



# The Arab State and human security—performance and prospects

The state, in its normative role, wins the acceptance of its citizens and upholds their rights to life and freedom. It protects them from aggression and lays down rules that guarantee them the exercise of their essential freedoms. The state that fulfils this role is a “legitimate state”. It adheres to the rule of law, which serves the public interest, not that of a particular group. The state which departs from these rules becomes a source of risk to life and freedom. Instead of guaranteeing human security, the state itself turns into a major threat to it.

It is fair to say that, across key dimensions of performance, the record of Arab states has been mixed, with negative impacts on human security. While most Arab states have embraced international treaties and adorned their constitutions with clauses that enjoin respect for life, human rights, justice, equality before the law, and the right to a fair trial, their performance shows a wide gap between theory and practice. Factors such as weak institutional curbs on state power; a fragile and fragmented civil society; dysfunctional elected assemblies, both national and local; and disproportionately powerful security apparatuses often combine to turn the state into a menace to human security, rather than its chief supporter.

## Introduction

*Across key dimensions of performance, the record of Arab states has been mixed*

This chapter measures the performance of Arab states against four criteria:

1. The acceptability of the state to its own citizens
2. State compliance with legal charters pertaining to human rights
3. How the state manages its monopoly over the use of force and coercion
4. Whether institutional checks and balances prevent abuses of power

Part II of this chapter considers the prospects and limitations of Arab political, legal and institutional reform in response to this performance. It examines how the reform process has been generated by the triangulation of three poles of initiative: governments, societal groups, and external powers.

### 1. The acceptability of the state to its own citizens

States are artificial creations. Their borders do not represent naturally ordained living spaces for homogenous ethnic, linguistic, and religious groups. Britain, France and Spain, to mention just three states older than the Arab states, all include diverse populations. Their rise as states coincided with the development of inclusive institutions, democracy, popular participation and respect for cultural diversity. Their political and institutional development has enabled these states to counter-balance separatist tendencies, but provides no guarantee that such tendencies will remain dormant. At different times, most established states have faced challenges from groups seeking either to maximise their local autonomy or to secede from central authority altogether. This challenge, with its well-known consequences for stability, peace and security within the borders of a state, seems to be especially acute in some Arab countries.

The consolidation of the Arab state did not take into consideration the extent of kinship and ethnic ties among the human groups that formed the administrative units of countries which subsequently went on to become states.<sup>1</sup> Their borders often appear contrived, enclosing diverse ethnic, religious and linguistic groups that were incorporated as minorities in the post-colonial era. The homogenising project of the Arab state has never been a smooth transition towards inclusion. Rather, a strong nationalistic trend developed with the objective of masking the diversity of the population and subduing its cultural, linguistic and religious heterogeneity under command structures. Most Arab states failed to introduce democratic governance and institutions of representation that ensure inclusion, the equal distribution of wealth among various groups, or respect for cultural diversity.

Such failures of political and economic governance have led identity-based groups in some Arab countries to try to free themselves from the captivity of the nation-state in whose shadow they live. This rejection

of the legitimacy of the kind of state which the contemporary Arab countries inherited and perpetuated has been accompanied by conflicts that threaten human security and to which some states have responded by imposing authoritarian controls. However, the suppression of channels through which public grievances can be heard has only further reduced the acceptability of these states to many groups within their territory. The resulting political vacuum is being filled by militant political and religious groups, a number of them with strong track records in providing social services as well as high levels of credibility with the public—sometimes even higher than that of the government they oppose.

### Identity and diversity

Collective and individual identities are normal components of social life, whether they are part of a conflict or not. Indeed, any person may have multiple identities. A Moroccan may be Arab or Amazight, Muslim or Jew, African or Mediterranean, and part of the human family all at once. A Sudanese may be Arab or African, Muslim or Christian, and a member of the human family. A Lebanese, while being in all cases Arab, may also be Maronite, Shia, Sunni, or Druze, and, again, also a member of the human family. A person's perception of his or her nested identities is in fact one of the factors which strengthens the bonds between people, and helps support human security. The more identities a person has, the greater will be his or her comfort zone when moving between the various communities of membership, even though one of these will likely form the person's primary identity.

Some political scientists argue that it is not these *inherited* or ascribed traits that count the most in defining a particular group but rather its *constructed* bases, such as its ideology, political affiliations or intellectual viewpoint, which are achieved through interaction among its members and between them and their social setting.

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*Collective and individual identities are normal components of social life*

The point to underline is that identity is not a fixed property of the individual or group, but rather a fluid choice among several options. This choice, which can vary depending on circumstances, expresses the *volition* of the individual or the group, and not a *predetermined disposition*. How we

choose to see ourselves among the several “selves” we can be, whether inherited or constructed, decides our identity and response in a given situation.

In Western political history, the normative concept that has contributed most to the management of ethnic, cultural and

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Box 3-1

BAHIYA AL-HARIRI\* – The powerful and just State: conditions for human security in Lebanon

The Arab Human Development Reports have renewed Arab intellectual vitality by casting light on many of the problems (differing from one country to another) that we are living through in the Arab world and on the issues and subjects the Reports have tackled, including freedom, the knowledge society, and women.

Each subject addressed has formed an entry point to many further or related issues, but the key focus has always been the human being in the Arab world. If we were to put on record one absolutely characteristic positive feature of these reports, it would be the adoption of Arab specificity in the development field, where the UN and its publications in the field of human rights and its social, economic, health-related, and environmental corollaries have previously talked in comprehensive fashion on the human being in general. We have been able, through the means of these Arab reports, to lay the foundations for an Arab debate over the challenges of an Arab renaissance, and come to realise the importance of dealing with Arab specificity. However, we have come to find, when we wish to approach these subjects, that there is a specificity within each Arab region over and above the general Arab specificity.

Taking one’s point of departure for the definition of human security from Lebanon—this country whose citizens have for more than three decades lived through a range of experiences that have had a profound effect on its human infrastructure and on the human conscience of both the individual and society—compels one to approach the issue of human security in a new way.

During the decades when people in Lebanon were exposed to all forms of threat, there was a total collapse of security in all its traditional and modern senses. These threats ran from the right to life and education to the right to a decent life. All the basic means of subsistence such as water, electricity, freedom of movement, freedom of belief, and freedom of affiliation were targeted, and every individual in all his constituent parts, needs, and aspirations became a target. As a result, the state, the natural guarantor of security in terms of the most basic forms of growth and progress, collapsed. Growth and progress can only be realised on the foundation of stability, which gives rise to security, in all its meanings, and the true essence of which is the capable, just, and nurturing state as the basic framework for human security in all its dimensions and components. Such a state can only exist where individuals are free to form a social contract concerning the framework that guarantees their freedom and stability, and such a state

can only guarantee security and stability through an encompassing environment of security and stability.

Lebanon, which tried to achieve security for individuals, society, and the state, was unable to achieve security and stability within its area of operation. Today, this has made the Lebanese confront two memories: a distant memory replete with recollections of the targeting of their human security, and a recent memory filled with recollections of their work and effort to restore their security and stability and rebuild their state. Present reality brings back to mind the targeting of their structure, humanity, freedom, and state.

During the period of renaissance, and since the beginning of the 1990s, we have tried to forget the tragedies lived through by the Lebanese individually and collectively. We have done so by the call to tolerance and reconciliation, by strengthening human security for every individual in Lebanon—and I am certain that every Lebanese man, woman, and child could write a thesis about what their security, humanity, conscience, and freedom were exposed to. However, these Lebanese hoping for rebirth, freedom, stability, and progress have been able to transcend these tragedies. This has been made clear through their capacity to overcome these trials, restart the course of life, and offer a major humanitarian model for restoring life, building the state, achieving rebirth, and restarting political, economic, and social life. This Lebanese paradigm can be an Arab example of the people’s will for rebirth and development and for making a major leap over our stumbling reality. This requires that we begin from an axiom that forms, in my opinion, the first item on the list of those necessary for an understanding of human security. This is not less than the recognition that Arabs are human beings, with their constituent parts, capacities, and needs, since dealing with our humanity on false preconceptions as to what it is, what it has, and what it needs is the greatest violation of humanity, while the renewal of a preconceived picture of what it must be is to condemn this humanity and its capabilities in advance.

This phenomenon may be the prime cause for extremism, fanaticism, and rejection of this image. We must learn a lesson from our experiences of those who claimed to work for the progress and development of our societies while in the background acting to reaffirm their underdevelopment and weakness, such as the mandatory rule and tutelage which formed the former colonial understanding and which are currently emerging in new forms from the same foundations and with the same unjust view of our people and societies.

\*Minister of Education in the Lebanese government, 2008.

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*Identity, per se, is not necessarily the cause of a conflict or even the main source of tension between different groups*

linguistic diversity is that of citizenship. The evolution of this concept has been part and parcel of the rise of democracy and democratic governance linked to the emergence of the modern European state. A seminal discussion of citizenship in the European tradition is T.H Marshall's essay collection, "*Class, Citizenship and Social Development*", which considered the European experience as the gradual expansion of citizenship rights, from civil, to political, and to social rights.<sup>2</sup> Citizens are rights-bearing persons conceived as equals under the laws of the state, to which they have common obligations, and citizenship is the active or passive participation of individuals in the common identity that these universal rights and obligations confer. Whatever other identities the individual or group may possess, that of citizenship provides the common denominator shared with all other individuals in the society.

Even in mature democracies, the concept of citizenship is still a work-in-progress, evolving in its most enlightened forms to accommodate the complexities of minority rights in multi-ethnic and multicultural societies. This evolution represents a balance, which is also potentially a tension, between the rights of the majority and those of minorities whose claims on the state would otherwise not be treated equally. However, the point here is that the Arab states have hardly perfected their transition to good governance, let alone to true democracy, or the further refinement of democracy that respect for minority rights represents. Thus, the first step to managing diversity, which several Arab countries have begun to take, is to adopt and apply the concept of citizenship under the law and in practice.

A key development in the evolution of citizenship is the understanding that it entails not only a 'vertical' relationship to the state, but also 'horizontal' relations between citizens. To be a citizen is necessarily to be a co-citizen, with the responsibilities, interactions and accommodations that go with 'civil behaviour'.<sup>3</sup> Inculcating this advanced view of citizenship is one of the primary functions of education; it is not to be confused with instilling crude or narrow notions of patriotism, but concerns instead the transmission of civic values of cooperation, co-existence and good neighbourliness. Where citizens

share a high level of civic consciousness, peaceful conflict resolution is often possible locally, without state action.

Contemporary events in Arab countries show that the degree to which identity issues surface in internal conflicts varies, and there is no single pattern to the form these issues take. For example, in some cases, the crux of the conflict may centre on identity, but the disagreement may be over *national* identity (is the nation Arab or Muslim, or does another identity take precedence over both of these?). Thus, the conflicting parties may not necessarily belong to separate racial or cultural loyalty groups, and their conflict may not revolve around power relations between those groups. Rather, the contention is among divergent political visions of the political entity to which they belong. An example is the debate over identity in several Arab countries between the State and some Islamic groups. This debate is largely about the imposition of a specific political identity on these states, and not about the inherited identities of the adversarial parties, who do not necessarily come from different racial or ethnic groups.

