



# EXECUTIVE SUMMARY

## Introduction

*This Report, the third in the Arab Human Development Report (AHDR) series, sets out to provoke a spirited, considered debate among all dynamic societal forces in the Arab region to prepare the way for an Arab renaissance. It provides a thorough examination of the deficit of freedom and good governance, a topic that dominates current discourse within the region and abroad.*

*The Arab development crisis has widened, deepened and grown more complex to a degree that demands the full engagement of all Arab citizens in comprehensive reform in order to spearhead a human renaissance in the region. Partial reforms, no matter how varied, are no longer effective or even possible; perhaps they never were, since reform requires a responsive and supportive social environment. Comprehensive societal reform in Arab countries can no longer be delayed or slowed down on account of vested interests.*

Of all the impediments to an Arab renaissance, political restrictions on human development are the most stubborn. This Report therefore focuses on the acute deficit of freedom and good governance.

## CHANGES IN HUMAN DEVELOPMENT SINCE THE LAUNCH OF AHDR 2003

In line with the methodology established in this series, the Report opens by recounting

### Freedom and good governance: an historical legacy

“Since when have you compelled people to enslavement, when their mothers birthed them free?”  
*Omar bin al-Khattab*

some of the events at the country, regional and global levels that most influenced the overall course of human development in the region during this period.

### CALLS FOR REFORM INTENSIFY

Since the publication of AHDR 2003, Arab governments and civil society organisations have proposed various reform initiatives to address some of the challenges facing the Arab world. The most significant official initiative was the “Declaration on the Process of Reform and Modernisation” issued by the Arab Summit held in May 2004. The Declaration called for the continuation and intensification of political, economic, social and educational change initiatives that reflect the will and aspirations of Arabs.

The Declaration specifically called for action “to deepen the foundations of democracy and consultation, and to broaden participation in political life and decision-making, in tandem with the rule of law, equality among citizens, respect for human rights, freedom of expression and ... safeguards for the independence of the judiciary”.

Civil society organisations also spearheaded several reform initiatives as this Report was being prepared. Amongst the most significant of these are the “Sana’a Declaration”, emerging from the Regional Conference on Democracy, Human Rights and the Role of the International Criminal Court (Sana’a, January 2004), and “The Alexandria Charter”, the result of a conference of Arab civil society organisations entitled “Arab Reform Issues: Vision and Implementation” (Alexandria, March 2004).

Independent political and civil forces in the Arab world also stepped up their struggle

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for political reform in Arab countries, resulting in some notable successes. In Morocco, human rights and political organizations persuaded the Government to acknowledge earlier violations, in particular relating to the disappearances of political opponents, and to begin to address the issue.

In Bahrain, the National Committee for Martyrs and Torture Victims began demanding compensation for the families of those killed and tortured by the security forces. It also called for those responsible for human rights violations in Bahrain to be brought to justice.

In Syria, civil society organizations asked for the state of emergency to be lifted and freedoms expanded. In Egypt, the Muslim Brotherhood announced an initiative for general reform.

At the beginning of 2004, Saudi Arabia witnessed an unprecedented number of civil initiatives, distinctive insofar as they were relatively acceptable to the government. A number of petitions and documents were addressed to the Crown Prince, some of which contained the demands of minority groups, such as the Shias, for religious freedom, civil rights, and equality among citizens. Others criticized acts of violence and called for political openness as a means out of the present crisis. Still other demands centred on improvements in the status of women, including guarantees of their full participation in public life. One petition called for a constitutional monarchy and fundamental political reforms, including elections, control of public funds and reform of the judiciary.

In Palestine, civil society organizations were active in many areas, from resisting occupation and defending human rights to assisting in relief and humanitarian aid operations and calling for reform.

#### **World Bank President: The shame of Israel's demolition of homes**

"Israel's military operations which demolish thousands of homes in Rafah are reckless, and leaves tens of thousands of people without a roof over their heads ....As a Jew, I am ashamed of this kind of treatment of people".

#### **The Wall violates international law: International Court of Justice (ICJ).**

"The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law.

This period also witnessed external attempts to encourage reform, beginning with the "Greater Middle East Initiative", which the US Administration presented to the G8 countries. After Arabs and some European countries expressed reservations on its first draft, the US put forward an amended project called the "Broader Middle East Initiative", with more limited objectives. It was adopted at the G8 summit in June 2004.

Reform initiatives, both those originating in and outside the region, were launched in an international and regional context that hampered progress, as illustrated in the following:

#### *A CONSTRAINING REGIONAL AND INTERNATIONAL ENVIRONMENT*

The continued occupation of the Palestinian territories by Israel, the US-led occupation of Iraq and the escalation of terrorism adversely influenced Arab human development.

#### **Israeli occupation of Palestine continues to impede human development and freedom**

Israel continued its violation of the Palestinians' right to life through direct assassinations of Palestinian leaders and the killing of civilians during raids and incursions into, and re-occupation of cities and villages in the West Bank and Gaza. Between May 2003 and June 2004, and as a result of repeated invasion and bombing, a total of 768 Palestinians were killed and 4,064 injured. 22.7 per cent of Palestinians killed during that period were children under 18.

