



## Concept Note | International Meeting on Recent Events in the Arab countries: Horizons, Challenges and Consequences for the Rule of Law and Justice Reforms

### I. Background – the 'Arab Spring'

When the young Tunisian Mohamed Bouazizi had set himself on fire in a desperate act of protest in December 2010, little did he know that this act of individual protest will have set in motion a revolutionary process across the MENA region, quickly coined by some the 'Arab Spring'. Less than a month later Tunisia's President Zine al-Abidine Ben Ali fled the country and the momentum of popular protest shifted to Egypt. Dramatic developments unfolded in a fast pace, and another month ahead Hosni Mubarak, the hitherto powerful President of Egypt, has also been forced to step down. Meanwhile, waves of popular protest have swept across the region. While in Tunisia and Egypt the rulers were toppled down rather quickly and both states are now heading towards general elections, to date we have not seen a similar outcome elsewhere in other Arab countries, but popular protest and unrest is persisting to a varying extent in Libya, Yemen, Jordan, Bahrain, Syria and elsewhere in the region. Yet even if we are to witness in the near future similar developments in other countries as well, the continuing unrest in both Tunisia and Egypt is a reaffirmation that for real change to occur there is still a long way to go. Fundamental political and legal transition does not end with the toppling down of the rule or even with announcing general elections. Rather, it only starts there and the way forward will be long, scattered with potholes, full of bands and devoid of shortcuts. Yet as much as the challenges ahead are great, so are the potential benefits to the peoples of the region and to the international community as a whole. Indeed, "what we have seen so far is a revolution of rising expectations - but what we must focus on are the policies necessary to prevent this from some years down the road turning into a revolution of failed expectations".<sup>i</sup>

### II. European responses: initial hesitation followed by support and commitment

In Europe, as in the MENA region and even more so in the rest of the world, politicians, decision-makers and opinion-leaders were caught by surprise by the events of the Arab Spring. Even after the Ben Ali regime in Tunisia came to an end, most governments found it difficult to conceive – and were thus again surprised – by the degree with which the fire of revolutionary protest engulfed the entire region. Western political responses were generally influenced by two prime considerations. The first concern was positive in nature and welcomed the popular uprising against dictatorship. On the other hand, Europe, "the West" and, perhaps, the entire international community, all have vital strategic interests in the region which leads, together with the fear of the unknown, to treating any (perceived) threat to stability with a degree of suspicion. Caught between these two pressures, the international community was generally seen to be fairly late to respond with a clear message.

Despite the oft-claimed lack of response and support for the revolutionary movements in the MENA-region, there were some notable exceptions. Among the institutions of the European Union (EU), the European Parliament was relatively early to formally pronounce on the matter in a clear manner, with official resolutions adopted on 3 February 2011 (Tunisia) and in the weeks thereafter (on Egypt and on the region as a whole).<sup>ii</sup> These resolutions expressed the EU Parliament's strong support for reforms leading towards democracy, the rule of law and social justice. The EU Parliament also called on the EU Commission to provide adequate support for such reforms. On 10 March 2011, The EU Commission and the High Representative of the Union for Foreign Affairs and Security Policy (Lady Ashton) followed with a *Joint Communication*.<sup>iii</sup> Seeing that the events unfolding in the region are "of historic proportions", the Joint Communication recalled the EU's "proud tradition of supporting countries in transition from autocratic regimes to democracy" and stated its readiness "to support all its Southern neighbours who are able and willing to embark on such reforms through a Partnership for Democracy and Shared Prosperity". "The commitment to democracy, human rights, social justice, good governance and the rule of law" - added Ashton and the Commission - "must be shared".

Importantly, the Joint Communication also emphasised that the the future European engagement with MENA counties as part of the 'Partnership for Democracy and Shared Prosperity' must be based on three elements:

- Democratic transformation and institution-building, with a particular focus on fundamental freedoms, constitutional reforms, reform of the judiciary and the fight against corruption
- A stronger partnership with the people, with specific emphasis on support to civil society and on enhanced opportunities for exchanges and people-to-people contacts with a particular focus on the young
- Sustainable and inclusive growth and economic development

In the field of rule of law promotion the EU claims its experience from similar reform in Eastern Europe over the last decades could be of great value to the countries in the MENA-region. The EU is willing to commit expertise and funding to the whole institutional chain requiring support, from assistance to political parties to expertise to improve judiciaries. Apart from the EU's focus on democratic, rule of law abiding institutions, it also aims to support and facilitate social dialogue and the role of civil society. The new EU strategy is still very much a work in progress that requires more input, deliberation, decision-making and funding, to lead to a long-term commitment.