On the other hand, empirical observation confirms that, in the Arab countries, ethnic, religious, sectarian, and linguistic differences can be associated with persistent group struggles, especially in countries where the population is not homogenous. In countries such as Iraq, Lebanon, Somalia, and Sudan, ethnic, religious and tribal loyalties have become the axis along which communities have been mobilized to press for inclusion or separation. This mobilisation has had destructive and destabilizing effects that undercut both human security and the integrity of states. Tragically, these conflicts have engendered the largest volume of human casualties in the Arab countries, a number exceeding those resulting from foreign occupation.

Our report takes the view that identity, *per se*, is not necessarily the cause of a conflict or even the main source of tension between different groups. Clashes that may appear on the surface to stem from identity in fact often originate in skewed access to political power or wealth, in a lack of channels for representative political participation, and in the suppression of cultural and linguistic diversity. Most commonly, such conflicts start with the

exploitation by political leaders, for their own ideological ends, of primordial ties among groups who share feelings of exclusion, deprivation and discrimination. Such exploitation, which puts the bonds among group members above the interests of the society, becomes possible when states fail to extend and ensure full rights of citizenship to all. By this standard, the practices of many Arab states are wanting.

## 2. Compliance with international and regional conventions and constitutional frameworks

### International and regional conventions

Most Arab states have acceded to the principal international charters pertaining to human rights. Accession and ratification entail an obligation on the concerned Arab states to bring national legislation and practices in line with these conventions, however, as noted by the *Arab Human Development Report 2004, Towards Freedom in the Arab World*, Arab states seem content to ratify certain international human rights treaties, but do not go so far as to recognize the role of international mechanisms in making human rights effective.

As for regional instruments, by mid-May 2009, ten Arab countries had ratified the Arab Charter on Human Rights, which had come into effect in 2008 (Algeria, Bahrain, Jordan, Libya, Occupied Palestinian Territory, Qatar, Saudi Arabia, Syria, the UAE and Yemen).<sup>4</sup> This, again, does not mean that the states that have acceded necessarily demonstrate greater respect for these rights than those that have not. However, accession and subsequent ratification of these conventions is a formal indication of the acceptance of a degree of accountability in the eyes of the world.<sup>5</sup>

Apart from the question of how many states have ratified the Arab Charter on Human Rights, there is also an issue with respect to whether the instrument is consistent with international standards. One of its shortcomings is with respect to the death penalty. In its revised version, as adopted by the League of Arab States in 2004, the Charter mentions the right to life (Article 5) and the right to freedom (Article 14), but it nevertheless allows for their curtailment,

provided that such curtailment is in accordance with the law. Specifically, it is unique among regional and international treaties addressing the death penalty in that its ban on the juvenile death penalty is not absolute (Articles 6-7). It may be noted that the death penalty, which more than half the countries of the world have abolished and which the United Nations condemns, is applied liberally in several Arab countries, which do not limit it to the most serious crimes or exclude its imposition in cases of political crime.

### Arab constitutions and legal frameworks

The ratification of international charters and conventions does not necessarily mean that their provisions will be translated into state constitutions and laws. And even

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#### Box 3-2

#### Arab Satellite Broadcasting Charter

At a time when voices within the Arab world are asking for freedom of opinion and expression, as well as freedom of the press and the media, and when an open cyberspace—the main recourse of independent and private media channels for the free exchange of ideas and information—is available, Arab governments agreed in early 2008 to suppress this breathing space. Their instrument is called “*The Charter of Principles for Regulating Radio and Television Satellite Broadcasting and Reception*”, which in reality aims to muzzle voices and diminish the margin of freedom available, despite what might appear to be some positive goals. The Charter was issued by subterfuge in the form of a declaration and not a treaty, to avoid presenting it to Arab parliaments for discussion and approval, and because Qatar and Lebanon had reservations on the text, which would not have applied had the document been drafted as an Arab treaty that required unanimity.

The Charter was approved by Arab Ministers of Information on February 13, 2008, and contains many restrictive provisions covering all forms of audio-visual programming on satellite channels in the arts, politics, literature and entertainment. Its provisions are stiffened by penalties for any infractions. The Charter stipulates that the authorities in every Arab country must approve the institution of a satellite broadcasting station as well as the re-broadcasting of material produced by other stations. However, it does not define clear standards for giving such approval, which leaves the granting of licenses to the will and whim of governments. In effect, it represents a kind of pre-censorship on the information content that needs to be licensed. These provisions directly contradict Article 32 of the Arab Charter on Human Rights which guarantees the right to information and freedom of expression and which was adopted by the Council of Ministers of the League of Arab States in 2004. They also violate article 19 of the International Covenant on Civil and Political Rights ratified by many governments in the region.

Source: AOHR 2008 (in Arabic).

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when they are, as the AHDR 2004 pointed out, all too often, what Arab constitutions grant, Arab laws curtail. And what those laws render legal, actual practice often contravenes.

The content of rights, the scope of freedoms, and the protection inscribed in each Arab constitution vary according to the ruling political philosophy of the state (Mohamed Nour Farahat, in Arabic, background paper for the report). These constitutions range in their defence of citizens' rights from terse summary to detailed exposition. While they are unanimous on the need to maintain the sanctity of the home and freedom of expression in all its forms, some fail to defend other rights at all, or they deal with them ambiguously.

Constitutions of Arab countries frequently adopt ideological or doctrinal formulas that empty stipulations of general rights and freedoms of any meaningful content, and that allow individual rights to be violated in the name of the official ideology or faith. An example is the Syrian constitution which in its preamble presents socialism and Arab nationalism as the only path for national struggle and proclaims the pioneering role of the Socialist Arab Baath Party. Article 38 of this constitution subordinates freedom of expression to the ideology of state and society by making it conditional upon "safeguarding the soundness of the domestic and nationalist structure and strengthening the socialist system."

Other Arab constitutions deal ambiguously with freedom of opinion and of expression, tending to restrict rather than to permit. For example Article 39 of the Saudi Basic Law stipulates, "Mass media, publishing facilities, and other means of expression . . . shall play their part in educating the masses and boosting national unity. All that may give rise to mischief and discord, or may compromise the security of the State and its public image, or may offend against man's dignity and rights, shall be banned. Relevant regulations shall explain how this is to be done."

Many Arab constitutions delegate the definition of rights to state regulation. In doing so, they open the door to restrain freedoms and to encroach, by means of legal provisions, on individual rights at the point when the latter are translated into ordinary law. In Iraq, according to the new constitution, all existing laws, including

those developed under Saddam Hussein, are considered to continue in effect unless specifically annulled or amended (article 130). As a result, many laws which are highly restrictive remain in effect. Under article 226, it is a crime to insult any public institution or official. It is also a crime, under article 227, to publicly insult a foreign country or an international organization with an office in Iraq.<sup>6</sup>

Arab constitutions step on fundamental rights in other ways as well. The laws and constitutions in the Arab states generally do not mandate discrimination between citizens on the basis of language, religion, doctrine, or confession. However, discrimination against women is quite evident in laws of some countries. The laws of most of the Arab states contain discrimination against women in matters of personal status, criminal sanction, employment, and the nationality of children born to foreign husbands. While in most of the Arab countries women have acquired their political rights, women in Saudi Arabia do not have the right to vote. It should also be noted that most of the Arab states have often entered reservations against certain provisions pertaining to gender equality in the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; and the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and basing the reservation on the avoidance of conflict with Islamic law. A welcome development is the progressive evolution of laws on personal rights in the three Maghreb states of Algeria, Morocco and Tunisia, which have gone a long way towards achieving gender equality in family law.

Varying positions exist within the Arab countries concerning the right to form and support political parties and the degree to which such parties should be allowed to operate. Across the Arab region, six Arab countries, Kuwait, Libya, Oman, Qatar, Saudi Arabia, and the United Arab Emirates, continue to prohibit in principle the formation of political parties. Bahrain is the only one of the six Gulf states which affords the freedom of formation to 'political organizations'. Most of the other Arab countries continue to practice considerable and varying degrees of restrictions on the establishment and functioning of political

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parties, particularly opposition parties, whose members may also be subject to repressive actions. However, an increasing margin of political freedom is currently being witnessed in countries such as Lebanon and Morocco.

All Arab countries, with the exception of Libya, support the right to form civil associations. But throughout the region, legal systems and regulations governing and regulating the civil society sector involve a wide and escalating array of restrictive measures that hinder the fulfilment of that right. Civil society organizations in Arab

countries face a number of restrictions, hindrances and practices that can be grouped under three main categories. Firstly, restrictions on their formation and ability to operate. Secondly, state authoritarian power to dissolve, suspend or terminate the associations or their boards of directors. And thirdly, tight restrictions on their sources of funding, particularly from abroad and on their affiliations with other international federations and networks. These restrictions vary widely from one country to another and from time to time. But in general, excessive state control and infringement of

*Civil society organizations in Arab countries face a number of restrictions*

**Box 3-3**

**RADWAN ZIYADEH\* – The State and human rights in the Arab world**

The relationship of the Arab state to human rights is inherently problematic in that human rights in their legal sense can be conceived of only in confrontation with the state. This is what makes the issue complex: how can the state, as the totality of executive, legislative and judicial institutions accountable for human rights violations, at the same time uphold these rights? Here we find the most important areas of political difference over the question of the state and human rights. The modern state solidified around the subjection of power to a number of legal precepts which serve to defend human rights from the state itself. That is, the prime and most important guarantees of human rights are that the state itself is subject to the law. This is the fundamental condition for talking about any right, because if the state is not subject to the law, there is no basis for talking about a right, whatever it may be.

Thus, improving conditions for human rights in a country is always firmly linked with the development of its legal and judicial organisations and the robustness of its political and democratic institutions.

It follows, too, that discussion of human rights can take place only under a ruling regime that adheres to specific principles based on separation of powers, independence of the judicial system, and a constitution that guarantees general political and constitutional liberties.

The modern Arab state drew its inspiration from the model of modern legitimacy, patriotic or national. But in reality, the exercise of power has not been based on any clear foundation owing to the clash of opposing values and inconsistencies between longings and aspirations. Across the region, in varying degrees, elements of power, appropriation, and upheaval mix with elements derived from Islamic, royal or tribal legitimacy.

It was thus natural that the Arab state should move deliberately to secure both its legitimacy and its regime at one and the same time. It did so by adopting Western patterns of modernisation focused on the structural form of state institutions, rather than on the substance of their role. It was assumed that this focus on outer form was more calculated to guarantee it international recognition and legitimacy than would attention

to inner questions of human rights, which grant the state genuine internal legitimacy as the true interpreter of society's aspirations and interests.

Concepts of human rights therefore remained secondary in the modern Arab state compared to its aspirations for progress and growth. While Arab constitutional provisions for human rights and basic freedoms exist, they differ in the level of guarantees provided for these and in the scope allowed for their exercise. In most categories of rights, constitutions generally give the state a role and justification. This is true of civil and political rights, including the individual rights to equality without discrimination, the right to life, liberty and security of the person, freedom of residence and movement, the right to enjoy a nationality and not be deprived of it, the rights to enjoy a private life and private property, equality before the law, the right to seek legal redress, freedom of creed and practice, and the key freedoms of opinion, association and public participation. The state is also present in economic and social rights.