In the past year, Israel has continued its violations of individual and collective freedoms of Palestinians. This is evident in the many forms of collective punishment, including arbitrary arrest and detention, and repeated restrictive closures.

Israel also continued its policy of demolitions, destroying property and land. Its incursion into Rafah in May 2004 alone left some 4,000 Palestinians homeless after the Israeli army demolished their homes.

Palestinians have therefore sustained enormous social and economic losses. Currently 58.1% of the population subsists below the poverty line.

Israel continued constructing the separation wall, which does not follow the boundary between the Occupied Palestinian territories and Israel but incorporates Palestinian land. The International Court of Justice, in response to a General Assembly request, issued a decisive advisory opinion on July 9, 2004 on the legal consequences of constructing the Wall. The Court ruled that the Wall violates international law, declared that it should be removed and called on Israel to compensate Palestinians harmed by the structure.

### **The impact of the occupation of Iraq on human development**

As a result of the invasion of their country, the Iraqi people have emerged from the grip of a despotic regime that violated their basic rights and freedoms, only to fall under a foreign occupation that increased human suffering.

A scientific study estimated the number of deaths associated with the invasion and the accompanying violence at around 100,000 Iraqis.

As the occupying powers proved unable to meet their obligations under the Geneva Conventions to protect citizens, Iraq witnessed an unprecedented loss of internal security, with killings and acts of terrorism in most parts of the country, including attacks against Iraqi and foreign civilians, international organizations and humanitarian organizations.

Women suffered the most. They were, and still remain, at risk of abduction and rape by professional gangs. In some cases, coalition soldiers reportedly also sexually abused female prisoners.

Thousands of Iraqis were imprisoned and tortured. Prisoners, mostly civilians, were subjected to inhumane and immoral treatment in Abu Ghraib and other occupation prisons. Such mistreatment is a clear breach of the Geneva Conventions.

The occupation forces struggled to restore basic facilities but were unable to bring electricity, water and telephone services back to their pre-war levels. A US report showed that, by the end of October 2004, the occupation authority had spent only US\$ 1.3 billion on reconstruction out of the US\$ 18.4 billion allocated for this purpose by the US Congress, i.e. less than 7 per cent.

### *ADDRESSING THE THREE DEFICITS: PROGRESS AND REVERSALS*

During the period in review, some Arab countries took steps to deal with their capability gaps in freedom, the empowerment of women and knowledge. However, progress was uneven, particularly in the area of freedoms where many countries experienced setbacks.

There were a number of positive developments in education, the most important of which was increased attention to quality issues at the different levels of the education system. Nine Arab states have participated in an international study designed to evaluate the quality of basic education in science and mathematics. Also, the Union of Arab Universities has taken a decision to set up an independent institute tasked with evaluating the quality of higher education.

Moving towards good governance, some Arab governments have begun to open themselves cautiously and selectively to opposition forces and have started expanding the public sphere. Nevertheless, there are indications of a regression in popular participation, and human rights violations have continued.

Civil society organizations and the media continued to suffer increasing restrictions. According to a 2004 international report, the Middle East was the region that enjoyed the least press freedom during the previous year. Several journalists were killed, particularly at the hands of occupying forces. As many as 14 journalists were killed during 2003 - 12 in Iraq, of which 5 were killed by US-led occupation forces. Two correspondents were killed by the Israeli occupation forces in Palestine.

In Darfur, violations of minority rights continued. Conflict and human suffering increased, despite the cease-fire agreement and the interventions of the international community.

On the empowerment of women, Morocco achieved a distinctive success with a new family law that met the demands of the women's movement to safeguard women's rights, notably with respect to marriage, divorce and childcare. Women have continued to rise to senior executive positions in Arab countries,

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*Freedom ... must be guaranteed, sustained and promoted by effective societal structures and processes.*

and there is steadily broader scope for participation by women in legislative assemblies.

Yet careful scrutiny of developments in this period indicates that, overall, there has been no significant easing of the human development crisis in the Arab region. Certainly, incipient reforms are taking place in more than one of the priority areas identified in this Report, but for the most part those reforms have been embryonic and fragmentary. Some gains are undoubtedly real and promising, but they do not add up to a serious effort to dispel the prevailing environment of repression.

## THE STATE OF FREEDOM AND GOOD GOVERNANCE

No Arab thinker today doubts that freedom is a vital and necessary condition, though not the only one, for a new Arab renaissance, or that the Arab world's capacity to face up to its internal and external challenges, depends on ending tyranny and securing fundamental rights and freedoms.

The scope of the concept of freedom ranges between two poles. The first is a narrow definition that restricts freedom to civil and political rights and freedoms. The second is comprehensive, and has been adopted in this Report. This comprehensive definition incorporates not only civil and political freedoms, including freedom from oppression, but also the liberation of the individual from all factors that are inconsistent with human dignity, such as hunger, disease, ignorance, poverty, and fear.

In human rights terms, the understanding of freedom in this Report covers all realms of human rights: economic, social, cultural and environmental rights as well as civil and political rights.

