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Handbook on Social Cohesion and Parliaments

Building Social Cohesion through Parliamentary and Constitutional Assemblies in the Arab Region

A Summary

Amman Regional Hub

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The UNDP Handbook on Social Cohesion and Parliaments is intended to initiate a grounded discussion on the role of parliaments and constitutional assemblies in enhancing social cohesion and to offer guidance on mechanisms and processes. A summary of the Handbook is disseminated to solicit feedback ahead of finalization. Jonathan Murphy led the development of this handbook.

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A Summary

1.

Introduction: Social Cohesion in the Arab Region

The initial demands of citizens who initiated the 'Arab Spring' focused on democratic transformation, including political freedoms and human rights, accountability of governments to citizens, and effective action against corruption. At the outset, there was widespread optimism that much of the region could undergo a peaceful transition towards democratic systems consistent with the wishes of the populations.

In retrospect, the initial hopes of many within the region were too optimistic about short term resolution of long-standing governance and accountability issues. The characteristics of many Arab states that led to the popular contestations and demands for change also rendered unrealistic a rapid transformation and the smooth implementation of liberal democratic regimes on the western model.

A focus on adoption of the formal rules and institutions of liberal democracy underestimates the much deeper nature of genuine democratisation, as well as the centrifugal forces that are unleashed through simply removing an authoritarian regime, organizing multi-party elections, and decreeing respect for human rights and freedom of speech.

In fact, this formalistic view of democracy and democratic transition has long been understood as providing only a framework within which democracy can exist, rather than the necessary conditions for democracy to be practiced. In countries that have established democracies, the network of interconnecting institutions and practices, both formal and informal, is typically extensive, diverse, and long-standing.

In the Arab region countries that have been undergoing transformation after 2011, these broader conditions for the successful institutionalization of democracy in the short term were typically not present. Not only had formal democratic systems been absent, civil society had often been widely repressed, peaceful social contestation was not practiced, balances between freedom of speech and unlawful incitation had not been established, and long-standing grievances had often been forcibly repressed, leading to an inevitable and often unmanageable explosion of demands once repression was lifted.

In many cases, this conjuncture of destabilising factors combined after 2011 to create a vicious circle of instability that rapidly undermined new governance structures that were themselves yet to establish broad-based popular legitimacy. All too often, the result was a downward spiral into inter-communal conflict, violence, and more or less successful efforts to re-impose order through force.

Developments in the Arab region post-2011 demonstrate that freedoms are both integral to development and, that at the same time, their effective and constructive exercise requires legitimate frameworks and processes whereby they can be exercised. These were too often lacking in the region, and the absence of processes for mediating between different needs and expectations was a major factor in disintegration of order in several countries, with the end result that freedoms and opportunities for all were threatened.

It has long been observed in this region, and elsewhere, that simply holding elections to representative bodies

does not create an accountable and democratic system. It is necessary within democracies for a continuing dialogue to take place between citizens and their representatives, and for this dialogue to be structured to enable citizens to have the necessary information and frameworks in order to provide effective input. In this regard, civil society organizations play an essential mediating role in helping to frame and structure discussion. Given the relatively early stage of development of civil society organizations in much of the region, it will be essential to foster development of civil society, and also to facilitate the engagement of civil society with parliaments and representative institutions.

In many countries, parliaments and other elected bodies are the only institutions where cross-community dialogue can occur in a structured and constructive way. Countries that have attempted to engage in governance change without taking into account the perspectives and concerns of all ethnic and cultural groups, especially ones deemed vulnerable, have typically suffered serious breakdowns in social cohesion and loss of human security for both minorities and majority. It is essential for represen-

tative institutions to assure that opportunities and formats exist for cross-community dialogue both within and beyond the institution. Both civil society and development partners can play a key role in fostering this approach and underpinning social cohesion.