Looking at the position of specific Member States, most European capitals are still going through a process of a wider overhaul of their Middle East policies. It is noteworthy that the Netherlands and Sweden, in particular, have both expressed interest in (and commitment to) the promotion of the rule of law in the MENA region. On 10 March 2011, the Dutch government issued an initial position paper (*'Transition in the Arab region'*) in which it analyses the protests in the region and sets out a number of priorities for future interaction with the MENA region. Rule of law reform and support to democratic institutions constitute an important part of the Dutch government's priorities in the new environment, for it claims to have particular expertise in this field. However, the government of the Netherlands also clearly stipulated that it wants its actions to be part of a wider European effort. In April 2011, the Dutch Minister of Foreign Affairs requested advice in this respect from the Advisory Council on International Affairs (AIV), which has been asked to submit its advice within a period of six weeks.<sup>iv</sup> Thus, over the course of the next months the Dutch government's recalibrated policy documents are expected to be adopted.<sup>v</sup>

### **III. The HiIL/ACRLI meeting on 23-24 May 2011**

Against this background, HiIL and ACRLI decided to enhance their cooperation, starting with the co-organisation of the informal expert meeting that will take place on 23-24 May, entitled *'Recent Events in the Arab countries: Horizons, Challenges and Consequences for the Rule of Law and Justice Reforms'*.

We bring together a range of stakeholders with knowledge, expertise and experience from Egypt, Jordan, Lebanon, Tunisia and Yemen. Indeed, the spotlight in this meeting will be on the perspectives of the MENA participants. In this respect, we have made an effort to bring to the table participants who come from different professional backgrounds: some hold official positions, while others have posts in academia, media and other civil society organisations. This is in line with the approach of the EU, which will be developed "by listening, not only to requests for support from partner governments, but also to demands expressed by civil society".<sup>vi</sup> The participants from the Arab world will be joined by representatives of donor states (The Netherlands and Sweden), as well as a selection of internationally renowned experts with invaluable expertise on rule of law promotion and reforms of legal systems. To allow for close contact and intimate deliberations, we deliberately kept the number of participants in this initial meeting rather small (a total of about forty participants).

#### **Purposes**

There is value already in simply facilitating the exchange of views and experience among various stakeholders from several MENA countries. There is even greater value in creating or enhancing contacts between people from this region and interested parties from donor countries, as well as rule of law experts who could lend a hand and offer experience-based advice. Yet for this meeting we also set more concrete and immediate goals, which should be reflected in the conclusions that will be presented at the end of the meeting. Namely, we aim to reach provisional conclusions with respect to the following headings:

##### *1) Priority needs, problems and topics for rule of law reforms*

By definition, the 'Arab Spring' has common features in various countries across the region. Arguably, to some extent it should be possible to describe, with a thick brush and using relatively general terms, reform needs that are typical to the region and would thus justify a regional approach.

At the same time, that 'one size does not fit all' is an important lesson learned from rule of law reforms around the globe. Thus, notwithstanding the commonalities of the legal systems in Arab countries, no country in the

region is the same and the specificities of each of them must be the focus of inquiry. Accordingly, we will attempt to identify and prioritise, more specifically, the main needs for rule of law reform in each of the five Arab countries on which thus meeting focuses.

## 2) *Strategies and paths to pursue reforms*

While the identification and prioritisation of areas requiring reform is important and necessary, no less important is the question of how could such reforms be successfully pursued and implemented. History has taught us that the 'what needs to be reformed' question is often easier to answer than the 'how to achieve it' question. The answer to the latter will likely vary from one country to another, as well as from one context of reform to another. While modesty imposes limits on what we can reasonably expect to achieve in one two-days meeting, it is certainly important to attempt to reach some provisional conclusions in respect of strategies and paths.