Freedom, however, is one of those superior human culmination outcomes that must be guaranteed, sustained and promoted by effective societal structures and processes. These societal guarantees are summed up in the order of good governance that:

- Safeguards freedom to ensure the expansion of people's choices (the core of human development)

- Rests upon effective popular participation and full representation of the public at large.
- Is buttressed by first-rate institutions (in contrast to the tyranny of the individual), which operate efficiently and with complete transparency. These institutions are subject to effective accountability among themselves, protected by the government's separation of powers, and by a balance among those powers; they are also directly accountable to the populace through popular selection processes that are regular, free, and scrupulously fair.
- Ensures that the rule of law is supreme; and the law itself is fair, protective of freedom, and applies equally to all;
- Sees that an efficient, fair and strictly independent judiciary upholds application of the law and the executive branch duly implements judicial rulings.

### Al-Kawakibi: Importance of holding the ruling authority accountable

In sum, we have said that government, of any sort, is not absolved of being described as oppressive as long as it escapes rigorous oversight and is not made to answer for its actions without fail.

The individual is free only in a free society within a free nation.

### Taha Hussein: Freedom and Independence

We want to be free people in our country, free of foreigners such that they cannot oppress us or treat us unjustly; and free with respect to ourselves, such that no one of us can oppress or treat another unjustly.

With this model as its yardstick, AHDR 2004 asks: what is the status of freedom and governance in the Arab countries?

## THE STATE OF FREEDOMS AND RIGHTS

Despite variations from country to country, rights and freedoms enjoyed in the Arab world remain poor. Even disregarding foreign intervention, freedoms in Arab countries are threatened by two kinds of power: that of undemocratic regimes, and that of tradition and tribalism, sometimes under the cover of

religion. These twin forces have combined to curtail freedoms and fundamental rights and have weakened the good citizen's strength and ability to advance.

#### *CIVIL AND POLITICAL FREEDOMS: FROM DEFICIENT TO SERIOUSLY DEFICIENT*

With limited exceptions in some countries and certain areas, freedoms, particularly those of opinion, expression and creativity, are under pressure in most Arab countries.

During the three-year period 2001-2003, journalists were repeatedly targeted for prosecution on the grounds of opinions they had expressed. Some of them were physically attacked or held and given harsh sentences.

Early in 2003, Arab Ministers of the Interior agreed to an anti-terrorism strategy, leading to further restrictions on freedom of opinion and expression and other human rights.

Violations of freedom of opinion and expression have included attacks on outspoken political activists and human rights advocates.

The curtailment of freedom of opinion and expression, in the form of officially imposed censorship, extends also to literary and artistic creativity. Some Arab states have gone as far as to ban circulation of some of the most treasured works in the Arab literary heritage, such as *The Prophet*, by Gibran Kahlil Gibran, and *A Thousand and One Nights*.

#### **Al-Manfaluti: The value of freedom that has been stolen**

Man lives in two prisons, the prison of his own soul and the prison of his government, from cradle to grave.

A man who stretches out his hands to ask for freedom is not begging; he is seeking a right that has been stolen from him by human greed. If he obtains it, it will not be as a favour from anyone, and he will not be beholden to anyone.

The freedom to form associations is often violated by denying organisations permission to operate, or by dissolving existing ones. Most restrictions have been directed against grassroots human rights organizations.

With a few exceptions, some of which are cosmetic, free presidential elections involving more than one candidate do not occur in Arab countries. In only three Arab countries (Algeria, Sudan and Yemen), and in a fourth under occupation (Palestine), are presidents elected through direct elections with more than one candidate and with presidential term limits. Syria and Egypt depend on referendums where the president is nominated by the parliament, after which a national referendum is held. In presidential referenda the outcome varies between an absolutely majority and total unanimity.

Totally or partially elected parliaments now exist in all Arab countries except Saudi Arabia and the United Arab Emirates. However, the right to political participation has often been little more than a ritual, representing a purely formal application of a constitutional entitlement. In most cases, elections have resulted in misrepresenting the will of the electorate and in low levels of representation for the opposition. Hence, elections have not played their designated role as a participatory tool for the peaceful alternation of power. These elections have generally reproduced the same ruling elites.

Personal life is also violated in some Arab countries. Political authorities sometimes breach the inviolability of the home at any hour, monitoring private correspondence and tapping telephones. Dominant social groups can similarly usurp the personal freedom of citizens in the name of norms and traditions.

#### **The denial of individuals' fundamental freedoms**

Some Arab governments also violate the right to life extra-legally and extra-judicially. Human rights organizations have observed that official reports on killings tend to be short on facts. In most Arab states, the names of the victims are not mentioned, and no public investigation is conducted.

Extremist groups which perpetrate assassinations and bombings and espouse the use of violence also violate the right to life. Armed confrontations between security forces and armed groups result in civilian casualties that can outnumber victims in the ranks of the combatants.

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With the advent of the global "war on terror", there have been unprecedented numbers of arrests. Legal safeguards have been violated, and people have been deprived of their liberty and, in many instances, tortured and ill-treated in prisons, camps and detention centres where their personal safety is uncertain. Perhaps one of the greatest menaces facing any Arab citizen is the frequent disappearance of suspects in detention.

Safeguards surrounding the right to a fair trial are also being eroded. In several Arab countries, civilians are being referred for trial to military courts or other exceptional tribunals such as the emergency, state security, and special courts, as well as martial law tribunals.