Because representative institutions existed in many countries of the region prior to political transformation, there is an opportunity to build on existing institutions within the framework of enhancing social cohesion. However, where parliaments were relatively weak vis-à-vis the executive, and government accountability was limited, it is necessary to reinforce the role of parliaments particularly in the areas of representation and accountability. This involves not only support to capacity development of both elected members and the administration, but also in many cases the establishment or the strengthening of related accountability institutions. These include bodies such as human rights commissions, the auditor general or audit court that carry out financial oversight of government, and ombudspersons and similar institutions, all of whom are accountable to parliament in most established democracies.



Challenges for Social Cohesion in the Arab Region

The Arab region

faces specific challenges to social cohesion. Although all countries in all regions of the world have obstacles in building and in maintaining social cohesion, the Arab region has to address particular issues in order to establish a solid foundation for growth and development. Governments and citizens in the Arab region need to take the lead in building social cohesion, enabling equitable development and growth.

2.

Challenges for Social Cohesion in the Arab Region

The Arab region faces specific challenges to social cohesion. Although all countries in all regions of the world have obstacles in building and in maintaining social cohesion, the Arab region has to address particular issues in order to establish a solid foundation for growth and development. Governments and citizens in the Arab region need to take the lead in building social cohesion, enabling equitable development and growth. At the same time, the international community has a responsibility to help remove obstacles to the development of social cohesion and effective, responsive governance in the region. At the same time,

Like most other parts of the world, the Arab region has been marked by long periods of colonial domination which have distorted social and economic relationships. Most states in the region gained their independence during the 20th century, and post-independence political life has often been dominated by the challenges of state-building and development. While the region is home to some of humanity's earliest civilisations, and there are strong senses of identity, national boundaries were often established as part of imperial calculations and settlements rather than the needs and wishes of the population. Effective states, therefore, had to be constructed within boundaries that included populations and communities that sometimes had diverse traditions.

The way in which post-colonial nation states were created in the region has led some to argue for a re-drawing of national boundaries within the region. Although national boundaries do change over time,

this is often an extremely disruptive, and even violent, process. No matter how boundaries are drawn, there will be minorities. Furthermore, there are multiple different ways in which humans differentiate themselves from one another, including ethnicity, language, religion, geography, and ideology. As well, there is always movement and exchange across borders. The advent of globalization in the context of liberalizing economies increases the extent to which national communities are connected by economic ties, which inevitably lead to human movement, shared visions, and frictions. The British anthropologist Benedict Anderson noted that nation-states are to a significant extent 'imagined communities'. The challenge is to create a shared vision for society in which all can find themselves. The recent history of the Arab region, as well as other countries around the world, is that it is invariably better to work towards harmony through accepting difference than it is to define communities in opposition to others. This inevitably leads to conflict and a worse situation for all, whether in the shorter and/or the longer term.

It is within a difficult context that Arab states engage in social cohesion. Whereas immediate post-independence development efforts were often built around a unitary vision of nation and state, there is increasing acceptance that the national imaginary must be a consensual and inclusive one. Only through such an approach can the concerns of the region's diverse populations be heard and incorporated into a cohesive common vision built upon a commonly accepted social contract. While this contract should be enshrined implicitly and explicitly in national constitutions, it is crucial that it is reflected both in the pol-



icy process as parliaments carry out their legislative and oversight responsibilities, and by government as it executes social and economic development plans based upon democratic engagement with the population.



A starting point for building social cohesion is to identify, understand, and work towards common solutions to the diverse challenges being faced within the region, and identifying common solutions to those challenges.

3.

Mechanisms for building social cohesion within parliaments

In common with any broad concept about society, the idea of social cohesion can be applied with different objectives. In this handbook we emphasize the importance of fostering social cohesion as a way to build more peaceful and resilient communities. However, the concept of social cohesion has also been used as a justification for limiting diversity within society, and sometimes for restricting citizens' rights to celebrate their cultural and religious traditions.

A distinction between an expansive view of social cohesion in which human commonalities are celebrated while embracing diversity, and a defensive view of social cohesion in which cohesion is believed to be founded on the incompatibility of difference is important.

