GLOBAL
ROUNDTABLE
e-book

DECEMBER 2020

IACL-AIDC

DEMOCRACY
2020

Assessing Constitutional Decay,
Breakdown, and Renewal
Worldwide

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What Covid-19 has Revealed about the Future of Democracy in the Arab World

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Introduction

What have the Arab regimes' responses to the COVID-19 pandemic revealed about the future of democracy for their people? Is it promising and bright, or it is looming with fright?

Admittedly, one may find most literature about Arab democracy to be disheartening and distasteful. You come across academics who would take it to the extreme, arguing that the Arab world is 'immune' to democracy. Others, who have chosen to be less pessimistic, argue that Arab authoritarianism is so consolidated to the extent that it would be theoretically impossible to replace. The moderates amongst them hold the view that only with economic pressure from 'developed' countries, Arab regimes would opt for allowing weak-form democratic practices to take place; that is limited freedom of expression rather than none, for instance.

This is not surprising. Most Arab regimes are post-colonial entities established after the fall of the Ottoman Empire in 1922. In their early phases, these regimes were not chosen through fair

and transparent elections, but through installment by the colonizing power, such as most of the Arab Gulf regimes. This fact resulted in impactful changes on their system of governance, leading it to become distant from democracy, and forming a unique version of self-acclaimed constitutionalism in the Arab world. Understanding the characteristics of Arab constitutions would help us to see in which context does this pandemic reside, and what the past tells us about the future of democracy in such regimes.

The Characteristics of Arab Constitutionalism

It is widely held that Arab constitutions generally authorise their respective regimes through providing the executive with dominance over other powers, rather than limiting it through a system of checks and balances. Generally, most Arab constitutions were written after either declaring independence following the fall of the Ottoman empire, or after ousting former monarchies. In both circumstances, the attainment of constitutional values was grossly hindered by a desire to establish robust authoritarian regimes, as the new rulers wanted.

Constitutions in most Arab region states aimed to achieve three inter-twined goals. The first was a declaration of their independence through affirming national sovereignty. The content and timing of most Arab constitutions suggest that they were adopted to affirm the sovereignty of a new regime after revolutionary change in Arab republics or, more often, following independence after the end of monarchical rule. They were less concerned with seeking international approval for the legitimacy of their sovereignty, and placed greater emphasis on addressing their constituents, in the form of royal and presidential announcements, to establish constitutional legitimacy for their rule. This is critical, as the language of many Arab constitutions indicates that the internal audience are the target of such announcements, making the external audience secondary to it. The language used to communicate with the people has laid the foundation for insignificant restraints on executive powers.

The second aim was to represent political and ideological doctrines. This can be observed in the content of many Arab constitutions, especially those that were adopted after reputedly revolutionary changes, such as Nasser's regime in Egypt. Such constitutions contained long preambles filled with statements that uphold the regime's ideology, and uncertain provisions regarding the competences and relationships between state powers. For example, early Arab constitutions following the fall of the Ottoman empire generally attempted to reassert existing ideologies and practices, while monarchical constitutions restated the legitimacy of the royal family while avoiding the upholding of democratic principles and individual rights. Additionally, Arab republics usually have constitutions with garrulous assertions of unrealistic values, rendering it even harder to hold the executive power accountable to these values. In short, reinforcing the legitimacy of the regimes' ideologies and political principles was sought by adopting constitutions that uphold such values.

The third aim of many of these constitutions is augmenting executive authorities. This is achieved by adopting constitutions that have significantly unrestricted executive competences, vague rights protection, the absence of rules to make the executive accountable to parliaments, and, most importantly, loopholes that allow rulers to escape their obligations under restrictive rules. By adopting such constitutions, Arab regimes can legitimise their executive powers and organise them without imposing effective restriction on their practice of such powers.

Those three aims represent the core characteristics of Arab constitutionalism. These constitutions display the will to establish legitimate, and mostly unrestricted executive powers as their purpose including by relying on the vagueness of constitutional provisions, especially those related to separation of powers and human rights. This vagueness allowed regimes to establish

rigid authoritarian systems that avoided limiting the authorities of the president and to restrict interpretations that might uphold individual rights against the regimes' interests.

The importance of understanding these characteristics lies in their fundamental impact on the rationales underlying constitutional arrangements in the Arab region, particularly the responses that such regimes may show to states of emergency, similar to this very pandemic.

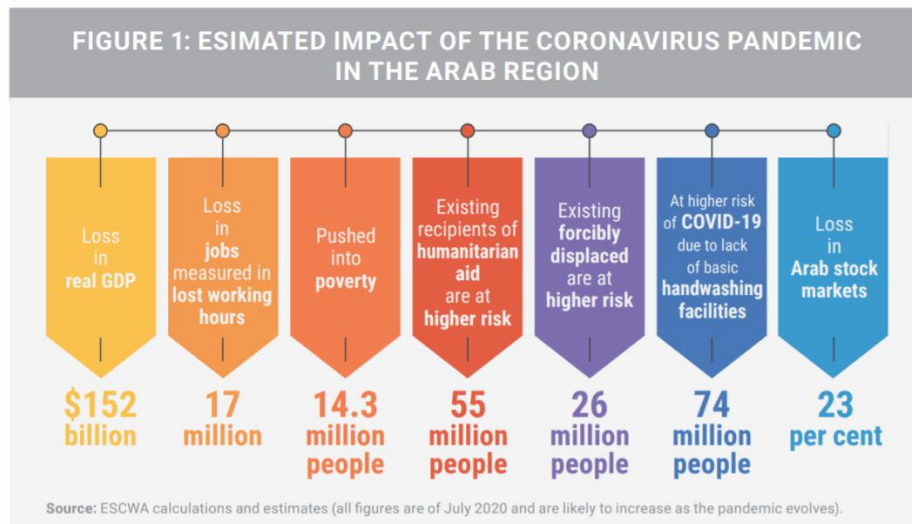**Democracy in the Arab World after the Arab Spring**