### **Format**

- The meeting will start and end with plenary sessions, but a big part of discussion will take part in two working groups, which will consume most of the time on the first day.
- Working-group 1 will focus on *constitution-making and institutional reforms*. Working-group 2 will focus on *human rights protection and the role of civil society*. (Note that these two themes largely correspond to first two principal elements on which the EU is building the 'partnership for democracy and shared prosperity').
- In each working-group, several topics will be discussed. To a large extent, the discussion will be structured around the input of MENA participants, who submitted in advance of the meeting short working-papers sketching the main issues as they see them.
- The morning of the second day will be devoted to reporting from the working-groups and discussion geared towards common conclusion.
- The meeting will end with a short session (after lunch) where the preliminary conclusions will be presented. (This session might also be attended by Ambassadors and media representatives).
- Arabic-English-Arabic simultaneous interpretation will be available throughout the different sessions.
- To encourage an open debate, the meeting will be held under the *Chatham House Rule*, which means that the meeting report will not attribute specific statements to the individuals who stated them.

### **Output**

- A publicly available report that will be submitted to relevant stakeholders.
- Longer-term cooperation between HiiL, ACRLI and the participants of this meeting, which may have various elements. At the moment, HiiL and ACRLI are contemplating cooperation on the following follow-up activities:
  - Follow-up national meetings;
  - Rule of Law Country Reports ('Quick Scans', using a methodology developed by HiiL; and thorough surveys, using a methodology developed by ACRLI).
  - A big international conference in The Hague in April 2012 (to be held as the 7<sup>th</sup> annual meeting of the HiiL-Convened Hague Rule of Law Network).
  - A special issue in the Hague Journal on the Rule of Law.

Participants are invited to suggest additional activities to form part of the follow up on this meeting.

### **The World Development Report 2011**

As part of the preparation for this meeting, participants are also advised to consult the World Development Report 2011, an overview of which is available in several languages.<sup>vii</sup> This recent publication from the World Bank is an important document that touches upon many themes relevant to this meeting. It can thus be used as a helpful framework or reference point.

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<sup>i</sup> Remarks by Carl Bild, Swedish Minister of Foreign Affairs, at the Opening of Doha Forum 2011, 9 May 2011, available at: < <http://www.sweden.gov.se/sb/d/14186/a/168063> >

<sup>ii</sup> See 'European Parliament resolution of 3 February 2011 on the situation in Tunisia', available at: < <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0038+0+DOC+XML+V0//EN> >; 'European Parliament resolution of 17 February 2011 on the situation in Egypt', available at: <

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<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0064+0+DOC+XML+V0//EN>

> ; and later: 'European Parliament resolution of 10 March 2011 on the Southern Neighbourhood, and Libya in particular', available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0095+0+DOC+XML+V0//EN>, as well as: 'European Parliament resolution of 7 April 2011 on the Situation in Syria, Bahrain and Yemen', available at

<[http://www.europarl.europa.eu/RegData/seance\\_pleniere/textes\\_adoptes/provisoire/2011/04-07/0148/P7\\_TA-PROV\(2011\)0148\\_EN.pdf](http://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2011/04-07/0148/P7_TA-PROV(2011)0148_EN.pdf)>

<sup>iii</sup> *Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, adopted 10 March 2011, available at: < [http://ec.europa.eu/commission\\_2010-2014/fule/docs/news/joint\\_communication-a\\_partnership\\_for\\_democracy\\_and\\_shared\\_prosperity\\_with\\_south\\_med\\_en.pdf](http://ec.europa.eu/commission_2010-2014/fule/docs/news/joint_communication-a_partnership_for_democracy_and_shared_prosperity_with_south_med_en.pdf) >

<sup>iv</sup> See: *Adviesaanvraag AIV ontwikkelingen in de Arabische regio*, 18 April 2011, available at: < [http://www.aiv-advies.nl/ContentSuite/template/aiv/aav/collection\\_single.asp?id=1915&aav\\_id=670&language=NL](http://www.aiv-advies.nl/ContentSuite/template/aiv/aav/collection_single.asp?id=1915&aav_id=670&language=NL) >.

<sup>v</sup> Sweden is also in the process of devising a new policy for the region and Carl Bildt, the Swedish Minister of Foreign Affairs, issued several relevant statements in the last few months: see e.g. *Statement of Government Policy*, 16 March 2011, available at: < <http://www.sweden.gov.se/content/1/c6/16/11/48/dc78c337.pdf> >; and more recently, *Remarks at the Opening of Doha Forum 2011*, 9 May 2011, available at: < <http://www.sweden.gov.se/sb/d/14186/a/168063>>.

<sup>vi</sup> *Joint Communication*, see *supra* note 2.

<sup>vii</sup> See: <http://wdr2011.worldbank.org/fulltext>