Responding to negative use of social cohesion requires thoughtful and constructive responses. While those who contravene laws or international human rights principles should be held accountable, it is crucial to address the core insecurities that provide a breeding ground for intolerance and the closing of communities to difference. Responsive governance needs to find the balance between building a cohesive society on the basis of natural communities and affinities, while fostering intergroup understanding and dialogue. Parliament is the national institution where national dialogue takes place on a continuing basis and is institutionalised as part of the national policymaking and state-building process.

Parliament represents all citizens within a democracy, and is the best forum to explore the impacts of government policies, and to promote constructive

responses to economic and social challenges. At the same time, some MPs may also be tempted to use the platform they have in parliament to fan flames of social discord. Therefore, it is important for constructive political forces to find ways to work together across social divides in order to address challenges to social cohesion in a serious but constructive way.

Often, in situations of crisis, parliament only place where leaders of the different factions within society can meet. Even when a parliament or assembly's regular meetings are suspended due to a crisis, the parliamentary precinct is often a place where members of different groups can meet in security, insulated from the need to publicly demonstrate their 'loyalty' to their supporters. If the situation has broken down too severely to allow leaders to meet directly even in parliament, it may be necessary to involve outside actors. This was the case with the so-called Quartet of civil society organizations that worked with political leaders in Tunisia in 2013 during the country's constitutional process. However, even in this situation, the key to a breakthrough was the acknowledgment by all the main actors that the Tunisian parliament remained the institution that represented Tunisians as a whole across ideological divides, and that whatever solution could be found to the political crisis would need to be adopted by the parliament. Furthermore, even while the top leaders of political parties were absent from the parliament, MPs from different groups continued to interact informally within and beyond parliament, reducing tensions and facilitating the eventual resumption of direct discussions and negotiations, and ultimately the adoption by parliament of a new constitution and political settlement.

Open and transparent parliaments

Because representative parliaments reflect diversity within society, they provide security to citizens that their voices, perspectives, and interests are being heard. But, this will only be the case if parliamentary activities are readily accessible to citizens. Parliamentary sessions should be open to the public and media. Adequate media facilities are important, as well as journalists' access to committee meetings, even if these are restricted to the public because of limited space.

Transparency also needs to include transparency of politicians' own parliamentary business. Public perceptions of politicians around the world has become increasingly negative, often tied to the impression or the reality of corruption. While in the past it may have been possible for MPs to avoid public scrutiny, in the mass information society this is not feasible, even if it was desirable. It is better for MPs to be transparent than it is for the truth to be cloaked, allowing rumour to be fanned by a plethora of electronic news sites. Increasingly, parliaments in both established and emerging democracies are establishing guidelines that parliamentarians must respect, on issues such as their personal assets, expense claims, relationships with lobbyists, etc.

Mechanisms for cross-party dialogue within parliament

In well-functioning parliaments, politicians from different parties work together on a regular basis. Al-

though the debate in plenary sessions is often heated and partisan, there are also plenty of opportunities for collaboration. Every parliament has slightly different rules and procedures, but some practices are common. For example:

- Work in committees is typically carried out collaboratively, and although committees will sometimes not reach agreement across party lines on particular legislation or oversight issues, often joint reports are issued or partial agreement is reached.
- The parliamentary agenda is established by consensus at a meeting in which all of the different parties are represented.
- The budget of parliament is administered transparently through a committee in which all the party groups are represented.
- The senior positions in parliament are shared between the different party groups – government and opposition. For example, if parliament has vice chairs or deputy speakers, these will come from majority and minority parties. Committee leadership (both chairperson and other table officers) are distributed according to the relative size of each party group. Specific key committee chair positions are reserved for members of the opposition. For example, in Westminster-type parliaments the Public Accounts Committee, which oversee the spending of public money, is usually chaired by an opposition member. In Tunisia, under the new constitution of 2014, the Finance Committee is chaired by a member of the opposition.
- There is a process for resolving differences on key pieces of legislation – a conciliation, consensus, or compromise committee. Where there are major concerns raised regarding particular clauses in pieces of legislation, these can be referred to the Committee to hammer out a compromise. The Compromise Committee will include representation from all the political groups within parliament, and decisions may be made by agreement rather than by vote. The Compromise Committee in the Tunisian parliament played a key role in reaching consensus on the new constitution, as well as on other contentious issues such as the voting for members of the independent electoral commission.