### **Exclusion from citizenship**

The withdrawal of nationality from an Arab citizen, as permitted under certain legislation through an administrative decision by a government official of less than ministerial rank, is one of the most extreme forms of exclusion from citizenship.

### **Abusing minority rights**

Violations of human rights in Arab countries are more pronounced when cultural, religious or ethnic dimensions are present. In areas of protracted conflict in Iraq and the Sudan, minority groups have suffered overt or covert persecution.

This kind of double subjugation affects a number of other social groups, notably *bidun* and naturalized citizens in Arab Gulf countries. The former, being stateless, have nowhere to go and are regarded as foreigners, while the latter are treated as second-class citizens; they are denied the right to stand for election to representative bodies or to vote.

"Card holders" in the border areas of Saudi Arabia, Kurds deprived of citizenship following the 1962 census in Syria, and "akhdam" in Yemen encounter much the same treatment.

Migrant workers in oil-producing Arab states, including Arab workers, suffer certain forms of discrimination according to international standards. The most notorious cases stem from the "guarantor system" and the abuse of domestic servants, chiefly women.

Socio-economic and military circumstances are creating bizarre situations in Mauritania and the Sudan. In the former, members of the group known as "haratin" (emancipated slaves) are not much better off than when they were slaves. In the Sudan, different tribes involved in the military conflict have abducted one another's women and children; here again, the victims' condition is tantamount to slavery.

### **Women doubly excluded**

In general, women suffer from inequality with men and are vulnerable to discrimination, both at law and in practice.

Despite laudable efforts to promote the status of women, success remains limited. Greater progress is required in women's political participation, in changes to personal status laws, in the integration of women in development, and in the right of a woman married to a foreign husband to transmit her citizenship to her children. The inability of existing legislation to protect women from domestic violence or violence on the part of the state and society is another deficit area. Violence against women peaks in areas of armed conflict, especially in the Sudan, Somalia and Iraq.

### *UNMET ECONOMIC AND SOCIAL RIGHTS*

Results of a study of 15 Arab countries found that 32 million people suffer from malnutrition. This figure represents nearly 12 per cent of the total population of the countries concerned. In the 1990s, the absolute numbers of those suffering malnutrition in the Arab world increased by more than six million. The worst results were observed in Iraq and Somalia.

However, physical illness still takes years off the life of the ordinary Arab. When years of illness are deducted from the estimate of life expectancy at birth, average healthy Arab life expectancy falls by ten years or more.

The spread of education is restricted by the prevalence of unacceptable rates of illiteracy (about one third of Arab men and half of Arab women in 2002) and the denial of the basic right to education of some Arab children – low as this percentage may be. The value of educa-

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tion is also diluted by its low quality and the resulting failure to instill the basic capabilities of self-learning, critical analysis and innovation among those educated.

### *HOW FAR DO ARABS BELIEVE THAT THEY ENJOY FREEDOM?*

The report team, in collaboration with reputable polling institutions, designed and conducted a field survey on what Arabs believe are the most important components of freedom. The study also explored the extent to which Arabs thought that they enjoyed those components of freedom in their own countries. The survey covered five Arab countries (Algeria, Jordan, Palestine, Lebanon, and Morocco) that represent about one quarter of the Arab population.

Interviewees in all five countries indicated that, in their view, the level of enjoyment of individual freedoms was comparatively high, whereas the enjoyment of ‘public’ freedoms was relatively low, especially regarding good governance.

For most interviewees, freedom of movement, marriage and ownership of property, and the freedom of ‘minorities’ to practice their own culture, topped the list of freedoms enjoyed in their countries. The existence of effective political opposition, an independent media and judiciary, transparent and accountable governance, and successful anti-corruption measures were put at the low end of the scale of enjoyment.

Asked how far they had seen an improvement or deterioration in the enjoyment of the elements of freedom during the five years before the survey, interviewees singled out individual freedoms in gender equality and marriage, freedom of thought, freedom from ignorance and disease, freedom of ‘minorities’ to practice own culture, and freedom of civil and co-operative organisations as areas of greatest improvement. The greatest deteriorations were thought to have occurred in the areas of corruption, lack of transparency and accountability in governance, lack of independence of the judiciary, inequality before the law and mounting poverty.

## **STRUCTURES IMPEDING FREEDOM**

Why, do Arabs enjoy so little freedom? What has led Arab democratic institutions (where they exist) to become stripped of their original purpose to uphold freedom?

Some analysts seek answers in the fraught and ambiguous relationship between “East” and “West,” portrayed as a stark split. The first pole is usually associated with “despotism” as a supposedly inherent characteristic of “the East” and “Eastern” civilization, while the second is linked to freedom, purportedly a fundamental quality of “Western” civilization. A few have claimed that Arabs and Muslims are not capable of being democrats, for the very reason of being Arab (“the Arab mind”) or Muslims. However, a recent research effort, the World Values Survey (WVS), has exposed the falseness of these claims by demonstrating that there is a rational and understandable thirst among Arabs to be rid of despots and to enjoy democratic governance. Among the nine regions surveyed by the WVS, which included the advanced Western countries, Arab countries topped the list of those agreeing that “democracy is better than any other form of governance”. A substantially high percentage also rejected authoritarian rule (defined as a strong ruler who disregards parliament or elections).

