically to those in financial need mainly in criminal matters.¹⁰²

¹⁰¹ Abolished Egyptian Constitution, art. 40.

¹⁰² *Id.* arts. 41, 65-68, 71, 165, 166 and 169.

Constitution of 2012 ¹⁰³

The current Constitution also guarantees the same rights and freedoms that were enshrined in the abolished Constitution of 1971. The current constitution has gone even further, in complying with international standards, as article 75 of the Egyptian constitution states that:

“The right to litigation is inalienable and guaranteed for all. The state commits to making judicial institutions accessible and to encouraging a rapid decision making process. It is prohibited to isolate any act or administrative decision from judicial oversight. No person can be tried except before his natural judge. Exceptional courts are prohibited.”¹⁰⁴

Further, article 78 of the said constitution states that:

“The right of defense in person or by proxy is guaranteed. The law guarantees for indigents the means to resort to the courts and to defend their rights before the courts.”¹⁰⁵

The current constitution has temporarily been suspended by virtue of declaration of the General of the armed forces, after the ousting of the former president on July 3, 2013. This occurred after mass demonstration sparked on June 30, 2013. The 2012 constitution is thus, subject to review by two constituent committees. In the premises, the researcher is encouraging the said committees to reconsider the articles that regulate the right to litigate, to be more compatible with international standards and norms. It is also recommended that the committees expressly stipulate the availability of free legal aid for marginalized groups, specifically women, in both criminal and civil matters.

¹⁰³ The 2012 constitution was temporarily suspended on 3 July, 2013 after ousting the president followed by mass demonstration sparked on 30 of June, 2013.

¹⁰⁴ *Id.* art. 75.

¹⁰⁵ *Id.* art 78.

4.2.2 Civil procedures law

Egyptian civil procedures law does not stipulate that lawyers represent the cases of the citizens before the court, except in certain matter such as appearing before the court of Cassation.¹⁰⁶ The position of Egyptian law, at least from the theoretical perspective, is to facilitate access to justice through allowing the citizens to appear before the court directly, to represent their cases, without retaining lawyers to represent them.

4.2.3 Criminal law

Egyptian criminal procedure laws stipulate that “If the accused is ... in a misdemeanor punishable by imprisonment, the court must assign him a lawyer to defend him.”¹⁰⁷ Such provision is compatible with international standards. However, in practice, many lawyers do not show up when they are assigned by the court.¹⁰⁸

4.2.4 Family law

According to Egyptian Family law, in personal status claims, legislation specifically allows courts to assign a defense lawyer for a plaintiff, with the attorney fees being paid out of the public treasury. Article 3 states that: “Alimony cases, and similar cases, are exempt from legal fees at all stages.”¹⁰⁹ Labor cases filed by workers are similarly exempted from any legal fees.¹¹⁰

4.2.5 Child law

According to Egyptian Child law, in matters dealing with children having infringed the penal law, free legal assistance should be provided for the child in question. Article 125 of the said law stipulates that: “The child has the right to legal assistance; he shall be represented in criminal and misdemeanor cases whose penalty is placing him in custody by lawyer to defend him in both the

¹⁰⁶ Art. 72 of Egyptian Civil procedures law number 13 of year 1968.

¹⁰⁷ Art. 237 of Egyptian criminal procedures law number 95 of year 2003.

¹⁰⁸ SAFAA SEDKI, IMPEDIMENTS OF JUSTICE IN EGYPT (2010).

¹⁰⁹ Art. 3 of Egyptian Family law number 5 of year 2004.

¹¹⁰ Art. 6 and 7 of Egyptian Labor Law number 12 of year 2003.

investigation and trial phases. If no lawyer has been selected by the child, the public prosecution or the Court shall appoint one, in accordance with the rules and regulation of the Criminal Procedure Code.”¹¹¹

4.3 Legal aid law in Egypt

Although legal assistance is incorporated within various legal sources, viz., in different legislations, such as family law and child law, there is no available comprehensive law to regulate legal assistance for citizens, especially those who suffer from economic hardship.

