

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

23 - 24 May 2011, The Peace Palace, The Hague

### I. An Arab - European partnership to promote the rule of law in the Arab world



In light of the historic developments in the Arab world and the expected transition to genuine democracy founded on the rule of law, the Hague Institute for the Internationalisation of Law ([HiiL](#)) and the Arab Center for the Development of the Rule of Law and Integrity ([ACRLI](#)) have joined forces and networks in a unique initiative to support the transition to democracy and strengthen the rule of law in the MENA region.

As a first step, a kick off meeting was held in the Peace Palace, The Hague, on 23-24 May. Approximately 40 participants took part in this meeting. The focus of this meeting was on how local actors view

these developments as well as their prospects and how reform needs are prioritised. Accordingly, about half of the participants came from the MENA region. The meeting brought together knowledge, expertise and experience from Egypt, Jordan, Lebanon, Tunisia and Yemen, including participants with varying backgrounds (state officials, civil society activists, media representatives and academics). They were joined by representatives of donor states (The Netherlands and Sweden), as well as a selection of internationally renowned academics with expertise on rule of law promotion and legal systems. It was the first meeting of its kind held in the Netherlands.

The meeting had a two-fold objective:

- To make a first inventory of needs given the events in the Arab world over the past months; and
- To identify a roadmap for reform to be taken forward by the meeting's participants and both organisations in an informal setting (or platform), now referred to as the '**Rule of Law Spring Group**'.

The meeting was successful on both counts and provided the buildings stones for the creation of the **Rule of Law Spring Group**. The Spring Group is not an international organisation or an institution. It is set up as an open platform of which HiiL and ACRLI are convenors. The Spring Group will support rule of law building in the Arab world by:

- Fostering dialogue among various stakeholders from different countries in the region, as well as between Arab and European actors;
- Generating actionable knowledge;
- Design adequate capacity building projects corresponding to clearly articulated needs; and
- Finding sources for funding.

In its work, the Spring Group emphasises local ownership, a concrete and practical approach and constructive dialogue within the Arab region and with donors, with outside assistance only when there is a clearly articulated demand.

## II. Proceedings

The meeting was opened with welcome words from **Sam Muller**, Director of HiiL and **Roger El Khoury**, Executive Director of ACRLI. **Muller** emphasised that two words are crucial for the objectives the Spring Group wants to achieve: 'listen', as the focus must be on how local actors articulate the problems and prioritise needs for justice reforms; and 'process', as the rule of law is not built in a day. **El Khoury** explained the unique position of ACRLI as a regional organisation monitoring the state of the rule of law in the Arab world and the reasons for ACRLI to engage in this timely joint initiative with HiiL. He also presented a short video clip featuring 'views from the streets' collected in several Arab countries. He emphasized that those voices should be the principal guide of the Spring Group.

Three keynote addresses then followed.



**Wassim Harb** emphasised the crucial importance of the Spring Group of encouraging national and regional dialogue, supported by international expertise, as until now the uprisings in the region did not have an agenda to fully constitute a revolution. He stressed the importance of local ownership, education (regarding the concept of citizenship, in particular), the role of civil society, and the potential value of peer review and the willingness to learn from the experience of others (in and outside the region).



**Hussein Chaaban** praised the historical magnitude of the long-awaited changes we are now starting to see in the Arab world. However, he highlighted that overcoming various obstacles might take time, as can be seen in the examples of some of the European countries after WWII and the Eastern European countries after the fall of the Berlin Wall. Both speakers pointed out that there are commonalities across the region that justify a regional approach rather than looking at each country-situation in isolation; at the same time, no Arab country is identical to another and reforming the legal systems thus requires a differentiated approach, paying due attention to the particularities of circumstances in each case.



**Julio Faundez** discussed the relationship between the three principal components of development: rule of law, markets and democratisation. According to Faundez, while there is an inevitable tension between democracy and markets, legal reform can smooth this tension, as long as its promoters are willing to support and develop legal institutions that enhance democracy for all. He, too, emphasised that, far from being an easy task, rule of law promotion requires patience and must take into account how prevailing structures of authority shape social processes.

The debate then split into two parallel groups. Working group 1, chaired by **Nathan Brown**, focused on constitution-making and institutional reform. Working group 2, chaired by **Gisele Khoury**, focused on human rights protection and the role of civil society. The working groups' discussions were based to a large extent on ideas included in working-papers submitted in advance of the meeting by the MENA participants.

On the second day, the outcomes of the working groups were presented and brought together in one, single vision and set of objectives. The final session was also attended by the ambassadors of Yemen, Lebanon, and Tunisia, The meeting was concluded with the signing of a Memorandum of Understanding by HiiL and ACRLI, to signal their mutual commitment and provide a framework for future collaboration, including supporting the Spring Group.