Undoubtedly, the real flaw behind the failure of democracy in several Arab countries is not cultural in origin. It lies in the convergence of political, social and economic structures that have suppressed or eliminated organized social and political actors capable of turning the crisis of authoritarian and totalitarian regimes to their advantage. The elimination of such forces has sapped the democratic movement of any real forward momentum. In addition, there are region-specific complexities that have deepened the crisis, the most significant of which are:

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*Political rulers, in power and in opposition, have selectively appropriated Islam to support and perpetuate their oppressive rule.*

### **The Contradiction Between Freedom In Arab Countries And Narrow Global Interests**

In the first half of the twentieth century, two factors emerged which were fated to have a far-reaching impact on the attitudes of the major powers towards freedom in the Arab region: the discovery of oil and the establishment of the state of Israel. The existence of large reserves of oil in the region and the dominant role of oil in the advanced economies, made continued supplies at reasonable prices the chief concern of global powers. Additionally, as vested interests in Israel grew, some global powers, especially the US, increasingly took any Arab country's attitude toward Israel and its practices as one of the most important yardsticks by which to judge that country.

Consequently, major world powers tended to gloss over human rights violations in their Arab client states so long as the countries concerned did not threaten these interests. Thus indulged, the Arab despots of the day ruled oppressively, restricting prospects of their countries' transition to democracy.

The events of September 11 have added a more recent dimension to this tension after the US Administration moved to curtail civil and political rights, especially those of Arabs and Muslims, in the fight against "terrorism" as it defined the term. The fact that some Western countries, which Arab reformers had long held up as models of freedom and democracy, have taken steps widely perceived to be discriminatory and repressive, has weakened the position of those reformers calling for Arab governments undertaking similar actions to change their course.

#### **Ayatollah al-Mohaqqiq al-Naeeny: An Opinion Concerning Conditionality or Constitutionality**

The conduct of the ruler is bounded by the limitations of his prerogatives ... it is conditioned not to exceed them, the people are his partners in all that concerns the destiny of the country to which they all belong on an equal footing. Those in charge are but loyal trust bearers of the people, not owners nor serv-

ants. Like other trust bearers, they are responsible to each and every individual of the nation, they are accountable for any trespass they commit, and every single person has the right to question and to object in an environment of security and freedom, without being bound by the Sultan's will or preferences.

### **Freedom shorn of effective advocates**

The cause of Arab freedom has suffered in the absence of effective, broad-based political movements capable of rallying people to the struggle. Popular political forces, such as the Arab nationalist and, later on, the Islamist movements, did not make comprehensive freedom their priority. When they did turn to the question, their more limited goal, understandably, was national freedom, which they made their public rallying point in the struggle against colonial powers at the regional and global levels.

### **Appropriating religion to perpetuate tyranny**

The dominant trend in Islamic jurisprudence supports freedom. Enlightened Islamic interpretations find that the tools of democracy - when used properly - offer one possible practical arrangement for applying the principle of consultation (al-shura). The fundamental principles in Islam which dictate good governance, include the realization of justice and equality, the assurance of public freedoms, the right of the nation to appoint and dismiss rulers, and guarantees of all public and private rights for non-Muslims and Muslims alike

Notwithstanding these key theological and philosophical interpretations, political forces, in power and in opposition, have selectively appropriated Islam to support and perpetuate their oppressive rule.

### **"The trap of the one-off election"**

This phrase refers to a ploy used by Arab regimes in Islamic societies to keep those apprehensive about the accession to power of Islamist groups on their side. It is also cited to justify foreign interference to prop up authoritarian Arab regimes. Essentially, it is contended that opening up the public sphere to all societal forces - among the most active of which is the Islamic movement - will end with these forces assuming power, followed by oppression, such that democratic competition becomes history after the one and only election.



## Specificity as a pretext for slighting human rights

In contemporary jurisprudence, human rights constitute the collection of rights incorporated in international agreements and treaties that guarantee all people, irrespective of their nationality, ethnicity, language, sex, religion, ideology and abilities, the fundamental rights to which they are entitled by virtue of being human. However, in Arab countries the issue of ‘specificity’ is frequently raised to weaken international human rights law.

In spite of the existence of several interpretive texts which assert the congruence between international human rights law and Islamic law (Shari’a), traditional interpretations of Shari’a that stress differences between the two, are used to argue that international human rights laws are not applicable in Arab countries.

## THE LEGAL ARCHITECTURE

Two sets of discrepancies commonly mar Arab legislation concerned with different levels of freedom and human rights. The first set reflects a gap between international norms and national constitutions, and one between national constitutions and national laws. The second set reflects a breach between international norms, national constitutions, and national laws on the one side, and actual practice on the other.