4.4 Legal framework in Tunisia

4.4.1 The constitution

As in the Egyptian Constitution, the abolished Tunisian Constitution guarantees the right to defense and a fair trial. The abolished constitution stipulates that “An accused person is presumed innocent until his guilt has been proven through a procedure that offers him the guarantees that are indispensable for his defense.”¹¹²

Draft Constitution

According to the Tunisian draft Constitution, a sole provision relates to the right to litigate. It stipulates that, “A defendant shall be presumed innocent until proven guilty by virtue of a free trial where he is granted all defense guarantees during all phases of prosecution and trial.”¹¹³ It is obvious from the provision that, it does not provide the defendant with the means to assist his case, such as the right to have a lawyer defend his case. Furthermore, the aforementioned provision is adopted from the abolished constitution without any substantial amendment.

¹¹¹ Art. 125 of Child law number 12 of year 1996 as amended by law number 126 of year 2008.

¹¹² Art. 12 of Tunisian Constitution of 1959.

¹¹³ Art. 26 of Tunisian draft Constitution.

4.4.2 Child law

Tunisian Child law provides that the Attorney General is assigned to represent children who are subject to investigation by the authorities for any “serious” issues committed.¹¹⁴

4.5 Legal aid law in Tunisia

Tunisian law on legal aid number 2002-52 of 3 June 2002 provides legal aid to citizens in both civil and criminal matters. However, the said law does not provide expressly for the possibility of refusing legal aid on the basis that the case is without justification. It does however, demand that the applicant attaches on his application, a copy of the items he is invoking to establish the existing right.¹¹⁵

Furthermore, the authority responsible for assessing the grounds for the action is not the court. This authority may be outside the court. The authority which grants legal aid is composed of a representative from the public prosecutor’s office, a representative from the ministry of finance and a member of the Bar Association. The committee is convened at the beginning of each month, at which time, it decides applications.¹¹⁶

¹¹⁴ Art. 77 of Tunisia's Child Protection law number 92 of 1995 as amended by code number 41 of 2002.

¹¹⁵ Art. 6 of Legal Aid law 52 of 2002 as amended by code number 27 of 2007

¹¹⁶ Art. 4 of Legal Aid law.

Chapter V: Towards Improving and Enhancing Access to Justice in Egypt and Tunisia

5.1 Introduction

This chapter will provide thorough analysis of how the governments of Egypt and Tunisia can improve the situation of access to justice in their country. This chapter will also attempt to shed light on the current efforts exerted by the said governments and other stakeholders. Further, the chapter will highlight the available tools for the said governments to enhance the current situation. Finally, this chapter will attempt to outline the potential role of “customary law” or the “informal justice system”, in enhancing access to justice for the poor and marginalized groups, particularly, women.

5.2 Existing Projects to Improve Access to Justice in Egypt

The international community is actively engaged in improving and enhancing access to justice, especially for women. One leading project under the auspices of UNDP is called the *Legal Aid and Dispute Settlement project* (“LADS”). LADS’ project aims to conduct activities that will support the rights of citizens - especially marginalized groups, women and the most vulnerable groups in access to services provided by the judiciary. The project aims also to raise legal awareness among citizens regarding contacting courts, especially in family issues. It further aims to create many legal aid offices that provide free services (within the headquarters of Family Courts). Additionally, it tries to upgrade the human element of the family justice system and support offices of the Family Courts in Egypt. It also aims to assist women with expenses, to ensure quick adjudication.¹¹⁷

¹¹⁷ <http://www.ladsegypt.org/> (in Arabic)

Another initiative that aims to improve access to justice was implemented by the protection project of John Hopkins University in association with Alexandria University and financed by USAID. The project aims to serve the community in Alexandria and its suburbs through volunteer legal services in collaboration with the legal aid offices in family courts and Ministry of Justice in Alexandria. Further, the project aims to train students to volunteer legal work for groups that need assistance. Finally, the project aims to prepare for the future, lawyers with valuable skills and practical experience under the supervision of professors of the college and the Ministry of Justice and the Bar Association.¹¹⁸

5.3 Role of Egyptian Bar Association

The Egyptian Bar Association “maintains a roster of lawyers eligible to serve as public defenders.”¹¹⁹ The Bar Association Law explicitly states one of its objectives as: to ensure the right to defense for all citizens and lawyers have an obligation to provide legal aid to those who cannot afford legal expenses. Egyptian Bar Association law in articles 94 and 95 states that: “Legal aid is provided to citizens in the following situations: (1) to anyone exempted from the litigation fees because he/she is financially disabled; (2) if no lawyers take his/her case; (3) in cases of his/her lawyer’s death; or (4) any other case where the lawyer becomes unable to proceed with his/her work.” The fourth chapter of the said law specifically addresses legal aid, by listing the situations in which a defendant is entitled to legal aid. According to Article 93 of the aforementioned law, legal aid covers a wide range of services, including legal representation, legal consultation and the drafting of contracts.