Reflective of diversity and electoral systems

The presence of a legitimately elected and representative parliament, in which the diversity of the population is reflected, helps protect against dangers of majoritarian abuse of minorities' representation and rights.

There are many different electoral systems that are democratic but which result in very different representation within parliament. Generally speaking, constituency-based systems with first-past-the-post elections result in the larger and more regionally concentrated parties heavily represented. Smaller parties, particularly those with support spread relatively evenly across the country, will be under-represented in comparison with their proportion of support nationally. Britain has such a system for its national elections, although it has abandoned this system for a more proportional model in its Scottish, Welsh, and Northern Ireland parliaments.

More proportional systems include single national list systems, such as exists in South Africa. Here, citizens vote for the party of their choice, and seats in the parliament are allocated nationally according to the percentage of the vote received so that all parties with above 0.17% of the vote have at least one seat in parliament. The weakness of this type of system is that members are elected on a national basis which may limit representation of geographic communities. This is somewhat balanced in South Africa by the presence of subnational provincial legislatures, though these too are elected by the party list system.

Most countries have a balance between the two systems, for example by electing a proportion of MPs on a party list basis and a proportion on a constituency basis, or by creating multi-member constituencies whose members are elected proportionately, thus retaining a link to local communities.

There are good reasons for each type of democratic electoral system, which varies according to the country, and also its governance and political traditions. However, in countries with social cohesion issues, for example a history of tension between different groups, it is essential that all key groups within the country are represented, and thus a proportional system that will permit minorities to be elected, even if they are in a minority within the regions where they live, will be preferred. There is a wealth of international expertise available on electoral system design, both from within the United Nations and a number of specialised electoral assistance organizations.

One mechanism that is used increasingly to assure representation of minorities and disadvantaged groups is the establishment of quotas. Quotas are most often used to ensure representation of women, and several countries within the Arab region have different types of gender quota systems. There are a number of models that can be used, from reserved seats to requiring parties to include a minimum proportion of women candidates on their party lists. Obviously, the type of quota that can be established depends on the electoral system.

Quotas are also used, less often, to assure representation of minorities. Different types of quotas exist in the Arab region, both formally and informally. For example, in Jordan a certain number of seats are reserved for Christians, Circassians, and Bedouins, and in Lebanon each confessional community is allocated a specific number of seats.

One issue that has grown in importance is improving the involvement of youth in parliaments. Across the world, youth have demanded more say in decision-making, and many of the political transitions in the Arab region and beyond have been driven by young people's passion and activism. However, once transitions take place, often young people again feel left out. Although there has been discussion about quotas for youth in parliament, by 2016 only one country in the world, Rwanda, had a quota for youth, and only in Norway did the proportion of members under the age of 30 years old exceed 10% (Lisi and Freire, 2012; IPU, 2014).

Engaging beyond the capital city and parliament

It is a recurring complaint of citizens around the world that they ‘only see their parliamentarians before elections’. While most parliamentarians work hard in the interests of their constituents, citizens often do not see this. In addition, parliamentarians are often torn between the need to participate in parliamentary sessions (and are criticised if they do not, particularly with reporting by parliamentary monitoring organizations on session and voting presence) and the expectation of citizens that they are present in the home constituency. While some of the ‘distance’ citizens feel from parliament can be reduced through media coverage and direct broadcast of parliamentary proceedings, physical presence remains important to relevance and citizen confidence. Parliamentary hearings on important issues and legislative proposals, conducted across the country, help to build confidence in democratic processes.

In the handbook we emphasize that parliament is a cornerstone of democracy. No other institution but a democratic parliament can claim to represent the entire breadth and diversity of the population. However,

in recent years there has been a strong and welcome growth in the number and diversity of civil society organizations, including within the Arab region. Civil society organizations bring together like-minded citizens with a specific commitment to particular issues. They are a crucial part of contemporary democracy, and encourage a continuing and direct engagement in the policy process beyond electing a representative every five years.