In 2015, in a special collection of the Journal of Democracy, Tarek Masoud argued that: "[i]n the aftermath of the Arab Spring, democracy in the Arab world seems farther away today than at any point in the last 25 years, leaving one to conclude that the answer to the question posed in this special anniversary issue of the Journal —"Is Democracy in Decline?"—is, at least in the case of the Arab world, a resounding, even deafening, yes. If democracy is to ever arrive in the region, it will likely be through an evolutionary and elite-driven process."

The International Institute for Democracy and Electoral Assistance (IDEA) highlighted in The Global State of Democracy 2019 report affirmed what Tarek has argued, stating that: "[t]he Middle East is the region in the world that suffers from the greatest democratic weakness. The democratic hopes brought about by the Arab Uprisings have dwindled and the region's democratic performance has since worsened. Moreover, a number of countries in the Middle East (including Bahrain and Yemen) and North Africa (including Egypt and Libya) have suffered from deepening autocratisation".

The Arab regimes' responses to the pandemic made that 'yes' (by Tarek) even more deafening. In Iraq, Syria, Lebanon, Morocco, Jordan, Yemen, and Tunisia, curfews and lockdowns, along with other restrictions on movement, were in place. To give three detailed examples, in Algeria, the President said last March that the pandemic is "is a national and health security issue that concerns everyone", in a statement to legitimise the restrains imposed on public freedom, particularly marches, "irrespective of their shape and declared purpose". This prohibition put an end to the public protests that took place every Friday in the streets of Algiers since February 2019, but not an end to retrying political activists and jailing influential journalists. In Egypt, an expert on Democracy noted in recent report that: "[t]he military regime has used COVID-19 as an opportunity to further repress political activists, rights defenders, lawyers, journalists, and doctors, arresting dozens, denying them basic assistance in places of detention, and placing several on terrorist lists."

In Palestine, the response has its own interesting character. The President, whose constitutional term has ended since 2009, and still running the West Bank under a state of emergency for the last thirteen years, issued a decree-by-law declaring a state of emergency (within the current state of emergency!) to face the pandemic. He claimed that this declaration is based on Article 101 of the Palestinian Basic Law, which entitles the President to declare such state of emergency when there is a threat caused by a natural disaster for a period of thirty days. To show how fragile a Basic Law can be, the second paragraph of that Article prevented extending that period except with the approval of at least two-thirds of the Parliament. However, the Parliament has been unconstitutionally suspended since 2007 by a presidential decree-by-law! Hence, the President waited for one day after the period of the first declaration of state of emergency has ended, then declared another state of emergency for another thirty days. Surprisingly, the Basic Law did not have a limit on how many times can the President declare such state, and the Basic Law itself was not ready for a scenario in which the Parliament itself is suspended for thirteen years by a presidential decree.

Given all of these developments, it is not surprising that the United Nations Development Programme (UNDP), summarising the impact of the pandemic on Arab democracy, affirmed, similar to what the following diagram shows, that: "[t]he pandemic has also magnified many decades-long challenges. These include violence and conflict; inequalities; unemployment; poverty; inadequate social safety nets; human rights concerns; insufficiently responsive institutions and governance systems; and an economic model that has not yet met the aspirations of all".

FIGURE 1: ESIMATED IMPACT OF THE CORONAVIRUS PANDEMIC IN THE ARAB REGION

Loss in real GDP	Loss in jobs measured in lost working hours	Pushed into poverty	Existing recipients of humanitarian aid are at higher risk	Existing forcibly displaced are at higher risk	At higher risk of COVID-19 due to lack of basic handwashing facilities	Loss in Arab stock markets
$152 billion	17 million	14.3 million people	55 million people	26 million people	74 million people	23 per cent

Source: ESCWA calculations and estimates (all figures are of July 2020 and are likely to increase as the pandemic evolves).

Conclusion

Despite constitutional reform attempts in the Arab region following the Arab Spring, it is arguable that these reforms existed as mere theoretical principles, with significant lack of commitment in practice. The executive powers of many states in the Arab region have been able to control other state organs. Reviewing many Arab states' responses to COVID-19 Pandemic reveals that respecting human rights, limiting exceptional powers of the executive, and deploying an efficient system of checks and balances are still far from becoming realities in many Arab states. Many of these states responded to the pandemic not only by declaring the state of emergency, but also through taking controversial measures that go beyond the scope of facing health threats, seeking even more restrictions on state organs for the interest of the regime. Such restrictions are arguably indicative of the unfortunate, inauspicious future of democracies in the Arab region.