¹¹⁸ <http://www.protectionproject.org/>

¹¹⁹ U.S. Department of State, *Egypt: Country Report on Human Rights Practices* (2006).

5.4 Role of the Office of the Egyptian Ombudsman

In 2002, the National Council for Women (“NCW”) was established by presidential decree to work on improving the status of Egyptian women by narrowing the socio-economic gender gap and empowering women in the social, economic and political arenas through a number of programs, including the Ombudsman’s Office.¹²⁰ The Office of the Ombudsman was established in 2001 to investigate, mediate and resolve claims of gender discrimination by Egyptian women above the age of 18.

Additionally, the Office of the Ombudsman: (i) provides legal advice through a telephone hotline; (ii) provides legal aid for needy women through its committee of volunteer attorneys; (iii) researches viable options for solving employment discrimination claims; and (iv) prepares legal and social studies to present to the NCW Legislative Committee for consideration. The Office also handles claims relating to personal status and nationality, sexual harassment, divorce, domestic violence, and gender discrimination in the workplace. Since its establishment, the Office of the Ombudsman has: received complaints and requests for legal counseling, developed and maintained a large network of national NGOs that are referred claims outside the scope of the Office, and has established several branch offices across the country. Moreover, the Ombudsman’s Office is tasked with reviewing legislative issues, working closely with the NCW Legislative Committee, which consults directly with members of Parliament for legal clarifications or favorable amendments.

To assist in its efforts, the NCW has also established Equal Opportunity Units (“EOUs”) at a number of ministries and institutions. An EOU Committee was also created to aid the Ombudsman’s Office in investigating and solving employment-related grievances and in

¹²⁰ <http://www.ncwegypt.com/index.php/en/> (last visited July 29, 2013).

organizing workshops and seminars to raise women's awareness of their legal rights at work. It was reported that the Ombudsman's Office provided legal advice to more than 9,000 women and processed 2,761 complaints during its first two years of existence.¹²¹

5.5 Role of Egyptian Quasi-Governmental and NGOs

Several quasi-governmental Egyptian organizations provide a variety of legal aid services. For example, the National Council of Human Rights which was established as a subsidiary to the Shoura Council (the upper house of the Egyptian Parliament) in 2003 had a aim of promoting and developing human rights and spreading their awareness to ensure their practice.¹²² Since its inception, the Council has issued yearly reports on the status of human rights practices in Egypt, among other activities.

There are approximately 16,000 NGOs operating in Egypt, More than 40 of these organizations provide some level of legal aid services on a wide array of issues. The most notable organizations are:

(a) The Arab Organization for Human Rights, which was established in 1983. The organization focuses on human rights violations, freedom of expression, prisoners' rights and combating torture;¹²³

(b) The Egyptian Organization for Human Rights ("EOHR"), which was established in 1985. The organization handles all human rights issues and works on promoting and enhancing the rule of law and respect for the independence of the judiciary. Their activities include ensuring fair

¹²¹ *The Egyptian Ombudsman Office for Gender Equality: Helping Women Obtain Fair Treatment*. Available at <http://www.wlum1.org> (last visited May 15, 2013).

¹²² Law number 94 of year 2003 promulgating National Council of Human Rights.

¹²³ <http://www.aohr.net/> (available only in Arabic)

trials to accused people and providing necessary legal aid.¹²⁴ The organization implemented a Women's Legal Aid Project and a Refugee Legal Aid Project. Additionally in 2003, the EOHR reported having helped over 550 refugees with their cases and appeals, providing approximately 50 women with legal aid, and receiving 900 complaints from both men and women, who requested explanations of the law;¹²⁵

The Association for Human Rights Legal Aid was established in 1999. The organization handles human and children's rights, provides legal support to victims of human rights violations, including cases of unfair dismissal and freedom of expression, and cases involving juveniles;¹²⁶

The Land Center for Human Rights was established in 1996. This organization handles human, women's and children's rights, provides legal aid to victims and works on raising people's awareness of their rights.¹²⁷

The Human Rights Center for the Assistance of Prisoners was established in 1997. This organization monitors prison environments and provides legal aid, including legal representation, to prisoners;¹²⁸