### Constitutions granting rights and laws confiscating them

*Freedom of thought, opinion and association:* Many Arab constitutions contain special provisions on freedom of thought, opinion, and belief, and freedom of peaceful assembly, association and affiliation. However, the constitution may also stipulate numerous restrictions on the right of association under the pretext of safeguarding national security or national unity. Political parties are permitted in 14 Arab countries. Libya and the member states of the Gulf Cooperation Council (Saudi Arabia, the United Arab Emirates, Qatar, Bahrain, Kuwait and Oman) prohibit the formation of political parties.

Arab constitutions assign the regulation of rights and freedoms to ordinary legislation,

which tends to restrict the right in the guise of regulation. As a result, many constitutional texts addressing rights and freedoms, whatever their own shortcomings may be, lose much of their worth, turning into an empty facade for the benefit of the international community. Examples include provisions that prohibit or restrict the exercise of the right to strike, demonstrate, hold mass gatherings or assemble peacefully.

In countries whose constitutions prescribe the multiparty system, there are legislative restrictions limiting the right to form political parties, requiring prior authorization from

### Restrictions on the rights to assembly and association

The holding or organization of a public meeting is not permitted without previously obtaining a permit for that purpose from the Governor in whose area of authority the meeting will take place, and all public meetings that are held without a permit will be prevented and dispersed.

(Article 4, Decree Law concerning the holding of public meetings and assemblies, Kuwait)

predominantly governmental committees. Other laws contain conditions concerning party activity, allowing the state to dissolve a party whenever it considers the conditions have been breached.

Moreover, both the establishment of civil associations and their activities are heavily circumscribed and subject to rigorous control in Arab countries, with a few exceptions in dealing with civil society more liberally, as in Morocco and Lebanon.

Press freedom in 11 Arab countries can be blocked or curtailed by regulations that permit prior or post-printing censorship. Laws impose restrictions on the right to publish newspapers by requiring a licence whose withdrawal, or threat of withdrawal, is used by the executive to deter newspapers from crossing set boundaries of freedom of expression. Journalists’ right to obtain information and news is assured in law in only five Arab states: Algeria, Egypt, Jordan, the Sudan and Yemen.

When regulating freedom of opinion and expression, including the media and mass communications, the Arab legislator prioritizes what s/he perceives as security and public interest considerations above freedom, diversity

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*A number of Arab constitutions contain provisions that conflict with international human rights principles.*

and respect for human rights. The result is that Arab legislation is armed with provisions that regard newspaper publication, audio-visual broadcasting and free expression in general as dangerous activities warranting a panoply of bans, restrictions and deterrent sanctions.

*The human right to litigation:* Arab constitutions take a consistent line on upholding the independence and inviolability of the judiciary. But most maintain the executive presence within the judiciary and its institutions. Hence, not only are judgements delivered and enforced in the name of the head of state, but the latter is also vested with the right to preside over the constitutional bodies that oversee the judiciary. This can often nullify other constitutional provisions.

While many Arab constitutions stipulate safeguards for fair trial in criminal laws and trial systems, scholars and human rights activists frequently note a disparity - usually for political reasons - between such guarantees on paper and reality.

Consequently, independence of the judiciary as an institution, and of judges as individuals, is jeopardized. Ideological and autocratic regimes frequently interfere, in the name of "protecting the ideological foundations" of their authoritarian regimes. In addition, where the executive controls the finances, and intervenes in the appointment, transfer and dismissal of judges, judicial independence suffers. Material and moral temptations for underpaid and unprotected judges are sometimes a factor as well. Many are sometimes fearful in delivering their judgements, particularly when the State has a direct or indirect interest in the case in question.

Justice and the right to litigation are also obstructed by the vast case-load in the courts of some Arab countries and consequent delays in hearings and justice delivered. The absence of an authority capable of enforcing the law fairly and promptly can encourage recourse to violence and individual reprisals, and deter the public from resorting to courts for solutions.

*Right of nationality:* Nationality gives a person the legal status that confers rights and duties and helps her/him to acquire full citizenship. There is a noticeable difference between the constitutional status of this right and the

situation of those who benefit from it in Arab countries; some constitutions remain silent on the subject, while others refer the matter of its regulation to the law, as in Egypt, Lebanon, Jordan, Saudi Arabia and Algeria. Still other constitutions allow for its forfeiture and provide for the conditions required, as in Qatar, Oman, the United Arab Emirates and Kuwait.

In some Arab countries, a new trend is emerging of granting nationality to the children of a mother bearing the nationality of the state. This is commendable, as it recognizes the principle of equality between mother and father in securing the nationality of their children and ends the misery that arises from the state denying nationality to the children where the mother is married to a foreign national.

### **And constitutions flatly violating rights**

A number of Arab constitutions contain provisions that conflict with international human rights principles by assuming an ideological or religious character that removes public rights and freedoms or permits their removal. An example is the amendment introduced by the Yemeni legislators to an article which originally provided that "there shall be no crime and no punishment other than as stipulated by law." The amendment states that "there shall be no crime and no punishment other than on the basis of a provision of religious law (Shari'a) or law."

Taking the provisions of Shari'a as a source of legislation is not itself a violation of human rights. The objection is that, in Arab countries that do so, the discourse is directed to the judge, instead of the legislator. Investing discretionary powers in the judge to interpret the Shari'a text and to choose among the multiple opinions of jurisprudence entails a lack of legal precision. In order to harmonise Shari'a with the law, the constitutions of those states which adopt it must therefore stipulate the principle that there is no crime or punishment other than that prescribed by law.