There is often a competition between civil society organizations and parliament about which has more legitimacy. This isn’t a helpful battle, because civil society can enrich parliament’s decision-making by providing information and feedback to parliamentarians that is often more specific and detailed than parliamentarians could themselves gather. Civil society also helps parliament to become more genuinely independent from government by providing balanced and alternative perspectives.

Civil society organizations are particularly helpful in helping parliamentarians stay in touch with what is happening within the population and outside the capital city. CSOs and other experts can assist specialist committees and committees of enquiry with information they need. At the same time, civil society organizations should recognize that parliament is elected by the whole population, and its specific constitutional duties of legislation, oversight, and representation make it a crucial entry point into the policy and governance process.

Support to Parliamentarians on legislation, budgeting and policy-making

Discussions in parliament are always more productive and constructive when they are based on solid understanding of the issues that are being discussed. Citizens need to have trust that state institutions are considering their interests when making policy. They expect parliament to have carefully assessed how proposed laws and policies will affect them, especially when the impact of policies may fall disproportionately on one group. Countries in democratic transition typically face serious fiscal constraints, and also need to make structural reforms. While painful reforms are never popular, parliamentarians need to be able to explain honestly and based on facts what the impacts will be and why citizens will benefit in the long run. Tools have been developed in various locations to assist parliaments to assess the impact on different groups of different initiatives, and thus the impact on social cohesion. These tools need to be developed and/or refined for specific national and regional contexts, and parliamentary staff as well as parliamentarians trained in how to use them. Support from the international community can help expose parliaments in the region to international best practices, and particularly in enabling south-south parliamentary learning on policy impact analysis.



4.

Social Cohesion and constitution-making processes

National constitutions represent a country's national statement of purpose, and framework of principles upon which the country's institutions will be structured, and laws established and interpreted. During democratic transitions, national constitutions are frequently revised or rewritten, reflecting the values of the political transition. While the content of a new or renewed constitution is clearly important, the process that underpins the drafting and adoption of a new text has a fundamental impact both on the prospects for successful transition and on the extent to which the new document will form the foundation for a genuine anchoring of democratic practices. The process and the content of a new constitution can lay strong foundations for enhancing social cohesion.

Fundamental rights

Political transitions have taken place in the Arab region and elsewhere because large segments of the population have felt their freedoms unfairly restricted, excluded from decision-making, and from a fair share of economic wealth. In a globalised world, it is increasingly difficult for governments to refuse to provide citizens with rights that are protected elsewhere, and to which in most cases their governments have committed in international treaties such as the Universal Declaration of Human Rights¹, the International Covenant on Civil and Political Rights², and the Convention on the Elimination of all Discrimination

Against Women. A first step towards social cohesion is for constitutions to integrate within their text the main international human rights commitments that their country has adopted (Böckenförde et al., 2011). In doing so, many of the expectations of citizens in terms of their relationships with the state will be anchored in a constitutional text.

Limitations Clauses

It is also important for constitutional texts to establish basic principles for determining in what circumstances and through what processes human rights may be limited when they contradict each other, or when the safety of citizens and the security of the state is threatened. While these so-called limitations clauses may seem to restrict freedoms, in fact, they protect rights by establishing clear rules and procedures to deal with exceptional circumstances (IDEA, 2014). Where countries do not have clearly drafted limitations clauses, there is no framework to deal with exceptional or crisis situations, and limitations will be put in place outside a proper legal framework, and without the opportunity for citizens to effectively challenge such limitations. Limitations clauses are particularly important for addressing issues of social cohesion because they make clear how freedoms and responsibilities are balanced, which is particularly relevant in determining how the rights of minorities are balanced against the will of the majority. Limitations



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clauses also permit the interpretations of constitutions to evolve as society changes, as the concept of what is a 'reasonable limitation' on freedom changes. In one of the first cases addressed by Canada's Supreme Court under the limitations clause, the Court ruled that a ban on store opening on Sunday under the Lord's Day Act, exceeded a reasonable limitation on the freedoms of others, such as non-Christians³.