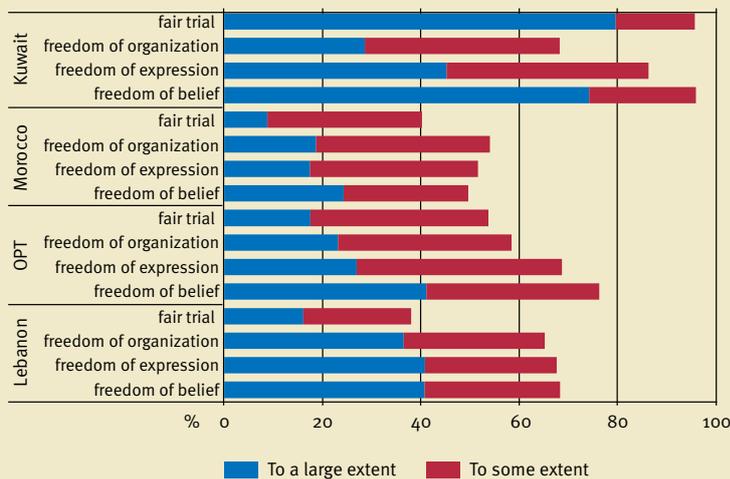
Most Arab constitutions have taken as an example the political, civil, economic, social, and cultural rights guaranteed by the two international covenants proclaimed by the UN General Assembly in 1966. However, all these rights, which are provided for in varying degrees by the Arab constitutions, are abolished by the general states of emergency in force in more than one Arab country. They are also negated by the lack of any legal convention that guarantees respect for the law and its institutions, that is bound together by political and social relationships, and that possesses convincing cultural and behavioural roots.

What constitutions legally decree is, in practice, lost under a mass of legal restrictions and exceptional measures, and through a lack of safeguards for these rights. The situation is the same with respect to international charters and conventions. All too often, it appears that Arab states have endorsed these conventions with the aim of improving their international image but without bringing national laws into line and without ratification having any tangible benefit for the Arab citizen.

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In four Arab states—Kuwait, Lebanon, Morocco and the Occupied Palestinian Territory—respondents were asked to characterize their relationship with their states and state institutions. When asked if they trusted various civic organisations, representative assemblies, and local councils, there was a clear difference in their responses. Those who expressed a strong level of trust in state institutions were in the minority in all four countries, the majority having only limited trust in them. The highest level of trust in institutions was in Kuwait, followed by the Occupied Palestinian Territory; the lowest was found in Morocco, followed by Lebanon. This is an arresting finding in that it reflects disappointment with the performance of representative institutions in the two Arab states furthest on the path to granting political freedoms to citizens. Conversely, with the exception of Kuwait, citizens in the other three countries assigned a greater degree of trust to charitable associations. Is the reason for this that state institutions in these countries do not allow the enjoyment of public freedoms? The responses of the four samples to this question are illustrated in the figure below:

**To what extent does the state respect your basic rights?**



Responses in the four countries reveal similar variations in how people rate the availability of public freedoms in their countries. The percentage of those who thought that the freedoms of belief and expression and the right to a fair trial were available to a large extent was highest in Kuwait. Kuwaitis believed that the right to organise was not prominent in their country, and relatively far less available than the other rights. Lebanese respondents came next after the Kuwaitis in thinking that these particular rights were available to them: a plurality (40 per cent) of them thought that the rights of belief, expression, and organisation were well protected in Lebanon, more so than their counterparts in Morocco and the Occupied Palestinian Territory. With the exception of freedom of belief in the Occupied Palestinian Territory—where 40 percent of the sample thought it available to a large degree, and a smaller proportion (38 per cent) considered it moderately available—few in Morocco and Occupied Palestinian Territory thought that the freedoms of expression and organisation were well protected—barely a quarter of the samples. A very small minority—less than a fifth of the sample in Lebanon and the Occupied Palestinian Territory and hardly a tenth of the sample in Morocco—considered a fair trial to be readily available in their country. The majority thought the opposite was the case.

the state on the functions of civil society organizations remain dominant features of the relationship between the state and civil society in the Arab region.

The most serious threat to the citizen's security in some Arab countries, in the context of fighting terrorism, is providing the state with pretexts to violate individual rights and freedoms without legal recourse. Following September 11, 2001, the UN Security Council adopted resolution 1373 which calls on all states to cooperate in preventing and suppressing terrorist acts and to ratify and implement the relevant international conventions related to combating terrorism. It requires all States to "ensure that terrorist acts are established as serious criminal offences in domestic laws and regulations and that the seriousness of such acts is duly reflected in sentences served". This resolution, which was adopted under Chapter VII of the UN Charter, did not provide a definition of the term "terrorism". In this context, it is important to note that, according to the International Covenant on Civil and Political Rights, even in states of emergency, no derogation is allowed regarding the right to life; the prohibition of torture; the prohibition of holding anybody guilty on account of any act or omission which did not constitute a criminal offence at the time when it was committed; the right to recognition everywhere as a person before the law; and the freedom of thought, conscience and religion.

Nonetheless, most Arab countries have passed anti-terror laws which employ a broad and unspecific definition of "terrorism" and which have given government agencies broad authority to tackle terrorist crimes. Their imprecision and ambiguity form a threat to basic freedoms. Such laws allow undefined periods of pre-trial detention; widen the applicability of the death penalty; curtail freedom of expression; and increase police powers to search properties, tap telephone calls and intercept exchanges of other types of communication. In some cases, these laws increase the use of military courts. In general, counter-terrorism laws in most of the Arab countries have failed to find the required balance between the security of society and the preservation of individual rights and freedoms.

A review of reports by international and regional human rights organisations (the Arab Organisation for Human Rights,

Table 3-1 Arab countries under a declared state of emergency in 2008	
State	Year of declared state of emergency
OPT	2007
Sudan	2005 (in the Darfur region), extended to the whole country in May 2008
Iraq	2004
Algeria	1992
Egypt	1981
Syria	1963

Source: AOHR 2008 (in Arabic).

Amnesty International, and Human Rights Watch), reveals violations of the obligation to defend human rights by states that have ratified the international conventions and included provisions for the respect of these rights in their constitutions, and equally by states that have not ratified these conventions.

We consider below some indicators of the Arab states' relevant practices, without reproducing, however, the detail in which the *AHDR 2004* dealt with the issue of freedoms in the Arab countries.

### States of emergency and human rights

Many Arab states have undergone extraordinarily long periods of martial law or emergency rule, transforming interim measures into a permanent way of conducting political life. A state of emergency grants the government in question the power to suspend the operation of some constitutional and legal provisions pertaining to human rights, and this is in conformity with the International Covenant on Civil and Political Rights. However, a number of these rights—such as the freedom of belief, the prohibition of torture, and non-retrospective application of the law—must continue to be respected. A state of emergency is also assumed to be temporary and imposed only in the face of a danger that threatens the independence of the state, its territorial integrity, or the regular functioning of constitutional institutions. Nevertheless, a number of Arab governments have resorted to declaring long states of emergency without clear reasons

for their continuation. These are often simply a pretext to suspend basic rights and exempt rulers from any constitutional limitations, however weak. According to the Arab Organisation for Human Rights, there were six ongoing states of emergency in the region during 2008.

### Violation of the right to life through torture and mistreatment

This violation implicates the state directly insofar as it is generally perpetrated within government facilities and by public employees. In its report for 2008, the Arab Organisation for Human Rights (AOHR) cites examples of the violation of the right to life in eight Arab states.<sup>7</sup> In addition to Iraq and the Occupied Palestinian Territory, these states were Egypt, Jordan, Kuwait, Morocco, Saudi Arabia and Syria. Reports of the UN High Commission for Human Rights indicated that instances of torture took place in Algeria, Bahrain, Morocco and Tunisia. The Commission relied in this respect on the reports of regional and international human rights organisations.<sup>8</sup>

*Some Arab governments have resorted to declaring long states of emergency without clear reasons for their continuation*

### Illegal detention and violations of the right to freedom

Violation of the right to freedom is a more widespread practice in the Arab countries. It takes place in numerous states and the number of its victims reaches thousands in some cases. The prevalence of this practice in some states is connected with the so-called "war on terror." However the victims of this practice in most other states are often members of the political opposition. The AOHR report names eleven states that have restricted citizens' freedoms by extra-judicial detention: Bahrain, Egypt, Jordan, Lebanon, Libya, Mauritania, Saudi Arabia, Sudan, Syria, Tunisia and Yemen. Although no official statistics are available on the number of detainees in these countries, the numbers given in the organisation's report suggest the magnitude of this violation. According to the report, the numbers of detainees sometimes exceed ten thousand. The organisation's report for 2008 indicates that the relevant authorities in a number of Arab states have begun to release some detainees.<sup>9</sup>

**Table 3-2** Political prisoners in 5 Arab states, 2005 and 2007

State	Number of political prisoners, 2005	Number of political prisoners, 2007
Iraq	26,000 (reduced to 14,000)	24,661
Egypt	10,000	--
Lebanon	--	5,870
OPT	9,000	11,000
Yemen	1,000	--

Source: AOHR 2008 (in Arabic).

### Judicial independence – the de facto gap

Threats to judicial independence in the Arab states come not from constitutions, which generally uphold the principle, but from the executive branch. All Arab justice systems suffer in one form or another from blows to their independence that stem from executive domination of both the legislative and judicial branches. The result is a considerable gap between constitutional texts and actual practice. Not only are rulings made and enforced in the name of the heads of state (in all their different designations and nominations), the latter have also been entrusted with the right to preside over the organs of judicial oversight. This is to say nothing of the executive’s powers over judicial appointments and promotions, the assignment of judges to extracurricular work, and the inspection and disciplining of judges.

However, in many Arab countries, the most prominent violation of the institutional independence of the judiciary is represented by the spread of extraordinary forms of justice, along with the infringements of the legal protection of individuals’ rights, particularly in the criminal domain, that these non-independent forms of justice entail. Forms of extraordinary justice—the most prominent of which are military courts and state security courts—represent a negation of the rule of natural justice and detract from guarantees of a fair trial.

Military justice, whose remit in some Arab states extends to the trial of civilians, particularly for political crimes, is bolstered by ordinary law. The most prominent example of this is Law no. 25/1966 in Egypt, where Article 6 extends the competency of military justice, particularly during a state

of emergency, to enable it to consider any offence stipulated in the penal code that may be transferred to it by the president of the republic. What is significant here is that the wide scope of military jurisdiction enjoys the endorsement of Arab constitutions, which make explicit provision for it.

Other forms of extraordinary jurisdiction, such as state security courts, lack guarantees of the right to a fair trial. These courts are found in a number of Arab countries. In Jordan, there are state security courts, created by Law no. 17/1959 and its amendments, which are competent to consider certain crimes, among them crimes against internal and external state security, and narcotics offences. In Syria, legal ordinance 47 of 28 March 1968 included the creation of the Supreme State Security Court. The first article of the ordinance, paragraph (a), stipulates that “these courts carry out their functions on the order of the military governor”, while Art. 7, paragraph (a) ordains that “state security courts are not restricted by the procedural rules stipulated in the operative legislations at any stage and procedure of the pursuit, investigation, and trial”.