The constitutional violation of human rights may assume a confessional shape, as illustrated in the Lebanese law, which provides that parliamentary seats in the Council of Deputies shall be divided on a religious and

confessional basis.

Constitutional violations of human rights can also take the form of an ideological bias, which excludes differing opinions or political affiliations. For example, the Syrian Constitution affirms the Ba'ath party as the leadership of

The confusion between religion and state is nowhere more clearly demonstrated than in the Sudanese Constitution, which provides that God, the Creator of humankind, holds supremacy over the State, without specifying the meaning of supremacy. Governance practices apparently sanctioned by God are likely to be immune to criticism and opposition.

society and the state, meaning that the multi-party system has no constitutional legality.

One of the most serious legislative violations of human rights in the Arab world occurs where the Arab legislator permits the executive to declare a state of emergency and abuse all safeguards for individual rights and liberties. In some Arab countries, the state of emergency has become permanent and ongoing, with none of the dangers to warrant it. What was the exception has now become the rule (e.g. in Egypt, Syria and the Sudan). Emergency Laws (or rules of martial law), strip the citizen of many constitutional rights, such as inviolability of the home, personal liberty, freedom of opinion, expression and the press, confidentiality of correspondence, rights of movement and assembly. They remove key legislative powers from the elected parliament and transfer them to the executive or military governor (emergency authority).

### THE POLITICAL ARCHITECTURE

It may at first seem difficult to talk about the common features of governance in the Arab world owing to the wide diversity of its regimes, ranging from absolute monarchies to revolutionary republics and radical Islamic states. Closer scrutiny, however, reveals an interesting affinity in the architecture and methods of Arab systems of governance.

### The “black-hole” State

The modern Arab state, in the political sense, runs close to this astronomical model, whereby the executive apparatus resembles a “black hole” which converts its surrounding social environment into a setting in which nothing moves and from which nothing escapes.

This increasing centralization of the executive is guaranteed in the constitutional texts of certain states, which vest wide powers in the head of state. The latter becomes the supreme leader of the executive, the council of ministers, the armed forces, the judiciary and public services.

In addition to the absolute powers of the executive body, there are additional mechanisms that increase the concentration of power in its hands. For example, the so-called ruling parties (where they exist) are, in reality, simply institutions attached to the executive, since party officials (or electoral candidates) are designated by the president, who is also regarded as the party leader. In practice, this means that parliament is a bureaucratic adjunct of the executive that does not represent the people whose mistrust in it continues to grow.

Furthermore, the executive uses the ordinary and exceptional judiciary to eliminate and tame opponents, rivals and even supporters who step out of line. This is linked with what is known as “unspoken corruption” where close supporters are allowed to exploit their positions for unlawful gain, while “enforcement of the law” against them remains a weapon to ensure their continuing and total loyalty.

The key support buttressing the power of the executive is the intelligence apparatus, which is not responsible to the legislature or to public opinion, but is directly under the control of the president or king and possesses powers greater than those of any other organ. The security apparatus has substantial resources and intervenes in all the powers of the executive, particularly in regard to appointment decisions and the legal regulation of associations, to the point where the modern-day Arab state is frequently dubbed “the intelligence state”

Arab states vary in their embodiment of these general traits, particularly in the margin of freedom that is considered unthreatening.

*In some Arab countries, the state of emergency has become permanent and ongoing, with none of the dangers to warrant it.*

*The executive apparatus resembles a “black hole” which converts its surrounding social environment into a setting in which nothing moves and from which nothing escapes.*

*The absence of any effective (political) alternative is itself one of the outcomes of policies that block all avenues for political and civil activity.*

*Opposition parties suffer from internal problems that are no less serious.*

However, what they have in common is that power is concentrated at the tip of the executive pyramid and that the margin of freedom permitted (which can swiftly be reduced) has no effect on the state's firm and absolute grip on power.

### **The crisis of legitimacy**

Without the majority of people behind them, most Arab regimes resorted to other sources of legitimacy: traditional (religious/tribal), revolutionary (nationalist/liberation), or patriarchal, claiming authority based on the wisdom of the 'family head'. However, the failure to tackle major issues such as the question of Palestine, pan-Arab cooperation, foreign intervention, the advancement of human development and popular representation, drove Arab states into a crisis of legitimacy. Hence, in addressing the masses, the regimes resorted to a new tactic: they linked legitimacy to achievements, actual or promised, in specific areas such as the economy, peace, prosperity, stability, or safeguarding values and traditions. Sometimes the mere preservation of the state entity in the face of external threats was considered an achievement sufficient to confer legitimacy.

Some regimes now bolster their legitimacy by adopting a simplified and efficient formula to justify their continuation in power. They style themselves as the lesser of two evils, or the last line of defence against fundamentalist tyranny or, even more dramatically, against chaos and the collapse of the state. This formula is what some have dubbed "the legitimacy of blackmail".

