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## Judiciary in Constitutional documents in Arab Spring countries

(Egypt- Tunisia- Morocco- Yemen)

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Policy papers of the project  
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Judiciary is one of the main pillars of balance between the three authorities and it plays an important role in the democratic transformation process. It is no doubt that the Arab Spring made radical changes in this field that created an important chance to enhance independence and neutrality of judiciary. The Status quo in the Arab world is confusing, thus, it created different reactions either from the judiciary itself or from different political powers. From here comes the importance of studying the status of judiciary in Arab constitutional documents to have a clear understanding of changes that happened to judiciary and to what extent it became independent.

**First: Litigation guarantees:** The four constitutions and the Yemeni National Dialogue Document assured liberties and litigation guarantees through criminalization of torture and independence of judiciary. The Egyptian and Yemeni constitutions stated that trials are public unless the court decided to make it a secret trial for reasons related to public order or public ethics. The Tunisian and Moroccan constitutions stated that trials are public except for cases determined by the law. The Moroccan constitutions exclusively mentioned forming judicial police under the authority of public prosecution not the ministry of interior. As for the Yemeni Dialogue Document it stated as well forming a judicial police to execute court verdicts.

**Second: Formation of Judiciary:** The Yemeni constitution did not specify judicial agencies or degrees of litigation, yet it considered judiciary as an integrated unit. The Tunisian constitution divided judiciary into five main agencies ( Higher Council for Judiciary- Justice court- Administrative court- Financial court- Constitutional Court) As for the Egyptian constitution, It stated formation of a higher council for judiciary and that to be responsible for all judicial issues and its powers, organization is determined by the law. The Egyptian constitution stated the independent judicial agencies (State court- Administrative prosecution- Military court). As for the Moroccan constitution, it stated that the king is the chief of the Higher Council for Judiciary, and judges are assigned by a royal decree. The Yemeni Dialogue Document stated formation of an administrative court. Though it did not states a constitutional court, yet the Supreme Republican court is practically a Constitutional court.

**Third: Independence and transparency of judiciary:** As for judiciary budget, the three constitutions (Egyptian- Yemeni- Moroccan) were different in their articles concerning that issue; the Moroccan constitution did not state the budget issue explicitly. The Yemeni constitution stated that the higher council for judiciary is responsible for the budget issue. The Egyptian constitution stated that each judicial agency has an independent budget. The Tunisian constitution stated that the Judiciary Council is independent administratively or financially.

**Fourth: Judicial agencies:** The four constitutions stated the importance of the attorney profession and that it is complement to the judiciary. The Yemeni constitution

stated that the law shall organize this profession. The Tunisian constitution stated that attorney is a free and independent profession, and lawyers should be guaranteed protection and independence. As for the Egyptian constitution, it assured independence and freedom of lawyers. It stated exclusively that judicial experts and forensic experts and who works in the real estate registration are independent. The three constitutions were different concerning Military court; The Yemeni banned any exceptional trials yet without clear mention to military trials. The same is in the Tunisian constitution yet it stated explicitly that military trials are for military related crimes. The Moroccan constitution stated that exceptional trials are banned trials and later they issued a law that banned military trials for civilians and for military in cases related to public rights. As for the Egyptian constitution it was totally different that it stated that the Military court is an independent judicial agency which means that it is not exceptional court.

**Fifth: Priority of Rights and liberties:** The Tunisian constitution stated exclusively that the phrase “According to law” in the constitution cannot detract from the essence of rights and liberties, and that rights and liberties are prioritized over discipline and standards. This was not the case in the Egyptian constitution, yet it stated the inadmissibility of immunization of administrative decisions from judicial censorship. The Yemeni Dialogue Document stated that rights and liberties in the constitution cannot be demolished or depreciated.

**Conclusion:** Political circumstances played a pivotal role in determining degree of change and independence of judiciary in each Arab country. The Egyptian constitution stated independence of judiciary yet it also made military court constitutional. As for the Moroccan constitution it reflected the overlap between judiciary and executive branches. The Tunisian constitution guaranteed the judiciary high degree of independence and transparency. As for the Yemeni Dialogue Document, it treated deficiencies of the status of judiciary that was in the Yemeni constitution.

[This paper is available in Arabic](#)