Judges in some Arab countries have struggled in order to give some substance to judicial independence. The Algerian reforms deserve to be noted in this respect, particularly after the legal reform of 2006, which gave elected judges the majority on the Supreme Council of the Judiciary. (Mohamed Nour Farahat, in Arabic, background paper for the report).

### 3. State monopoly of the use of force and coercion

It is widely accepted that human security is reinforced when the state alone wields the instruments of coercion and uses them to protect and uphold people’s rights, those of citizens and non-citizens alike. When other groups gain control of instruments of force, the outcomes seldom favour security for citizens.<sup>10</sup>

A number of Arab states have confronted this problem over the past two decades. In addition to Sudan, Iraq, Lebanon, and Somalia, which were plunged into civil wars where identity slogans were raised, a number of other Arab states have faced the challenge of armed rebellion by a part

*Threats to judicial independence in the Arab states come not from constitutions but from the executive branch*

of the citizenry. If, in these latter cases, the question of identity arose, it was in relation to the government's political identity more than to any demand for recognition of the rights of the members of a particular group within the nation. The state authorities in some Arab countries have proved unable to impose security while confronting armed groups, particularly during the first half of the 1990s. Some Arab governments have plunged into minor wars against opposing groups in recent years, while other states have suffered from the armed violence in which some of their citizens, or those of other Arab countries, have been caught up.

One of the major questions about human security in the Arab countries is how states should address Islamic political movements. States frequently cite threats from the latter quarter as their justification for clamping down on political and civil rights. Yet the most hopeful prospect of maintaining stability and citizens' security lies in bringing the non-violent groups into the framework of legitimate political activity.<sup>11</sup>

The state's capacity to achieve security in its territory is clearly the outcome of numerous factors that do not depend solely on material and organisational capabilities such as the size of the police and armed forces and the quality of their weapons and

training. No state, however large and well armed, can guarantee absolute security on its soil. A state may impose its will briefly through its might; but the state that protects its citizens' rights, and which is seen as legitimate, worthy of trust and open to power-sharing, is much more likely to prevail.

While many of its citizens live under various 'un-freedoms' which effectively deny them voice and representation, and while the threat of state-initiated violence against them is ever-present, the Arab countries, in some cases, offer a degree of protection from crime higher than other developing countries. Barring the cases of foreign occupation and civil war, a relatively low incidence of conventional violent crime remains the norm for Arab countries.

A useful indicator for comparing this situation in the Arab countries with that in other regions, is homicide rates. The data from the United Nations Office on Drugs and Crime (UNODC) illustrates how a number of world regions compare with respect to this indicator.<sup>12</sup>

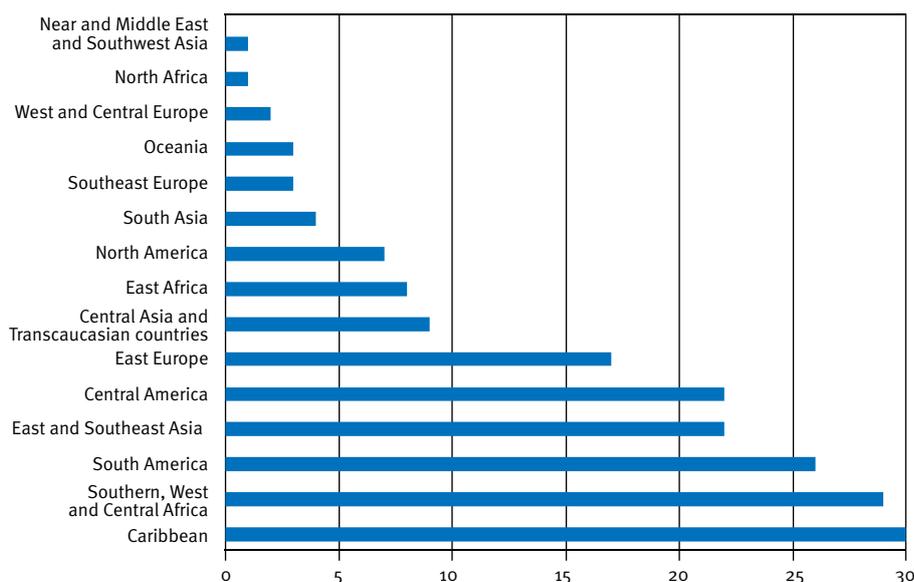
Going on this data, the Arab countries have the lowest rates of homicide in the world. It should be underlined that these statistics date from 2002, that is, before the invasion of Iraq and the intensification of conflicts in Sudan and in Gaza.

*When non-state groups gain control of instruments of force, the outcomes seldom favour security for citizens*

*The state's capacity to achieve security on its territory does not depend solely on the size of the police and armed forces*

Figure 3-1

Homicide rates (per 100,000 of the population), world regions, 2002



Source: UNODC 2005.

*Security and armed forces that are not subject to public oversight present grave potential threats to human security*

Nevertheless, the Arab countries, indicated in Figure 3-1 by two sub-regions (North Africa and the Near and Middle East/South-West Asia, which also includes Iran, Israel and Turkey), not only has the lowest police-recorded homicide rate of all regions of the South, but also in both the developing and developed worlds.

#### **4. Institutional checks against abuses of power**

Security and armed forces that are not subject to public oversight present grave potential threats to human security, as the experience of numerous Arab states attests. Most Arab governments wield absolute authority and maintain their hold on power by leaving the state's security apparatus an extremely wide margin for manoeuvre, at the expense of citizens' freedoms and fundamental rights. The resulting violations have been recorded by local, regional, and international human rights organisations and by the UN agencies that monitor such questions—that is, when Arab governments have allowed them to assemble such reports.<sup>13</sup>

Arab security agencies operate with impunity because they are instrumental to the head of state and account to him alone. Their enormous powers are buttressed by executive interference with the independence of the judiciary, by the dominance (in most states) of an unchanging ruling party over the legislature, and by the muzzling of the media. In these circumstances, judicial or popular oversight of these agencies is a forlorn notion.

True, this lack of oversight varies in degree from state to state: Egyptian civil judges for example have acquitted many of those accused by the security bodies of terrorist offences and Egyptian members of parliament have requested information from the Interior Ministry on the number and conditions of those detained. Local and regional human rights organisations have also criticised the state of freedoms in many Arab states. The Moroccan government offered an apology to the Moroccan people for state-led human rights violations during the last three decades of the 20th century, and King Mohamed VI dismissed the interior minister whose name was linked with these practices. Human rights education is even taught in some police academies in

#### **Box 3-5**

#### **Executive control versus reform in the security sector**

As in many genuine democracies, virtually all Arab heads of state are constitutionally defined as the supreme commander of national armed forces. But the key difference in the Arab region is the lack of any parliamentary checks and balances by which to hold the executive ultimately accountable.

Arab parliaments have little or no effective control over the security sector. Indeed, far more common in the Arab region is for parliaments to treat defence and security matters as taboo. The legislature most often lacks the constitutional mandate to question the executive over these matters or to require submission of even the most general defence budgets (let alone details of expenditure and procurement). Even those few that are constitutionally authorized to oversee budgets—in Egypt, Lebanon, Kuwait, Morocco, and Yemen—prefer not to exercise their authority. In Arab countries that lack a legislature altogether, there are even fewer public safeguards and the executive has absolute leeway in setting policies, operational plans, and budgets.

The executive branch has proven effective in deflecting or pre-empting parliamentary scrutiny even where this is nominally allowed. Kuwait offers an impressive but solitary case of parliamentary oversight. The ministers of defence and interior

answer to the National Assembly, and the Interior and Defence Affairs Committee of the Parliament also questions ministers and top security officials including heads of intelligence, and, since 2002, has published an annual human rights report.

The exclusive, non-accountable control of executive branches over the security sector has had problematic consequences for the latter's capacity, and led to a lack of proper budgeting, fiscal controls and transparency. Furthermore, despite the absence of effective parliamentary challenges, executive branches in a number of Arab countries have taken security matters further out of public debate and scrutiny by establishing national security councils that are accountable only to heads of state.

The proliferation of security organizations has naturally been accompanied by a significant inflation in personnel numbers, poor functional differentiation between the various services, duplication of roles, structural disinclination to inter-service coordination, and bloated payrolls. These factors are leading to ineffective performance and financial inefficiency, which severely debilitate capacity in the security sector across the region.

Source: Sayigh 2007.

the Arab countries, and the authorities in some of these countries allow the organisation of training sessions for police officers around these topics.<sup>14</sup> However all of this amounts to no more than a chink in the wall of immunity around the security forces of almost all Arab states.

Measuring the performance of the Arab states on the preceding scorecard confirms that the relationship between the state and human security is not straightforward. While the state is expected to guarantee human security, it has been, in several Arab countries, a source of threat undermining both international charters and national constitutional clauses. Establishing the rule of law and good governance in the Arab countries remains a precondition for the foundation of the legitimate state, which is ultimately in charge of protecting human life and freedoms and limiting all forms of unchecked coercion and discrimination. Until that development is completed, citizens will continue to suffer from the levels of exclusion and political insecurity to which Figure 3-2 points:

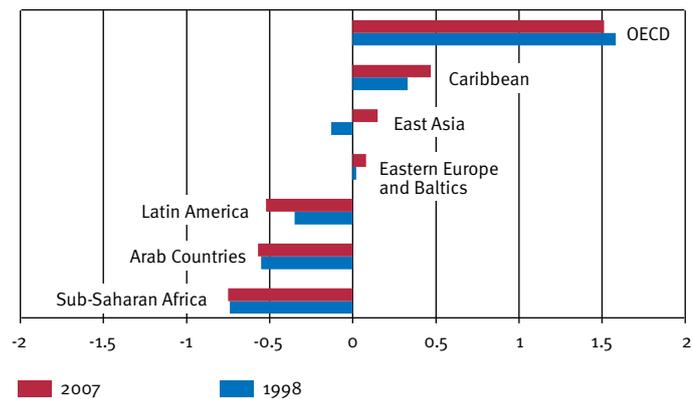
### The crisis in Darfur: a tragic lesson in state failure

Without doubt, the ongoing conflict in Darfur is among the most serious conflicts in the Arab region at the time of writing. The magnitude of this humanitarian crisis, to which both the past policies of the Sudanese government and its present approach to handling events have contributed, provides an archetypal illustration of the state's role in aggravating human insecurity. Although the Sudanese state threatens citizens' security in other regions of the country as well, its role in Darfur is an extreme example of failure under all the norms of state conduct adopted in this chapter.

In its report to the Secretary General issued in January 2005, the UN Commission of Inquiry on Darfur noted that government forces and allied militia had committed widespread and consistent war crimes and crimes against humanity including murder, torture, mass rape, summary executions and arbitrary detentions.<sup>15</sup> The Commission found that, technically, the term 'genocide' did not apply in the legal sense, since genocidal intent appeared to be missing. However, it confirmed

Figure 3-2

The rule of law – the Arab countries compared to other regions, 1998 and 2007



Source: UNDP/AHDR calculations based on World Bank 2008.