### III. Outcomes and conclusions

#### **Overarching themes:**

- It is noteworthy that most of the issues raised during these two days pertain to fundamental constitutional-political questions rather than to legal-technical ones. *State building and the making of a new social contract* (referred to below, broadly, as the 'constitutional process') is the core of what is happening or what occupies the minds of people in most MENA countries these days.
- There is a need for *strong donor support* - not just funds but also expertise and experience - but the MENA countries should be the main drivers of the process, rather than being driven by donors' interests. *Local ownership* is *sine qua non* for success.
- Rule of law reforms in the MENA region must be based on a *differentiated approach*. HiIL, ACRLI and the Spring Group acknowledge and stress the fact that a "one size fits all" approach is not adequate given the particularities of each country. However, a regional approach can be justified to a certain extent, inasmuch as it addresses the regional commonalities within the MENA.

#### **On the constitutional process:**

- Each of the Arab countries has its own needs and problems relating to the constitution. The common problem is that, at present, constitutions in Arab countries do not sufficiently provide for checks and balances and in particular they do not impose sufficient limits on executive power.
- There is no single constitutional model that is guaranteed to work successfully anywhere. The MENA participants noted that it would be useful to learn more about possible constitutional models.
- The independence of the judiciary is also a common problem. Not having this undermines the status of the judiciary and leads to lack of popular trust in the system.
- The constitutional process should also include transitional justice, as exemplified by the developments in Egypt where the former president and his sons are now on trial. However, here too, there is not one solution for all states. Some have legal systems which are quite capable of dealing with leadership criminality. Transitional justice is not seen as a panacea to solve all problems and should not come at the expense of strengthening the legal system in general and building the capacity of the judiciary to successfully deal with more mundane issues like civil conflicts, petite crime and so forth.
- Throughout the region, lack of participation in and accountability of various state organs is a serious problem, which leads to lack of institutional legitimacy.
- Oversight is a crucial point: no state organ must be allowed to operate outside of the legal system or to escape scrutiny and oversight. This is particularly the case in the area of the security services.
- The concept of citizenship needs to be strengthened and in some cases, even re-invented. Long term educational activities to enhance the concept of citizenship and sense of belonging need to be designed and implemented.
- Protection of women's rights (both in the law and in daily life) is pivotal.
- The constitutional process must deal with sectarianism, which some of the MENA-participants saw as a cloud hanging over the "Arab Spring", and the position of ethnic and religious minorities.
- The freedom of the press must be enshrined and given real hands and feet in the constitution.
- It is important not only to look at the letter of the constitution (which is some countries is quite adequate), but rather its implementation.
- Corruption is a major concern across the region, including in the top level of government.
- Civil society must be included in the constitutional process and the legal status of civil society organizations and their freedom to act should be enshrined in the constitution.
- The constitutional process will go hand in hand with and should not come at the expense of more specific legal-technical assistance that can and should take place without delay.

### ***On civil society:***

- Unbiased media and civic education can have tremendous impact on better human rights protection and more responsive governments.
- Civil society needs to be empowered, also by legal means.
- While it was felt that in some states there is already a pretty strong civil society, the more common situation seems to be that civil society organizations need to be 'upgraded' to better understand their role in a democratic society and to build their capacity to carry out the role of a watchdog, monitoring and overseeing the activities of various state organs.
- The latter problem relates to the weak concept of citizenship. A stronger concept of citizenship will lead to better functioning civil society. On the other hand, civil society has a role to play in enhancing the concept of citizenship and the public awareness to it. This is a dialectic process.
- Business actors also have a role to play, particularly in relation to development.

### ***On security sector reform:***

- This issue has different aspects and, obviously, the problem is not identical in the various countries concerned.
- Some participants viewed this as a crucial and urgent task. Others saw it as one element among the many other facets of the constitutional process.
- On the one hand, the importance of maintaining law and order also during or in the immediate aftermath of uprisings can hardly be disputed. In fact, one of the greater obstacles of the uprisings is the common fear of the unknown, of the future, and the fear of deteriorating to chaos. In this sense there is a hugely important role for the security sector to maintain the rule of law in its most basic form ('law and order'). On the other hand, in Egypt, Tunisia and elsewhere, some parts of the security sector have been used very harshly in trying to oppress the uprising, costing thousands of lives. In Egypt and Tunisia, there is a popular call to hold members of the security apparatuses criminally accountable for their role in the failed attempt to crush the popular protests.
- It was generally agreed that, in the long run, it is crucial to find ways to guarantee that the security sector operates within the law and not outside the legal system. This can only be achieved if there is civil oversight and control over the security sector.