The Egyptian Women Issues Center was established in 1995. It focuses on women's and children's issues, provides legal consultation, maintains a hotline for free legal consultation, and provides legal aid for women who cannot afford court fees and litigation expenses.¹²⁹

¹²⁴ en.eohr.org/about

¹²⁵ *Id.*

¹²⁶ <http://www.ahrfa.org/>

¹²⁷ <http://www.lchr-eg.org/en/>

¹²⁸ <http://hrcap.org/en/main.php>

¹²⁹ <http://ecwronline.org/>

The Arab Center for the Independence of the Judiciary and the Legal Profession (“ACIJLP”) was established in 1997. The organization offers legal assistance to activists working in the field of public rights and freedoms who have been subjected to investigation and/or trial;¹³⁰

The Center for Egyptian Women's Legal Assistance Foundation was established in 1995. The organization offers Egyptian women legal support and assistance regarding their rights;¹³¹

The Hisham Mubarak Law Center (“HMLC”) was established in 1999. The organization issues reports violations against human rights and provides legal aid and counseling for victims;¹³²

Finally, The National Council for Childhood and Motherhood (NCCM) was established in 1988 by virtue of a Presidential Decree number 54 in 1988. The Council is entrusted with policymaking, planning, coordinating, monitoring and the evaluation of activities in the areas of protection and development of children and mothers. NCCM operates through a strong network of NGOs, students, volunteers, community leaders, academia, youth centers and schools and in partnership with a large number of donors as well as the UN family. Since the 1990s and to date, the NCCM has played a vital role in policy making, monitoring and coordinating actions in the best interests of children on the national and local levels and has demonstrated a successful model on a regional and international level.¹³³

5.6 Existing Projects to Improve Access to Justice in Tunisia

With the support of European Union, several projects took place to improve access to justice in Tunisia and modernization of the judiciary in Tunisia. Among project objectives: Publication of

¹³⁰ <http://www.acijlp.org/>

¹³¹ <http://www.cewla.org/>

¹³² <http://hmlc-egy.org/>

¹³³ <http://www.nccm-egypt.org>

books, brochures and documentation for the general public and specialists, in order to "better disseminate legal and judicial information, Record judgments through the implementation of an intranet to improve traffic between Ministry of Justice and Human Rights, courts and related institutions, such as judicial training institute."¹³⁴

5.7 Role of the Office of the Tunisian Ombudsman

The Office of the Tunisian Ombudsman was established in 1992. The Office examines the claims of private individuals and enterprises regarding administrative issues of concern. By law, citizens can submit matters directly to the Ombudsman without precondition, and all public authorities must respond to inquiries from the Ombudsman.

5.8 Role of Tunisian Quasi-Governmental and NGOs

The Higher Committee on Human Rights and Fundamental Freedoms was created by a virtue of a presidential decree in 1991. The Higher committee is tasked with helping the Tunisian president by giving opinions on human rights questions, submitting proposals to the president, and conducting studies and research.¹³⁵ The Committee also prepares an annual report for the president and publishes national reports on human rights in Tunisia. There are few NGOs operating in Tunisia that provide legal aid, namely: Tunisian Association for Human Rights that was established in 1977; Atlas Society for Self Development and Solidarity that was established in 1990; Arab Institute for Human Rights that was established in 1989; Centre for the Independence of Judges and Lawyers; and Al Marsad for Judicial independence.¹³⁶

¹³⁴ EU, Evaluation a MI-Parcours du projet d'appui lala Modernisation du systeme judiciaire [in French](2010) Available at http://eeas.europa.eu/delegations/tunisia/index_fr.htm

¹³⁵ <http://www.droitsdelhomme.org.tn/en/>

¹³⁶ <http://www.law.emory.edu/ihr/tuni.html>

5.9 Can Informal Justice play a Role in Enhancing Access to Justice

Informal justice systems that are often described as “traditional”, “customary” or “non-state” systems - are not the same and may differ sharply in normative rules, processes and genesis.¹³⁷

They can include indigenous or religious legal orders, NGO-led alternative dispute mechanisms¹³⁸ or popular justice forums,¹³⁹ among others.