Note: The rule of law governance indicator has a range of -2.5 to 2.5; higher is better. It is a subjective indicator aggregated from a variety of sources and measuring perceptions of the following concepts: legal impartiality and popular observance of the law.

that massive violations of human rights and humanitarian law, "which may be no less serious or heinous than genocide",<sup>16</sup> were continuing. The Commission also found that the Janjaweed militia operated alongside Government armed forces or with their ground and air support.

The situation in Darfur continues to be characterized by widespread and systemic violations of human rights and international humanitarian law. Fighting involving Government of Sudan forces, signatories and non-signatories to the 2006 Darfur Peace Agreement (DPA), and other armed groups has resulted in civilian casualties; widespread destruction of civilian property, including homes and markets; loss of livelihoods; and mass displacement of affected communities. In addition, increasing insecurity negatively impacts on the humanitarian space and the security of the civilian population. Violence and sexual abuse of women and children by state, non-state, and private actors such as criminal groups and bandits also continue unabated throughout Darfur. A culture of impunity is prevalent: the State fails to investigate, punish and prosecute perpetrators of human rights violations.<sup>17</sup>

Despite some action taken by the Government to prevent and protect the civilian population against attacks, the civilian population in Darfur is reported to remain exposed to a host of threats.

*Arab security agencies operate with impunity*

*The situation in Darfur continues to be characterized by systemic violations of human rights*

4.27 million people were in need of assistance in Darfur in July 2008

Both the rebel movements and primarily the Sudanese Government have manipulated ethnic tensions

According to UN sources,<sup>18</sup> as of July 2008, there were 4.27 million affected people in need of assistance, of which 2.5 million are internally displaced. An additional 250,000 Darfurians have sought refuge in Chad. The upheavals affecting thousands continue. 150,000 people were displaced in the first four months of 2008 and 780,000 since the signing of the DPA in 2006.<sup>19</sup>

### Failure to win the acceptance of all citizens

While the Darfur conflict is often characterized as a clash between “Arab” and “non-Arab” African people, it is rather the ways in which both the rebel movements and primarily the Sudanese Government have manipulated ethnic tensions that have served to polarize much of Darfur’s population along ethnic lines. These tensions create shifting alliances among the government, Arab and non-Arab tribes, and rebel groups, as well as internecine conflicts among competing Arab groups and among rebel factions.

In its report “Darfur 2007: Chaos by Design”, Human Rights Watch (HRW) referred to the Government’s stoking of chaos and, in some areas, its exploitation of inter-communal tensions as an effort to “divide and rule” and to maintain military and political dominance over Darfur.<sup>20</sup> HRW indicated that state institutions have failed to provide protection to Darfur’s beleaguered population, serving rather as the agents of repressive policies and practices.

### Failure to protect the Darfuris’ right to life and security

In its resolution 9/17 issued on 18 September 2008, the UN Human Rights Council stressed the “primary responsibility of the Government of the Sudan to protect all its citizens, including all vulnerable groups”.<sup>21</sup> However, despite some action taken by the Government, the people of Darfur were reported to remain largely unprotected. Not only has the state in Sudan failed in its primary responsibility for guaranteeing the life and safety of its citizens in Darfur, but government air and ground forces have repeatedly conducted indiscriminate

attacks in areas of rebel activity, causing numerous civilian deaths and injuries.<sup>22</sup>

**Lack of civilian protection:** UN sources indicate that from January to July 2008 there were indiscriminate Government aerial bombardments of civilian towns specifically in West and North Darfur.<sup>23</sup> The attacks led to killings; widespread looting and destruction of civilian property, including hundreds of houses; the theft and killing of large numbers of livestock; as well as the displacement of thousands of people. In the Northern corridor of West Darfur, the Government embarked on a major military campaign using armed militias and Sudan Armed Forces (SAF) ground troops, supported by SAF air assets, to regain control of areas that were seized by the armed group, Justice and Equality Movement (JEM). In its campaign, the Government failed to discriminate between civilians and combatants belonging to armed groups. In April and May 2008, in North Darfur, ten civilian villages including cultivated land were subjected to aerial bombardments in violation of the principle of distinction.

**Weak police response:**<sup>24</sup> The Government of Sudan’s systematic failure to address these abuses is reflected in its reluctance to ensure that Darfur’s regular police have even minimal capabilities. The state has failed to invest in its own police force, which is too weak to disarm the Janjaweed, let alone protect people from rape and robbery and other crimes. Some police officers themselves commit such abuses with impunity. Thus, the militia forces that subject Darfur to violence remain strong, active, and unchallenged. Some former militiamen have been incorporated into civil defence forces, such as the Central Reserve Police, whose duty is to protect displaced persons and other civilians.

### Failure to comply with international charters on human rights

In its resolution 9/17 issued on 18 September 2008, the UN Human Rights Council expressed its “deep concern at the serious violations of human rights law and international humanitarian law in Darfur”.<sup>25</sup>

**Summary executions, arbitrary detention, disappearances, torture:** According to UN sources, the Government's security apparatus continued to commit human rights violations including arbitrary arrests, arbitrary detention, torture and ill-treatment of detainees.<sup>26</sup> Individuals targeted included community leaders and people perceived to have ties with rebel movements. Violations of the right to a fair trial are endemic. Individuals are often arrested and kept incommunicado for prolonged periods of time by the National Intelligence and Security Services (NISS), frequently in unofficial detention centres known as "ghost houses". Detainees are often held without being charged, thus not allowing them to legally challenge their detention.<sup>27</sup>

For example, according to UN sources, the attack on 10 May 2008 by the Justice and Equality Movement (JEM) on Omdurman, Khartoum, was followed by hundreds of arrests in Khartoum by the NISS, mainly targeting Darfuris.<sup>28</sup> The Government responded to the events of 10 May by making numerous arrests. According to police figures, in the Khartoum area 481 people were detained and then released again in the immediate aftermath of the attack. It was also reported that several hundred civilians were arbitrarily arrested and detained without charge, in addition to combatants and some 90 alleged child combatants. At the end of July, two and a half months after the attacks, some 500 were feared to still be in NISS detention, their whereabouts unknown. Other sources report even higher figures of detainees remaining in custody in connection with the attack. Those held reportedly include human rights activists, journalists, family members of the accused, and women. As the United Nations still does not have access to places of detention in Khartoum, the exact number of detainees is impossible to verify. However, most appear to be of Darfuri origin and there is credible evidence that many were arrested on grounds of their ethnicity.<sup>29</sup>

As of 20 August 2008, 50 alleged members of the JEM had been sentenced to death by Special Counter-Terrorism Courts set up by the Ministry of Justice in the aftermath of the 10 May 2008 attack. The judicial process in these courts failed to satisfy international fair trial standards. Most of the accused were allowed access to lawyers only after their trials had begun, and

in some cases the accused persons alleged that they had been forced to confess under torture and other ill-treatment.<sup>30</sup>

### **State abuse of its monopoly of the use of force and coercion**

The continued failure of the Sudanese state to protect the civilian population from the fighting, distinguish between combatants and civilians, and use proportionate force during clashes and military operations has exacerbated the spread of violence.<sup>31</sup>

**Disproportionate use of force:** There are several reports of air attacks by Government forces, leading to extensive civilian casualties. These include attacks on civilians in Saraf Jidad, Sirba, Silea and Abu Suruj in West Darfur in January and February 2008 and the bombing of a number of villages in North Darfur, such as the air attacks on Helif village on 29 April or on Ein Bissar and Shegeg Karo villages on 4 May 2008.<sup>32</sup> In May alone such air strikes reportedly caused the death of 19 civilians and injury of another 30, including women and young children. Information suggests that the bombing of these villages was indiscriminate, and the impact on civilian communities was disproportionate to any military advantage likely to be gained as a result of the strikes.<sup>33</sup>

### **State retaliation to 10 May Justice and Equality Movement attack on Omdurman:**

On 10 May 2008 armed members of the Darfuri Justice and Equality Movement (JEM) launched an attack on Khartoum. The United Nations Secretary-General condemned the attack and expressed concern over its possible effect on civilian lives and property.<sup>34</sup> The fighting that took place in the Omdurman district of Khartoum entailed violations of international human rights and humanitarian law reportedly committed by both sides.

The Government's response in the weeks after the attack entailed serious violations of civil and political rights.<sup>35</sup> There were reports of grave violations by combatants on both sides, including the targeted killings of civilians, indiscriminate fire, the disproportionate use of force and the execution of wounded or captured enemy combatants.<sup>36</sup> The Government launched

*Violations of the right to fair trial are endemic*

*Individuals are often arrested and kept incommunicado in what are known as "ghost houses"*

*One of the major obstacles to improving the human rights situation in Darfur remains the widespread absence of justice and accountability*

*Despite some Government steps to reform laws, the human rights situation on the ground remains grim*

several airstrikes and bombing raids against villages suspected of harbouring JEM fighters, which caused heavy civilian casualties.

Such imprecise bombings of populated areas violate the prohibition under international humanitarian law of attacks that do not discriminate between military targets and civilians. Persons knowingly or recklessly conducting or ordering such attacks are considered to have committed war crimes.<sup>37</sup>

### **Failure to operate within institutional checks and balances**

#### ***Lack of accountability for human rights violations:***

One of the major obstacles to improving the human rights situation in Darfur remains the widespread absence of justice and accountability for violations and the impunity this promotes. This is manifest in the lack of follow-up to incidents in which no investigations are carried out to identify the perpetrators and bring them to justice, as was the case with the 12 May 2008 Central Reserve Police attack on Tawilla. According to UN sources, no legal action was taken against the perpetrators, including those in command, and no compensation provided to the victims.<sup>38</sup> The prevalence and negative effects of impunity are only too apparent in the many incidents of sexual and gender-based violence in Darfur and in other grave violations which are prohibited by international law.<sup>39</sup>

#### ***Enshrining legal immunities for state agents in law:***

Legal immunities for armed state agents continued to be enshrined in Sudanese law. The new Police Act touches on immunity of police personnel in its Article 45: "1) No criminal procedures shall be taken against any Policeman, who committed any act which is deemed to be an offence, during or because of executing his official duties and he may not be tried except by a permission issued by the Minister of Interior or whoever authorizes. 2) The State shall bear the payment of the compensation or the blood money for any police man in case he committed an act which is considered a crime during or because of his official duty. 3) Any Policeman who faces any legal procedures, which require placing him under legal

custody, shall be confined to the police barracks, pending the decision on procedures; and the regulations, shall specify the placing him to confinement." The Government has confirmed that the Act gives police personnel procedural immunity which shall be lifted automatically at the request of the aggrieved persons. It also provides for accountability procedures in cases of transgressions.<sup>40</sup>

***Insufficiency of state reforms:*** Despite some Government steps to reform laws, the human rights situation on the ground remains grim, with many interlocutors reporting an overall deterioration in the country.<sup>41</sup> Human rights violations and breaches of humanitarian law continue to be committed by all parties. It is essential that impartial, transparent and comprehensive inquiries be held to investigate allegations, identify perpetrators and hold them accountable. The Special Rapporteur on the situation of human rights in the Sudan reiterated her request that the Government of National Unity make the reports of investigative committees public in order to combat impunity and promote the rule of law.<sup>42</sup>

Sadly, justice in Darfur is undermined by a lack of resources and political will. In the first quarter of 2006 there was one prosecutor for the whole of West Darfur, and for extended periods of time the area had no more than two or three prosecutors. In July 2007, more prosecutors reportedly arrived. However, most of them are based in large towns, remote from detainees and complainants in distant villages and towns, who remain in need of a fair, accessible and functional justice system.<sup>43</sup>

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## Part II: THE PATH TOWARDS REFORM

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Given the limitations discussed in Part I which compromise the Arab states' ability to underwrite human security, it is important to consider the prospects for a transformation to the rule of law in these countries. Reforming the state's governing apparatus in order to provide guarantees against discriminatory practices and human security violations is the first step on this long road.