### ***On Donors:***

- Donors take a buy-in approach: they want the input and ideas of local actors.
- Donors encourage an inclusive approach, broad participation of the various stakeholders in the process of reform.
- Donors are willing to invest considerable funds in the reform process (as has been confirmed in the G-8 meeting that took place shortly after this conference). However, as donors have generally become somewhat disillusioned regarding the concrete impact of rule of law programme, they require programmes and projects to be particular, well-motivated, smartly-designed, aware of risks and, importantly, measurable.
- Donors encourage the local actors in the MENA region to learn from the experience of rule of law promotion elsewhere on the globe. Not only best practices, but also: learn from failures, see what should not be done or should be done differently.
- Donors view civil society organizations as drivers for change.
- Donors encourage peer-review and a broad consultation process: Among the national stakeholders in each country; inter-state within the MENA; lessons learned from relevant cases (i.e. Indonesia, Latin America, South Africa); With the donor community.

### Country-specific issues:

While this conference did not focus in particular on any specific country (this is planned as part of the follow up activities, see below), some issues were pointed out as specific challenges/needs in particular countries:

- In Tunisia, the revolution succeeded (in the sense of overthrowing Ali's regime) very quickly. However, there was no clear plan for the day after. Hence, there is a highly volatile transition period at present and in the near future. The upcoming elections pose a great challenge. There were different views on the timing of the upcoming elections. Some participants warned that delays might endanger the success of the revolution and might drag the country into in even more volatile and unstable situation. Others were concerned that the country might not be prepared to undergo general ballot in a genuine and equal way and that time must be granted for political parties to organize. Another main concern pertains to the position of the judiciary, which was one of the main targets of the uprising. The challenge is how to reform the judiciary while avoiding false or arbitrary accusations.
- In Egypt, there is a great challenge in preparing for the upcoming elections, while also carrying out judicial proceedings against Mubarak and his sons. The position of the security forces is also a challenge: they have an enormous responsibility in maintaining law and order, but accountability for alleged crimes during the uprising remains a concern. Due to Egypt's prominent position in the Arab world, the way in which transitional justice will be carried out is of even greater importance.
- In Yemen, it was felt that to a large extent the problem is with a huge gap between the protection that the constitution and laws are promising and how power is exercised, de facto.
- In Jordan, the main problems relate to the excessive powers of the King and lack of accountability. There are calls to return to the 1952 Constitution, which resembled the constitutions of several European monarchies, but has been amended throughout the years resulting in greater concentration of power with the King, erosion of judicial independence and lack of accountability.
- In Lebanon, the greatest concern seems to be sectarianism, which erodes the concept of citizenship and the trust in state institutions. Corruption was also mentioned as a major concern.

In conclusion, the task at hand is enormous. It is not just institutions that need to be rebuilt, the social contract between the people and the state needs to be redefined. This is first and foremost a task for the people in the countries involved, but well-aimed and carefully thought through donor assistance can make an important difference in this process.



#### **IV. The way forward**

Based on these conclusions, the Spring Group reached a consensus on the following, initial work plan:

- In each country, a Spring Group Representative will be nominated.
- The representative will take the lead in organising a follow up national meeting in the next few months, on the basis of the priorities defined at the first meeting, but focusing more on the particularities and details of each country;
- The outcomes of the national meetings will feed into an international conference to be held in The Hague in April 2012 as part of the 7th annual meeting of the Hague Rule of Law Network (HROLN). HiiL and ACRLI will explore the possibility to cooperate with other organisations (informal talks have been initiated with the Dutch and German MFAs) to hold another international conference, perhaps in 2011.
- The Conveners of the Spring Group will draft Rule of Law Country Reports to assist potential donors. HiiL has developed a methodology that will be used to draft 'Quick Scans' within a short period of time (a couple of months); ACRLI has developed (and implemented in the past) a methodology leading to more thorough rule of law reports (focusing on judiciary, parliament and media) that will also include surveys. These will be freely shared.
- On the basis of the work done thus far, the national meetings which are foreseen, and international conference, the Spring Group will approach donors for funding and expertise.
- The Spring Group remains an open platform; suggestions for new members are most welcome.
- HiiL and ACRLI will set up an international research project on the rule of law in the MENA region, leading to the publication of a special issue of the Hague Journal of the Rule of Law in 2012/2013.
- Production of education materials on the rule of law.
- Planning, design and implementation of capacity-building projects to meet clearly articulated needs and demands.

**The Rule of Law Spring Group welcomes additional members as well as any ideas and suggestions for further partnerships to develop rule of law reform in the Arab World.**

**Such ideas can be shared with HiiL and ACRLI as the conveners of the Rule of Law Spring Group.**

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