Although extremely diverse, informal systems are commonly distinguished from state formal justice systems as they frequently aim to resolve disputes through mediation or arbitration, usually through a person or a group of persons who are regarded as prominent in the community.¹⁴⁰ They often adopt practices that draw their authority from perceived cultural, customary or religious concepts, rather than the political or legal authority of the state.¹⁴¹ Informal justice systems are meant to keep community in harmony, rather than individual rights. They also aim to restore peace within the community by repairing relationships between the disputing parties so that they can “get on with the daily business of living and working together in close communities.”¹⁴²

Another common characteristic of informal justice systems is that the due processes, including any decisions rendered are rarely recorded. Rules and procedures tend to be applied flexibly and on case by case basis. It is possible to have competing versions of a particular rule, with the result that there are usually multiple versions of informal laws. This is not the case generally, within the formal legal system. Nevertheless, such systems can still be properly

¹³⁷ ACCESSING JUSTICE: MODELS, STRATEGIES AND BEST PRACTICES ON WOMEN EMPOWERMENT, 14 (2013).

¹³⁸ LEGAL EMPOWERMENT: A PRACTITIONERS’ PERSPECTIVE, 35 (2011)

¹³⁹ *Id.*

¹⁴⁰ EWA WOJKOWSKA & JOHANNA CUNNINGHAM, JUSTICE REFORM’S NEW FRONTIER: ENGAGING WITH CUSTOMARY SYSTEMS TO LEGALLY EMPOWER THE POWER’ IN LEGAL EMPOWERMENT: A PRACTITIONERS’ PERSPECTIVE (2011) 93, 95.

¹⁴¹ ERICA HARPER, CUSTOMARY JUSTICE: FROM PROGRAM DESIGN TO IMPACT EVALUATION (2011).

¹⁴² *Supra* note 141, at 98.

described as constituting law because, regardless of structure or origin, decisions hold an authoritative status within the community through popular consent or deference.¹⁴³

A question arises why poor and marginalized groups, especially women rely on informal justice system, despite non-documentation and non-conformity with international human right standards. Although exact figures are difficult to estimate, researches clearly indicate that a significant number of women in the developing world access informal justice systems,¹⁴⁴ especially in rural and poor urban areas. It is frequently at the informal justice level that a number of key issues of particular significance to women are administrated and adjudicated. These issues include inheritance, family law and access and ownership of land and natural resources. Informal justice systems operate alongside formal justice systems in a wide variety of nations across the globe.¹⁴⁵

In MENA region, Informal justice systems are deeply entrenched to varying degrees, because of historical and cultural reasons, as well by modern necessity. For example, in Palestine, informal justice remains the dominant method for dispute resolution in part, because of its deep cultural roots. Its local nature renders it more accessible than the formal courts for several reasons, including travel restrictions in some parts of Palestinian territories, including its justice sector.

A study was commissioned by the Institute of Law at Birzeit University, which found that women and women's organizations took opposing stance about the desirability of the informal justice system. Some embraced it as the only feasible dispute resolution mechanism available to women, while others rejected working with the system altogether, because it results in women

¹⁴³ *Id.*, at 95.

¹⁴⁴ UN Women, *2011-2012 Progress of the World's Women: In Pursuit of Justice* (2011).

¹⁴⁵ DFID, *Non-state Justice and Security Systems* (2001).

waiving their rights. There were others however, who, in principle, still did not like the system, but found themselves engaging it, out of necessity.¹⁴⁶ Several representatives of women's organizations successfully engaged with the informal system and used it to successfully resolve disputes, particularly those concerning violence against women.¹⁴⁷

A research that was conducted in Egypt revealed that the state on some occasions encourages, through the local police at the local level, the work of the arbitrators and informal councils in cases where reconciliations are organized between Christians and Muslims, (For example, on the local level where specific priests and shaykhs or local elders are called upon if local security officers become aware of looming tensions between the two religious groups, or in cases where violence erupts between larger groups of people, or when homicide or blood feuds are the issue). Moreover, the state officials maintain a close relationship with local arbitrators who coordinate with the arbitrators and the state institutions.¹⁴⁸

Further, the said research revealed that, interaction between the council (informal tribunal) and courts is not marked by mutual opposition or disqualification. Rather, rulings by one, are taken into account, evaluated and perhaps reformulated by the other. The persisting vitality of local non-state forms of arbitration and dispute settlement is clearly not merely a reaction to unpopular or corrupt state institutions. It is due to cultural tradition, local prestige and the political significance of the councils, their internal workings, and the way they reach solutions to disputes.¹⁴⁹

¹⁴⁶ Informal Justice: Rule of Law and Dispute Resolution in Palestine (2006).