The last decade witnessed several attempts by Arab governments to address the question of reform. At the same time, the role of political movements and civil society increased noticeably. And, in the aftermath of 9/11, some Arab countries came under external pressure from Western powers to embark on political reform. All three actors have played different roles in pursuing reform efforts in the Arab countries.

The Arab Youth Forums held in conjunction with this Report produced a damaging indictment of the region's political shortcomings, faulting the general environment on multiple counts. Analysing the Arab countries' insecurities, participants singled out the exclusion of civil society from decision making, the absence of political freedoms, the politicisation of Islam, the absence of good governance, terrorism, the lack of peaceful rotation of power, the suppression of pluralism, obstacles young people face in attaining public office, the oppression of minorities, and stifling bureaucracy and wide corruption in governments. Many remarked that the forms of democracy found in the Arab countries were little more than make-believe and pageantry; however, several observed that the region cannot import democracy from abroad but has to encourage its evolution within Arab culture.

Young people from the Mashreq pointed to the weakness of political opposition groups, which, they said, simply act out an empty role. This criticism was echoed by some participants from the Maghreb. There was general agreement that some of the greatest threats to Arab human security come from authoritarian regimes; restrictions on core freedoms; and deficits

in institutionalisation, transparency and accountability. The Lebanese participants concurred with their peers in the Maghreb states that foreign meddling deepens internal political differences in the region. The Egyptian and Sudanese participants cited detention without charge and torture, particularly of students and members of opposition groups, as growing threats.

### 1. The drive for reform from governments

A spate of political reforms initiated by leaders has cascaded across the Arab countries in recent years. They include for example the establishment of representative assemblies in United Arab Emirates, Oman, and Qatar; the return of an elected parliament in Bahrain; the holding of multi-candidate presidential elections in Egypt in 2005; and the organisation of partial local elections in Saudi Arabia in 2006 (limited to men only). Reform initiatives also included the adoption of a code of personal status law in Algeria and Morocco, and the creation of the Justice and Reconciliation Commission in Morocco.

The motivation for such reforms is widely debated. To some, it appears that governments are bowing to necessity: mounting popular unrest and agitation have pressured them to make changes to reduce the likelihood of civil disturbance. Others believe that "advice" from foreign strategic allies to make concessions to popular demands, in the wake of the 1991 Gulf War or the 2003 invasion of Iraq, largely account for these developments. Whatever their origins, these reforms, despite their significance, have not changed the structural basis of power in the Arab states, where the executive branch still dominates, unchecked by any form of accountability. Certainly, the value of the reforms introduced by the governments has been diminished by constitutional or legislative amendments that curtail citizens' rights in other areas, in particular the right to organise and to participate in free and fair elections.

*A spate of political reforms initiated by leaders has cascaded across the Arab countries in recent years*

*The motivation for such reforms is widely debated*

*The most important dividing lines within the ruling elites reflect generational differences*

Along with a new constitution in Iraq came the extension of the state of emergency that permits the suspension of constitutional provisions relating to freedoms. In Egypt, amendment of Article 76 of the constitution on presidential elections so as to allow multiple candidates was followed by a law that limited the right to stand as a candidate to the leaderships of parties existing when the law came into force. The state of emergency was extended for another two years or until the issuance of an anti-terror law, when the extension came up for review in May 2008. This was followed by the agreement to constitutional amendments making it permissible to transfer civilians to military courts and ban any party formed on a religious or class basis, as well as any political activity on a religious basis.

In the same fashion, in Algeria, on the heels of agreement on the Charter for Peace and National Reconciliation, which addressed the effects of the violent confrontations of the 1990s, came the extension of the period of the presidency by two years, the removal of the limit on the number of times the president could stand for election, and the continuation of the ban on the Islamic Salvation Front. There was a similar move in Tunisia which amended its constitution to increase the maximum allowable age of the president, and to remove limits on the number of presidential terms. The Islamic-oriented Renaissance Party remained outside the frame of legally recognised parties.

Qatar, Saudi Arabia, Sudan and the United Arab Emirates (UAE) took the same pattern: the first proclaimed a constitution calling for the election of a State Council and then temporarily removed citizenship from around six thousand citizens who became stateless on the pretext that there was no proof they belonged to the nation; the Sudanese government proclaimed a new constitution after the ratification of the Naivasha agreement, and subsequently introduced a law that gave it wide power to recognise or dissolve political associations; Saudi Arabia allowed the formation of a human rights organisation, but restricted elections to some cities and only to local councils; the government of the UAE reformulated the ground rules of the National Unity Council, half of whose members would be elected from only two thousand

citizens chosen by the seven Emirati rulers by means of an indirect election.<sup>44</sup>

Journalists and academics often speculate that there are multiple wings within the Arab states' ruling elites. Some go to great lengths to describe these wings—the one characterized as hard-line, the other as reformist—and to link the adoption of reforms with what they see as the rising influence of the reformist wing. It is true that members of ruling elites, and even their various institutions, do not always and in all circumstances agree on all details of general policy. However, it is by no means clear that such differences revolve around the transition to greater democracy. Rather, the most important dividing lines within the ruling elites of Arab states—that is, those which are visible to people outside them—seem to reflect generational differences, institutional power-bases, and ideological affiliations.

Ideological divisions within the Arab countries' political elite are also a hindrance to reform. The most important of these separates the Islamic movements, wedded to restructuring the political system in their respective countries according to their conception of Islamic law, from most members of the ruling elite, who may show respect for the principles of this law, but who are open to other sources of guidance in developing the political system. This division is clear in the states which permit the Islamic movements to be politically active, even if not necessarily through recognised parties. While Islamic movements in the opposition demand more political freedom, the key difference between them and the ruling elites is over how to adopt Islamic laws and how each side understands the rulings of these laws.

## **2. Demands for reform: societal groups**

Could transformation come about as a result of political mobilisation by societal groups that see their interests and those of the state converging around the rule of law? In the Arab countries there are four forces that could have a role in that respect—political opposition groups (with the Islamic movements to the fore), civil society organisations, business people and, lastly, citizens, when they are allowed to

participate through the ballot box. What are the prospects for change originating in these quarters?

### **Political opposition forces and the Islamic movements**

In most Arab states that evince some form of multi-party system, such as Algeria, Egypt, Jordan, Tunisia, and Yemen, or in those where the political system accommodated political pluralism since independence, such as Lebanon and Morocco, the Islamic movement represents one of the main strands of political opposition. Moreover, the Islamic movements have been part of the main governing group in Iraq since the fall of Saddam Hussein, in Sudan since the coup of August 1989, and in the Occupied Palestinian Territory following the election of 2006. Some Opposition Islamic movements support demands for the right to form political parties and to organise, freedom of thought, fair elections, and limits on the power of the executive.

Arab governments have followed different policies to deal with the Islamic movements. These include adopting some of their demands and allowing them the right to organise and participate politically alongside other political parties, as is the case in Iraq, Jordan, Lebanon, the Occupied Palestinian Territory, Yemen, and, to a certain extent, Morocco. Non-party Islamic associations are also present in Bahrain and Kuwait. However, Egypt and Tunisia have banned the Islamic movements outright, and the Algerian government has banned the main strand of this movement. Nevertheless, the Egyptian government allows individuals belonging to the Muslim Brotherhood to take part in elections as independents. In all cases where Arab governments make concessions to political pluralism, they nonetheless take precautions against a possible victory of Islamic movements in parliamentary elections and use methods both legal (using their majority in representative assemblies), and administrative, to prevent them from coming to power.

Despite the Islamic movements' positioning on the political stage, transition to democracy is not their strategic demand. It is, rather, their path to power, which will then enable them to implement their

strategic goal of rebuilding Arab societies on their vision of Islam. Without commenting on the intentions of their leaderships, doubts about them are common among some groups in the Arab countries and abroad. The chief concern is that these movements would rescind the very freedoms they need in order to come to power once they have gained it. Freedom of belief, opinion and expression and a range of personal freedoms have, at different times, been singled out by some Islamic opposition leaders as inconsistent with what they conceive of as true Islam. The manifestos of some of these movements, such as the programme of the Muslim Brotherhood in Egypt, have not dispelled such doubts.<sup>45</sup> On the other hand, given the Islamic movements' popular standing, it is not conceivable to continue denying the avenue of legally recognised parties to those groups that reject violent methods.

### **Civil society organizations**

Civil society movements are active in several Arab states where they have developed a political identity and have begun to make their views felt. While stiff resistance to calls from civil society organizations (CSOs) for transparency and greater freedom of expression in Tunisia and Syria has blocked their activities in those countries, movements in Egypt and Lebanon have attained more far-reaching influence. In Egypt the *Kifaya* movement's tactics inspired citizens to use mass protest to press their demands on the government. This was reflected in the unprecedented wave of mass protests involving a spectrum of social classes and groups which followed, particularly in 2007 and 2008.

Arab governments respond differently to pressures from rights-based CSOs. Some ban their activities altogether; others tolerate them while making it as difficult as possible for them to operate by tying them up in red tape, interposing obstacles to their registration and scrutinizing their finances, especially from foreign sources.

Most organisations live with these restrictions and try to work around them. For most, the main avenues open for promoting democratic development in the Arab countries are analysis and advocacy efforts such as producing position statements on freedom

*Arab governments have followed different policies to deal with the Islamic movements*

*It is not conceivable to continue denying the avenue of legally recognised parties to those groups that reject violent methods*

*Arab CSOs play a significant role in spreading awareness of human rights issues*

*The general reluctance of political parties to work with CSOs considerably hampers their efforts*

issues, consciousness-raising through reports monitoring the state of human rights in their countries, and training sessions and conferences on human rights questions. Some organizations also make use of the law when opportunities materialize to stop violations through the courts.

Arab CSOs play a significant role in spreading awareness of human rights issues by expanding the agenda and by demonstrating public concern for that agenda through their intervention. Their public image is however often tarred by Arab governments, which characterize them as agents of foreign powers dependent on foreign funding. They frequently encounter government-imposed restrictions, obstacles and harassment, and hence have limited membership. The general reluctance of political parties to work with them considerably hampers their efforts to propel Arab societies towards the rule of law.