Limitations clauses need to be drafted carefully to ensure that they foster freedoms while protecting minorities and other groups from abuse. International IDEA has proposed five tests regarding the wording of limitations clauses:

1. *The grounds on which the right can be limited are ... narrowly specified.*
2. *The extent of the limitation may be framed in terms of necessity, proportionality or reasonableness.*
3. *The essential core of the right to freedom of speech may not be infringed.*
4. *There is a procedural check, in that a law limiting rights must be an organic law.*
5. *There is a sunset clause attached to any law restricting the protected right.*

(IDEA, 2014)

Institutional design

There is a wide variety of institutional design within democratic states with different levels of autonomy and independence of institutions one from the other, different power balances between the main state institutions, and between the main institutions and secondary institutions such as local governments

and independent commissions. There is, therefore, no 'right' balance to assure social cohesion. In some established democratic countries, the constitutional relationship between the state institutions may appear unbalanced, for example, with a very powerful government vis-à-vis parliament and the judiciary. However, this is counterbalanced because the framework for independent citizen activity is well developed, so that there appears to be a de facto limitation on the power of government. However, the stability of governance systems with institutional design weaknesses can quickly unravel when faced with conflict, and 'civil society' can be manipulated by populists and demagogues. Properly balanced powers of state institutions in emerging democracies is particularly important, both because the 'rules of the game' and the implicit limitations on state actions are not universally understood, and because the network of civil society organizations and activism is not as well developed, meaning that it is not clear how far the state might be able to exercise its power.

Therefore, it is important for states in transition that the powers of the different state institutions are clearly articulated within a constitution, which will act as a framework for establishment of laws and practices that are consistent. This in turn will aid in fostering social cohesion, helping to ensure that state powers are checked, that minorities feel they have protections, and that the governance framework is clear and reliable, and can be counted upon to be impartial.

While the details of electoral systems are often not addressed within constitutions, provisions can be included to ensure that elections are carried out according to a proportional system that will enable minorities to gain representation – an important feature in fostering social cohesion across communities. Generally speaking, countries with strong parliaments have more stable democracies, and better protections of human rights (Fish, 2006; Bunce, 2000). Again, one reason that countries with strong and effective parliaments perform better than those with an over-powerful executive is that strong parliaments with representative electoral systems include minority voices, and provide the opportunity to debate

differences within a constitutional institution rather than on the streets or by extra-constitutional means. The central role of parliaments in anchoring inclusive and accountable governance, and in balancing minority representation with majority decision-making, should be reflected clearly and specifically within the constitutional text.

Constitutions with a strong commitment to social cohesion will ensure that power is not excessively concentrated in the hands of a political majority.

Apart from electoral system design, mentioned above, provisions can be included in a constitution to assure the sharing of responsibilities in parliaments, for example, through providing that leadership positions like committee chairs and vice-speakers are distributed across different parties proportionately. In the Portuguese constitution, for example, it is required that the four largest political groups within parliament should each hold a vice president's position in parliament.

Another area where effective parliaments can be facilitated through a constitution is in clearly stating and defining the role of oversight as one of the key parliamentary roles. Before the political transitions in the Arab region that began in 2011, the oversight function of parliaments within the region was often not clearly articulated. The South African Constitution, for example, states that Parliament has the power to conduct oversight of all state institutions. Constitutions may describe the specific oversight tools that a parliament has in order to hold government to account, including the right to establish missions of enquiry, ask questions of the government, call ministers to appear and, ultimately, hold a vote of confidence in the government.

The parliamentary roles and processes that are described within a constitution should include the principles of inclusivity (for example in granting MPs the right of legislative initiative and amendment), governance accountability, and the role of citizen representation. These principles then provide a framework for parliaments to define detailed functioning processes, such organization of committees and hearings, etc., more through their Rules of Procedure.