¹⁴⁷ *Id.*

¹⁴⁸ Hans Christian & Korsholm Nielsen, *State and Customary Law in Upper Egypt*, 13 (1) Islamic law and society 123 (2006).

¹⁴⁹ *Id.*, at 151.

Finally, UN Women have highlighted institutional and social factors that provide disincentives for women to engage with the formal justice systems,¹⁵⁰ including discriminatory state laws or a failure to apply the law in a non-discriminatory manner. For instance, in an Asian Foundation study conducted in East Timor, 50 percent of respondents thought the formal system favored the rich and powerful, whereas only 15 percent felt the same way about the informal system.¹⁵¹ Overall, 9 out of 10 respondents indicated that they were comfortable with solving a problem through the informal systems.¹⁵²

Another question arises as to how to engage with informal justice system to enhance and improve marginalized groups' access to justice, particularly, women. If it is agreed that one of the objectives of rule of law reform is to enhance access to justice and improve the substantive rights of the marginalized sectors of the society, ignoring informal justice systems can result in missing one of the few and most probable entry points for enhancing such access.¹⁵³

As the afore-outlined paragraphs illustrate, informal justice systems are used by a large number of women in the developing world and are often the “cornerstone of dispute resolutions for the poor and disadvantaged in developing countries.”¹⁵⁴ It follows that any serious attempt at improving access to justice for disadvantaged members of the society needs to consider means to engage with such informal systems.

Undoubtedly, informal systems may be the only available recourse for justice in fragile or transitional societies, where formal courts are incapable of processing cases in a timely

¹⁵⁰ *Supra* note 145, at 52.

¹⁵¹ *Supra* note 141, at 96.

¹⁵² *Id.*

¹⁵³ *Supra* note 141, at 31.

¹⁵⁴ *Id.*

manner,¹⁵⁵ or where judicial officers send women back to community authorities in cases perceived as “private matters.”¹⁵⁶

Interestingly also, in the MENA region, informal legal systems are regarded as a shrine of norms by the people. Hence, more analysis is needed about their relationship to the formal legal system. Both systems do not operate independently of each other. Their interaction therefore requires closer analysis to determine how they impact on each other in relation to specific issues, such as, violence against women. Such analysis should appreciate that the procedural barriers to access to justice might not vary to the extent one would imagine, given the vastly different procedures associated with each system.¹⁵⁷

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Bahdi, *supra* note 78, at 33.

Chapter VI: Conclusion and Recommendations

6.1 Summary of chapters

Chapter two addressed access to justice within the international and regional context. It focused on access to justice as a core human right and examined how the international courts and customary international law have established access to justice as a core human right.

Chapter three however, addressed the impediments and obstacles to access to justice, generally. It further provided an overview of the impediments and obstacles to access to justice that existed in both Egypt and Tunisia in the aftermath of the “Arab Spring”. Further, the chapter discussed the main characteristics and nature of these impediments.

Additionally, chapter four provided an analysis of the legal framework that exists in Egypt and Tunisia through analyzing the provisions in a uniformed and structured manner. It did this by: identifying the main issues of concern and explaining the concept behind each issue; examining the position of access to justice in relation to the national context; examining the situation under international and regional agreements in relation to the issue; discussing the implications of these provisions on the citizens, especially, on the the poor and marginalized groups.

Likewise, chapter five attempted to provide a thorough analysis of how the governments of Egypt and Tunisia acted towards enhancing and improving the situation of access to justice. This chapter also attempted to shed light on the current efforts by the said governments. Furthermore, the chapter discussed the available tools for the governments to improve the current situation of access to justice. Finally, this chapter explored “customary law” and its potential role in enhancing access to justice for the poor and marginalized, especially, women.

6.2 Conclusion

The following conclusions can thus be drawn:

Egypt maintains relatively adequate access to justice, at least, theoretically. However, the poor and marginalized groups, especially women, are still unable to access justice due to the relatively high litigation fees and their inability to pay lawyers' fees.

Furthermore, a comprehensive legal aid scheme is yet to be implemented for the provision of legal aid services in Egypt and Tunisia, as it did not receive adequate consideration and planning. A comprehensive legal aid scheme, which engages all stakeholders and actors, and addresses the needs of poor and marginalized, is yet to be developed.