### **Business people**

The private sector does not generally play an independent political role in the Arab countries, although it has begun to emerge in the political life of the region's growing market economies. So far, business people have not gone further than becoming

junior partners to the state bureaucracy. The main reason why they are not greater driving forces lies in the particular economic weight of the Arab states—which exceeds that found in other developing regions. The ratio of the states' consumption to GDP and of their revenues to GDP is greater than that of counterparts among other regions of the South. This gives Arab states a control over economic life unmatched in most developing countries. This control relies for the most part on oil, most of whose extraction revenues go to the government, and which is the main source of direct or indirect income for the oil-exporting Arab states. A number of other Arab states such as Algeria, Egypt, Libya, and Sudan preserve a large public sector, whose role is still influential in the economy despite their moves to transfer state-owned assets to the private sector and foreign companies.

The fact that the ratio of government revenues to GDP for the states of the Middle East and North Africa (MENA) is higher by a significant degree than in other countries of the South in general may serve to clarify these observations. In 2005 this ratio reached 25.6 per cent in the MENA states, while in low-income countries it was 13.0 per cent; ten years previously (1995) the average for the former states was

#### **Box 3-6**

#### **The Second Declaration of Independence: towards an initiative for political reform in the Arab world**

Many Arab Civil Society organizations took the Arab Summit in Tunis in May 2004 as an occasion to reinforce their calls "outside the tent" during a conference they convened in Beirut in March 2004. Fifty-two organizations from thirteen Arab countries attended the conference. The initiative for the meeting came from the Cairo Institute for Human Rights Studies, Human Rights Watch, and the Palestinian Human Rights Organization. The conference issued a document called the Second Declaration of Independence, which summarized civil society demands for political change, while rejecting suggestions for reform from abroad, underlining that these reflected foreign, not Arab interests. The Declaration set out principles of political reform in the Arab region. It called for:

- Respecting the right to self-determination of all people.
- Adhering to the principles of human rights, and rejecting all interpretations based on cultural particularism and the manipulation of nationalism.
- Rejecting the fragmentation of human rights and the prioritization of certain categories of rights over others.
- The tolerance of different religions and schools of thought.
- Establishing sound parliamentary systems.
- Incorporating guarantees in Arab constitutions for political and intellectual pluralism.
- Rejecting violence in political life.
- Opposing the state of emergency other than in the event of war or natural disaster.

Source: Cairo Institute for Human Rights Studies 2004.

26.1 per cent, it stood at 13.3 per cent for low-income developing countries, and for the middle-income developing nations it was 17.2 per cent.<sup>46</sup> According to the Joint Arab Economic Report (2006), this ratio in 2005 reached its peak in the OPEC-member Arab states, at 68.04 per cent in Libya; 48.62 per cent in Saudi Arabia; around 40 per cent or slightly less in Algeria, Oman, Qatar, and Kuwait; and between one-third and less than one-fifth in the other Arab states. The lowest rate was in Sudan where it reached 17.84 per cent. The explanation for the rise in this ratio is that oil, most of the revenues from which go to the state, represents 71 per cent of total government income in the Arab states.<sup>47</sup>

This political economy translates into government domination of the private sector in most Arab states. The government remains the major partner, either because it has its own roots in the private sector, as is the case in the Gulf states, or because banks owned by the state are the source for capital accumulation in large private-sector companies, or because government contracts are the source of profits for companies which carry out the projects.<sup>48</sup> In contrast with the private sector's role in supporting democratic transition in some Latin American and South Asian states, notably South Korea, the upper echelons of the private sector in the Arab states, with limited exceptions, are partners of growing influence in government. Even where the Arab governments are in transition to a degree of political plurality, business people tend to support the ruling party or family. Thus the kind of liberal political parties known in the West which enjoy an influential social base among business people, or within a progressive middle class, are missing from the political opposition. As a result, Arab entrepreneurs have not been prominent in the political reform process. Perhaps they have been content with the political influence and economic space they have obtained through the move to market policies in the Arab states.

### The role of Arab citizens

As individual citizens, few Arabs feel they have any power to change current conditions in their country through political participation. This seems clear from the

In the Middle East, the private and public sector do not have distinctive and independent roles to play; rather, the dividing line between what is public and what is private is not clearly defined. One needs to get away from the notion of the private sector in the context of western societies. In the West, the system of law is much more developed, and emphasis on transparency and accountability of government and corporations alike provides a clearer sense of division. This is not true of the Middle East/Gulf. The 10 largest listed companies in the GCC remain state-owned (e.g. SABIC, Emirates Bank Group, Qatar Telecom).

The private sector is also dominated by family businesses that have a close relationship to the state, and it is this relationship which prescribes their attitude toward political reform. This is, in fact, neither unusual nor surprising: in all industrial countries, major business families have found it convenient to nurture close ties with holders of political power, and sometimes, directly run for office. The demand for greater accountability and political reform is born out of the progressive widening of the ranks of business entrepreneurs, and the increasing competition between business groups. In some instances, this has led to clear demands for greater transparency and accountability in government decision making, primarily with respect to business interests.

The above having been said, the private sector does have a reformist role as governments fail in most cases to establish and execute reforms by themselves. The private sector has to reach beyond its natural boundaries and support governments to encourage reform measures in areas that directly reflect on their interests such as judicial reforms. The private sector could start by establishing non-political associations or task forces to represent civil society. It could issue initiatives whereby it acts as a partner with government to establish effective reform measures.

Source: Sager 2007.

decline in levels of political participation in some of the most stable Arab states. The rise in levels of participation in other states is linked to the successful mobilisation of voters along sectarian or tribal lines which have no relation to general political issues, as in Kuwait and Yemen, or because of the novelty of contested elections as in Iraq, and in Mauritania after the temporary abandonment of military rule in May 2007. Lastly, the rise in levels of participation in states such as Tunisia or Yemen has not necessarily led to advances in the political reform process in those cases.

Popular demand for democratic transformation and citizens' participation is a nascent and fragile development in the Arab countries. These goals have not been high on the list of demands by the majority of protest movements over the last three decades. Historically, among the most important waves of public demonstrations in Arab cities were those against the economic measures of some Arab

*Arab entrepreneurs have not been prominent in the political reform process*

**Table 3-3** Electoral turnout in eighteen Arab states between 2003 and 2008

State	Parliamentary	Presidential	Local
Algeria	35.5% (2007)	59.3% (2004)	--
Bahrain	72% and 73.6% (two rounds in 2006)	--	61% (2006)
Djibouti	72.6% (2008)	78.9% (2005)	--
Egypt	31.2% (2007) 28.1% (2005)	23% (2005)	--
Iraq	79.6% (2005)	--	--
Jordan	54% (2007)	--	56% (2007)
Kuwait	59.4% (2008)	--	Less than 50% (2005)
Lebanon	46.4% (2005)	--	--
Mauritania	73.4% and 69.4% (two rounds in 2006) 98.2% and 97.9% (two rounds in 2007)	70.1% and 67.5% (two rounds in 2007)	73.4 and 69.4% (two rounds in 2006)
Morocco	37% (2007)	--	54% (2003)
Oman	62.7% (2007)	--	--
OPT	77.6% (2006)	66.5% (2005)	--
Qatar	--	--	30% (2007)
Saudi Arabia	--	--	70% (2005)
Sudan	--	86% (2000)	--
Syria	56% (2007)	95.8% (2007)	49.5% and 37.8% (2007)
Tunisia	91.4% (2004)	91.5% (2004)	82.7% (2005)
Yemen	75.9% (2003)	65.1% (2006)	65% (2006)

Source: UNDP/RBAS 2008; IPU 2008; Egypt SIS 2008 et al. (See Statistical references).

governments in response to International Monetary Fund prescriptions, as in Egypt during January 1977, Morocco in 1981 and 1984, Tunisia in 1985, Algeria in 1988, and Jordan in 1989. In some cases, such as Algeria and Jordan, these protests led to the introduction of significant political reforms that were not sustained in some cases. These reforms, however, were equivalent to compensation given to citizens for allowing the same economic policies subsequently, albeit more gradually, to proceed. The absence of democracy as the core and chief demand of organised opposition movements, of mass demonstrations and of voters in general, has long lulled Arab governments into believing that no significant internal pressure for democratic evolution exists and that it therefore requires no serious attention.<sup>49</sup>

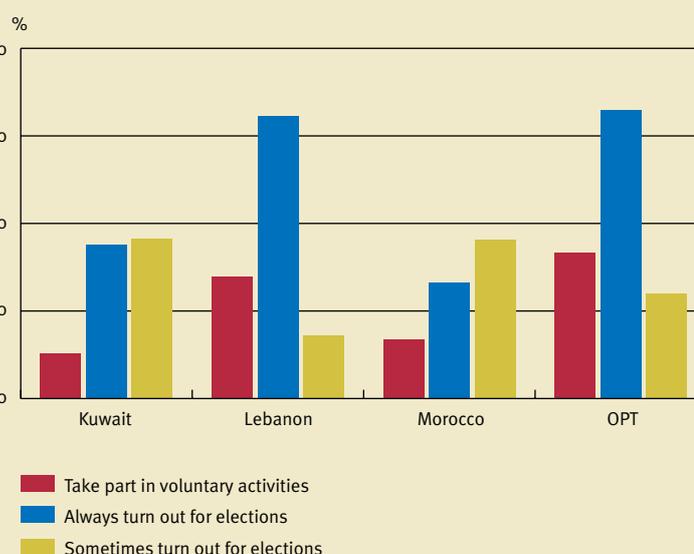
### 3. External pressures

With limited, and sometimes faltering, prospects for a transition to the rule of law through its internal dynamics, the region remains vulnerable to external pressures for political transformation. Repeated calls have been made by Western powers with strategic interests in the Middle East to respect human rights, mobilize civil society and accelerate political reform.

#### Box 3-8

#### THE HUMAN SECURITY SURVEY – Political participation versus voter apathy

Among the four countries sampled, the survey revealed comparatively low interest in elections among citizens in Morocco, one of those Arab states that have made most progress towards political liberalisation. Evidently, for this group of citizens, participating in elections was no longer considered a novel or decisive way to influence the course of the state. Interest, as indicated by turnout, was higher in two countries where popular political participation has recently consolidated the rise of sectarian forces (Lebanon), or the deepening of political schism (Palestine). In Kuwait, the small proportion of the sample interested in voluntary activities and political participation suggests quite a degree of public apathy.



The most significant initiatives of this kind have occurred in the context of the 1995 Barcelona Process and the G8's Broader Middle East and North Africa initiative of July 2004. To these may be added moves by the former US administration, such as the Middle East Partnership Initiative, as well as policy statements by the former American president calling for democratic transformation in the Arab states.

US policy discourse on reform in the Arab countries in the last few years has not been consistent. In 2004 it strongly advocated for specific democratic changes in "the Greater Middle East". Subsequently, US policy favoured more guarded policy statements as it found it necessary to strengthen alliances with undemocratic

but cooperative Arab governments in the so-called "war on terror". After 2006, US diplomatic efforts focused on other priorities. The target of such diplomacy was not mainly political reform in the Middle East, as had predominantly been the case in 2004 and 2005. Rather, the goals were to overcome Arab reservations about a proposed conference on peace in the Middle East that would bring Arab, Israeli and Palestinian leaders together in the United States; to secure Arab help in stabilizing the Iraqi government; and to gain Arab support for international efforts to make the Iranian government abandon its uranium enrichment programme.