Some countries include specific constitutional provisions to protect the interests of subsections of the population, ensuring that majority rule is not abused. Belgium, which has two main language groups with sometimes divergent interests, has several clauses in its constitution that encourage dialogue over majoritarian domination:

The process for amending Constitutions can also provide safeguards that foster social cohesion. Generally, it should be difficult for a bare majority to make substantial constitutional changes that might impinge on the rights of minorities. Many other countries require constitutional amendments to be considered over a period of time, and to be adopted by a qualified majority. A number of countries, including Denmark, Estonia, and Belgium, require a general election to be held before a constitutional change can be adopted. Some countries require constitutional changes to be adopted through a popular vote in a referendum; this does not however necessarily protect minorities.

Responsible subnational and local government is an important domain in which constitutions can help to foster social cohesion that enables communities to exercise responsibilities over their own affairs within an overall state structure. Again, there are many different constitutional models ranging from highly decentralized, such as the structure in Switzerland, to highly centralized models. The choice of model is heavily dependent on the history of the country, its population make-up, etc., and it is not possible to identify a specific constitutional arrangement which will necessarily foster social cohesion in all circumstances. However, in general, models where both authority and resources are devolved to responsible (in other words, elected) local government provide communities a sense of ownership and control over their own services. An important complement to decentralization is the necessity of coherence in state policies as well as assuring that there are approximately equal resources available for public services across the country, including in different jurisdictions. For example, the Canadian Constitution of 1982 provides poorer provinces within Canada with the right to 'equalization payments', enabling them to offer similar levels of public services.

Constitutional processes

It has already been noted that the process whereby a Constitution is developed and adopted can be as important as the content of the Constitution. This is true for several reasons:

1. In countries in political transition, it is crucial that legitimacy for the new state institutions and structures is established during the transition process. There is likely, by definition, to be an absence of legitimacy at the outset, as one political system is being replaced or renewed with another that has yet to become rooted in the political and social culture. The constitutional process must appear

transparent, credible, and inclusive in order for its outcomes to be widely accepted and integrated into the national identity.

2. There is increasing expectation on the part of citizens that they will be involved in the process of deciding the governance system under which they will live. Even if 'experts' may well have a clearer view of the institutional design options and some



of the risks to assess in a constitutional process, citizens in contemporary societies are no longer willing to take experts' word that they know the best solution. Citizens, often correctly, believe that institutional design questions are not simply technical, but affect how power will be distributed within the country, and who will benefit politically, economically, and socially from the institutional design.

3. Effective constitutional processes take time and, typically, countries set unrealistic timelines, as was the case in both Libya and in Tunisia after the 2011 transitions. While it is understandable that countries wish to quickly establish a permanent constitution, it is preferable to adopt an interim constitution and establish a realistic process and timeline for adoption of a permanent one. South Africa adopted this approach for its post-apartheid constitution, first establishing an interim constitution and then setting a four year time period for consulting, drafting, debating, and adopting a new constitution. This timeline was respected, and the South African constitution of 1996 has been widely regarded as a model for contemporary constitutions. In Tunisia, a one-year time period was established for the National Constituent Assembly to draft and adopt a new constitution after its election in October 2011. This timeline was not met, and questions about the legitimacy of the Assembly, after its expected mandate had expired, contributed to crisis and instability. The extra time taken to adopt the constitution eventually voted in

January 2014 allowed compromises to be reached on controversial points, and resulted in a constitution more in line with international best practices than the earlier drafts.

4. Citizens require both information regarding constitutional issues, and the opportunity to provide input, wherever they live in the country. Countries in transition may have reduced governmental capacity to organize broad consultations, and there may even be security concerns regarding travel in all regions of the country. Nevertheless, it is in situations of uncertainty that governmental processes are most important, and dialogue with citizens is at its most crucial for the viability and credibility of the state.

International support to countries in transition, technical, organizational, and financial, is crucial. At the same time, processes will quickly lose credibility if they are seen as being controlled or manipulated by outside forces, particularly if those forces are seen as having strategic interests in the country.

Notes

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