Moreover, Egyptian and Tunisian governments have not established institutionalized frameworks that provide reliable legal aid delivery mechanisms, although the legal assistance law exists in Tunisia. On the other hand, the efforts by bar associations, certain quasi-governmental entities and selective civil society organizations are regarded as minimal to enhance access to justice.

6.3 Recommendations

The study has raised questions and attempted to provide answers. Conclusions have also been drawn. It is found that more efforts need to be exerted in order to ensure that access to justice is fulfilled in both Egypt and Tunisia.

The governments of Egypt and Tunisia have to start serious initiatives to ensure that their citizens are able to access justice, especially the marginalized segments in the society, particularly, after the "Arab Spring". In the aftermath of the "Arab Spring", the citizens of Egypt and Tunisia were demanding the application of the rule of law and engaged in mass protests in December and January 2011, in both Egypt and Tunisia.

6.4 On the national level

Governments of Egypt and Tunisia should be encouraged to draft their poverty reduction strategies for medium and long terms for reforming the justice sector. The reform should include addressing access to justice as cornerstone for reducing poverty among their citizens, which includes the provision of legal aid.

All stakeholders must be engaged to enact or amend the existing legal environment to develop a legal infrastructure that allows for a functioning access to justice system. New laws should be enacted or existing laws amended to specifically provide for legal aid. The national legal framework should incorporate international standards in domestic law and ensure that they take precedence over domestic law. Regulations allowing for proper enforcement of laws and constitutional provisions must be enacted.

Provision of legal aid should be initiated or expanded to include both civil and criminal matters, and should include legal counseling, legal representation and other forms of legal assistance, based upon the needs of the citizens. Legal aid services should also be prioritized to address the needs of the most vulnerable and underserved groups.

Furthermore, governments of Egypt and Tunisia must be encouraged to ratify the Arab Charter on Human Rights 2004. Likewise, governments of Egypt and Tunisia should be reminded of their positive obligations under human rights treaties such as: the provision of legal aid at a level sufficient to guarantee proper legal defense for the accused, the provision of sufficient numbers of courts, court staff and facilities, the provision of initial and continuous or in-service training, to include human rights training of law enforcement officers, judges, prosecutors, court staff and personnel in detention facilities.

Finally, governments of Egypt and Tunisia could initiate public awareness campaigns to disseminate information regarding the availability of basic legal rights to their citizens, including

the availability of legal aid (the services provided and how a person can request it). To reach the widest possible audience, all stakeholders, such as CSOs and NGOs, should be engaged and collaborate on the implementation of a public awareness campaign. Such a campaign could include information brochures, public service announcements in a variety of media, public information counters in courthouses or other government buildings and existing social media tools.

6.5 To Bar Associations

Bar Associations in Egypt and Tunisia must be engaged in promotion of *pro bono* work among its members through engagement with law clinics and NGOs that provide legal assistance or through establishing its own legal aid scheme within the Bar Association itself.

6.6 To NGOs

NGOs should take further steps in providing various levels of legal aid to needy citizens, specifically, marginalized groups. NGOs may use the knowledge gained from this work to help guide and enhanced delivery of legal aid, nation or region-wide. Civil society must also work closely with Egyptian and Tunisian governments to share information and explore how the public and private sectors can best cooperate to maximize the provision of legal aid

6.7 To Universities

Universities in Egypt and Tunisia should expand the legal clinics practices within its law schools to ensure that they provide hands-on experience to the students, in dealing with indigent clients. Universities should, through their legal clinics, collaborate with Bar Associations, CSOs and other law schools to expand such practices, in order to reach citizens who have financial hardship and are in need of legal aid.

Continuing legal education should be encouraged and specific training in substantive law and practical legal skills should be provided to lawyers providing legal aid. The training of selected administrative staff in areas such as case management and customer service should also be implemented. Interaction between Egyptian and Tunisian legal aid professionals and experts outside the region should be encouraged.

Finally, the legal scholars in both Egypt and Tunisia should contribute to the establishment of strong legal standards that may contribute to emerging international standards.

6.8 To International Donors

An effective access to justice system is one that involves ministries of justice, the judiciary, bar associations and civil society organizations. Only by working together can access to justice by the citizens, be met. International donors should engaged all relevant stakeholders to ensure that access to justice, including the provision of legal aid- is addressed in the budgets of the Egyptian and Tunisian governments.

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