The electoral victories for some Islamic movements in elections in recent years

*The region remains vulnerable to external pressures for political transformation*

**Box 3-9**

**AZMI BISHARA\* – Human rights and citizenship: the first building block of a nation**

Citizenship is the flip-side of sovereignty. There is no complete sovereignty, in the modern meaning of the term, without an equivalent and meaningful citizenship. A secure society guarantees its people stable citizenship, does not treat the latter as a gift to be given and taken away, protects its people from arbitrary and tyrannical authority, provides for their health and education and protects them in old age. Creating such a society forms one of the most important elements of nation-building.

This is particularly true in the case of developing countries, with their weak institutions and emaciated public spheres, which are still deeply caught up in the process of self-realization. Many of these states have succumbed to the belief that creating an army in uniform, a centralised government, a nationalized education system, a "unified" official history, and a national airline is what it takes to build a nation.

The challenge of forming a secure society become more acute under conditions of sectarian and ethnic pluralism which can turn all politics into identity politics and a horizontal conflict among religious, cultural, or "ethnic" groups. It is not only meaningful citizenship, i.e., that which goes beyond the formalistic, that prevents national unity from collapsing. The more components are added to citizenship rights, the larger the meaning of citizenship becomes. Its diversity can be a society's strength.

The best that may be asserted at the Arab level is that the political and civil rights of citizenship are incomplete. This empties citizenship of its content. Indeed, in a number of Arab cases, citizenship means very little.

Indeed, in states lacking a broad middle class, where growth and privatisation in some cases and corruption in others, are accompanied by widespread impoverishment, a human rights discourse on civil and political rights without a corresponding debate over social rights is meaningless.

The right to work, the right to medical treatment, the right to education, and the right to appropriate housing are examples of social rights. They can only be guaranteed by institutions maintained by the state and financed by a national economy from a tax base. The exception, of course, is the rentier state which uses handouts to buy public acceptance with minimal representation. These issues are linked and mutually inter-related components.

Where a broad middle class is either non-existent, eroding or in atrophy, as is the case in most Arab states, and thus cannot claim its social rights, the latter's absence can polarize the nation.

Members of the privileged class receive medical care in the best hospitals at home or abroad and are educated in private schools. The poor are unable to visit a doctor or obtain treatment or ensure a decent life for their children or themselves in old age. They depend on mass public education the quality of which has dropped through neglect and under-investment. These stark and ever-expanding divisions in meeting needs and providing the basics and fundamentals of a decent life find expression in cultural and religious and even linguistic divides: for example, the orientation of private education for the privileged towards the English language versus the domination of conservative religion over the official education system in Arabic. In both cases, over time, common citizenship loses its meaning; the ruling power stays afloat by extolling national unity against parties and pluralism or against other states or external and internal enemies, or against various conspiracies.

Shared social guarantees and the institutions that back them up, financed by public revenue in the public interest, not only make the difference between misery and a decent life; they are also among the most important components of nation-building in our times.

\*Former National Democratic Party member of the Israeli Knesset, and Palestinian political writer.

*A wide gap exists between the expectations of Arab citizens and what they are given on the ground*

reduced, unsurprisingly, the enthusiasm of external parties for reforms that bring to power groups considered unfriendly to their interests. In 2007, President Bush acknowledged the difficulty of a shift to democracy that, in his words, allowed the enemies of democracy the chance to regroup and wage a campaign against the recently created democracies in the region, especially in Iraq and Lebanon.

But whatever motives drove the adoption of democratic reform as the first article of new policies towards the “Greater Middle East”, its relegation has confirmed the worst fears of Arab reformers. Their conclusion is that, from the perspective of outside powers, democracy in the region only matters to the extent that it achieves their own security and other goals. Where it does not, security and those other goals take precedence, and reform may find itself friend-less.

Mirroring this trend, on the regional level, talk of reform no longer dominates the communiqués of the Arab summits. Here, one might compare the resolutions of the 2004 Tunis Meeting titled the “Development and Modernization Summit”, with those issued later in other Arab summits. The former discussed civil society, women’s rights, and human rights as major issues, in addition to ratifying the Arab Charter on Human Rights. The other summits, however, adopted an apologetic and defensive stance, stressing the importance of Arab security, the dangers threatening that security, and the importance of maintaining the Arab identity.

## Conclusion

This chapter examined the role of the Arab states in guaranteeing human security as defined in this report. It assessed the performance of Arab states against four criteria and concluded that there is a human security deficit in state provisions despite the constitutional commitments of Arab states and the international charters signed by most of them.

The civil state—that is, one which is ruled by laws that respect civil and political rights—is the best safeguard of human security. This chapter underlines that a wide gap exists between the expectations of Arab citizens for the protection of their

rights and freedoms, and what they are given on the ground, even if the distance between hopes and reality is not the same in all Arab states.

The chapter suggested that ethnic, sectarian, tribal and religious diversity does not in itself constitute a threat to human security. However, it is evident that, in the Arab countries, the politicization of identities leads to polarization, violence and armed conflict. Active tolerance of diversity is the only certain means of alleviating the potential eruption of conflicts along communal lines. The responsibility for containing volatile situations lies within the Arab states, which need to manage their own diversity through policies of inclusion and social equity. Peaceful co-existence in multi-ethnic and multi-sectarian societies rests on evolved forms of citizenship. The catastrophic consequences of failing to pursue this path have become only too apparent in the collapse of entire states.

The chapter, furthermore, discussed the limitations of factors contributing to the reform process. Reforms introduced by Arab governments are mostly driven by the concern to maintain control over the population rather than to enhance human security. The state still privileges its own security at the expense of that of society. Society itself, especially its economic elites, civil society and opposition groups, is weak and lacks a clear reform agenda. For its part, the international community has adopted damagingly intrusive policies and initiatives that have set back Arab reform, first through aggression and then through equivocation. The overall result is that the Arab states still lag behind other developing countries in adopting serious measures for enhancing the human security of their citizens.

Reform from within remains its first and best hope for meaningful security in Arab countries, starting with the essential rights of the people. This reform cannot be imposed from outside; neither can democratic models be imported wholesale. Arab countries need to adapt different institutional forms suited to the context of each of them—as long as these forms respect human rights in full, protect freedoms, guarantee popular participation and ensure both majority rule and minority rights. All social groups should be allowed to organize and compete in the public space as long as they respect the right to differ, and neither

*Reform from within remains the first and best hope for meaningful security in Arab countries*

resort to violence nor abort the democratic process.

In all this, the relationship between Arab reformers and their international supporters has to be conducted in a spirit of partnership, not one of spineless dependence or crude interference. In the Arab

countries and abroad, it has to be recognized that, on both sides, regressive public forces, vested interests, and misperceptions fed by prejudice could put sizable obstacles in the way of building the 21<sup>st</sup> century Arab civil state on foundations of tolerance, peace and security.

## Endnotes

- <sup>1</sup> Clapham 1985.
- <sup>2</sup> Marshall 1977.
- <sup>3</sup> Van Hensbroek 2007.
- <sup>4</sup> KUNA 2009 (in Arabic).
- <sup>5</sup> UNDP 2007.
- <sup>6</sup> UNDP and Article 19 Global Campaign for Free Expression 2007.
- <sup>7</sup> AOHR 2008 (in Arabic).
- <sup>8</sup> Human Rights Council. Working Group of the Universal Periodic Review. First Session. Geneva 7-18 April 2008. Summary prepared by the UN High Commission on Human Rights according to paragraph 15(c) of the annex to Human Rights Council decision 1/5. This summary was issued on the four Arab states of Bahrain, Algeria, Tunisia, and Morocco. See p.4 of each of these reports. The periodicity of the review for the first cycle being four years, information reflected in these reports mostly relates to events after 1 January 2004.
- <sup>9</sup> AOHR 2008 (in Arabic).
- <sup>10</sup> Wolfe 1977; and Bienen 1978.
- <sup>11</sup> Hafez 2003; Bayat 2005; The Emirates Centre for Strategic Studies and Research 2004.
- <sup>12</sup> UNODC 2005.
- <sup>13</sup> See the reports of the UN Human Rights Council on Algeria, Bahrain, Morocco, and Tunisia. Summary prepared by the UN High Commission on Human Rights according to paragraph 15(c) of the annex to Human Rights Council decision 1/5. Human Rights Council. Bahrain Report pp.4-5, Tunisia Report pp. 2-3, Algeria Report p.6, and Morocco Report p.4.
- <sup>14</sup> Kawakibi 2004 (in Arabic).
- <sup>15</sup> UN 2005.
- <sup>16</sup> UN 2005.
- <sup>17</sup> UN Special Rapporteur on the situation of human rights in the Sudan, 2008l.
- <sup>18</sup> UN Special Rapporteur on the situation of human rights in the Sudan, 2008k.
- <sup>19</sup> UN Special Rapporteur on the situation of human rights in the Sudan, 2008k.
- <sup>20</sup> HRW 2007.
- <sup>21</sup> UN Human Rights Council 2008h.
- <sup>22</sup> HRW 2007.
- <sup>23</sup> UN Special Rapporteur on the situation of human rights in Darfur, 2007d.
- <sup>24</sup> HRW 2007.
- <sup>25</sup> UN Human Rights Council, 2008h.
- <sup>26</sup> UN Report to the Secretary General, 2008e.
- <sup>27</sup> UN Report to the Secretary General, 2008e.
- <sup>28</sup> UN Special Rapporteur on the situation of human rights in the Sudan, 2008l.
- <sup>29</sup> UN Special Rapporteur on the situation of human rights in the Sudan, 2008l.
- <sup>30</sup> UN Report to the Secretary General, 2008e.
- <sup>31</sup> UN Special Rapporteur on the situation of human rights in the Sudan, 2008l.
- <sup>32</sup> UN 2007c.
- <sup>33</sup> UN Special Rapporteur on the situation of human rights in the Sudan, 2008l.
- <sup>34</sup> OHCHR 2008.
- <sup>35</sup> UN Report of the Secretary-General, 2008b.
- <sup>36</sup> UN Report of the Secretary-General, 2008b.
- <sup>37</sup> HRW 2007.
- <sup>38</sup> UN Special Rapporteur on the situation of human rights in the Sudan, 2008l.
- <sup>39</sup> UN Special Rapporteur on the situation of human rights in the Sudan, 2008l.
- <sup>40</sup> UN Special Rapporteur on the situation of human rights in the Sudan, 2008k.
- <sup>41</sup> The Government provided information on criminal cases of violence against women in South and North Darfur, involving accused who are members of the regular forces (armed forces and police). These efforts to combat impunity through investigation, prosecution of perpetrators and compensation must continue.

- <sup>42</sup> UN Special Rapporteur on the situation of human rights in the Sudan, 2008l.
- <sup>43</sup> UN Special Rapporteur on the situation of human rights in the Sudan, 2008l.
- <sup>44</sup> AOHR 2008 (in Arabic).
- <sup>45</sup> Brown, Hamzawy and Ottaway 2006.
- <sup>46</sup> World Bank 2007b.
- <sup>47</sup> AMF, LAS, AFESD and OAPEC 2006 (in Arabic).
- <sup>48</sup> Heydemann 2004.
- <sup>49</sup> Bayat 2003.