The "legitimacy of blackmail" has been eroded by the growing realization that the absence of any effective alternative is itself one of the outcomes of the policies that block all avenues for political and civil activity, and so prevent other alternatives from materializing. Hence, the survival of "the black-hole State" has become more dependent on control and propaganda; on marginalizing the elites through scare-and-promise tactics; on striking bargains with dominant global or regional powers; and on mutually supportive regional blocs to reinforce the status of the ruling elites against emerging forces.

### **Muhammad Al-Charfi: Arab democracy - form without substance**

A citizen no longer has any guaranteed right unless s/he wishes to cheer the ruler, voice gratitude for his accomplishments and extol his qualities and wisdom.

### **Repression and political impoverishment**

The Arab political scene today is quite varied. Some states categorically prohibit any political organization. Other states allow conditional political pluralism and, as a rule, ban the strongest and most important opposition party, while favouring the party established by the ruling authority. States which allow party activity nonetheless try to trip up the opposition parties, by depriving them of resources and media coverage, controlling nomination and election procedures, using the judiciary, the army and security services to curtail their activities, hounding their leaders and activists and tampering with election polls.

In addition to official repression, opposition parties suffer from internal problems that are no less serious. Despite theoretical references to democracy in their charters, their practices show that the influential political élite holds sway in most of these parties, resulting in immovable leaders who, with rare exceptions, only leave their posts when they die, casting doubt on their claims to modernity and democracy.

Beyond that, there is an acute "sectarian split" in the political community between the Islamic parties on the one hand and the liberal and nationalist secular parties on the other (as well as other sectarian divisions along doctrinal, ethnic, tribal and regional lines). As a result of this sectarian fragmentation some parties and political forces have preferred to co-operate with undemocratic governments rather than work with their rivals to lay the groundwork for a democratic rule open to all.

Restrictions on opposition parties have led to the marginalization of some parties and hastened their demise, and generated a lack of confidence in the political process as a whole. This contraction has pushed some towards clandestine political activities adopting violent and terrorist means, and others into political

passivity. Constraints on political space have led some activists and scholars to rely on civil society organizations, especially trade unions and professional organizations, on the grounds that they are better equipped than Arab political parties to lead Arab society towards development and democracy.

Yet, civil society faces the same problems as the political community vis-à-vis the authorities who seek to control civil organizations, directly or indirectly, by using a dual strategy of containment and repression. In addition, many CSOs become extensions of political parties, which use them as fronts through which to expand their political influence at the popular level. This, in turn, limits the CSOs' initiative and independence of action. Consequently, civil society organizations have not been significant actors in resolving the existing political crisis, as they too have been caught up in its vortex.

### **The vicious circle of repression and corruption**

Economic corruption is the natural result of political corruption. In some countries corruption may be characterised as "structural" because personal abuse of public office and misuse of public finances are considered normal according to prevailing custom (such as obtaining commissions for government deals). It also takes the form of "petty corruption" in some countries. Petty corruption refers to situations where Arab citizens have to rely on personal contacts (wasta) or pay a bribe to obtain services that are legitimate and to which they are entitled, or to avert a punishment by the authorities. If ending corruption entails, among other measures, deep economic reform, active laws and mechanisms of accountability, and transparent governance, "structural corruption" can be overcome only by radical reform of the political architecture.

## *SOCIETAL STRUCTURES*

### **The chain that stifles individual freedom**

The crisis in political structures is reflected in Arab societal structures that consist of em-

bedded links in an interconnected chain constricting freedom. Starting with the child's upbringing within the family, passing through educational institutions, the world of work, and societal formation, and ending with politics - both internal and external - each link in the chain takes its portion of freedom from the individual and delivers her or him to the next, which, in turn, steals a further share.

In varying degrees, the family, the primary unit of Arab society, is based on clannism, which implants submission, and is considered the enemy of personal independence, intellectual daring, and the flowering of a unique and authentic human entity.

Clannism flourishes, and its negative impact on freedom and society becomes stronger, wherever civil or political institutions that protect rights and freedoms are weak or absent. Without institutional supports, individuals are driven to seek refuge in narrowly based loyalties that provide security and protection, thus further aggravating the phenomenon. Tribal allegiances also develop when the judiciary is ineffective or the executive authority is reluctant to implement its rulings, circumstances that make citizens unsure of their ability to realize their rights without the allegiances of the clan.

Once children enter school, they find an educational institution, curricula, teaching and evaluation methods which tend to rely on dictation and instil submissiveness. This learning environment does not permit free dialogue and active exploration and consequently does not open the doors to freedom of thought and criticism. On the contrary, it weakens the capacity to hold opposing viewpoints and to think outside the box. Its societal function is the reproduction of control in Arab societies.

For all its deficiencies and flaws, education, particularly at the higher levels, remains a vital source of knowledge, enlightenment and leavening for the forces of change.

Even so, outside the academy, the world remains harsh on the young. After a student graduates, and when fate or chance ends the period of unemployment, s/he steps onto the lowest rung of a rigid, restrictive hierarchy, especially if the job is with the civil service.

The chain constricting freedom completes

*Many civil society organizations have become extensions of political parties, which use them as fronts.*

*Each link in the chain takes its portion of freedom from the individual and delivers her or him to the next, which, in turn, steals a further share.*

*The rentier mode of production opens cracks in the fundamental relationship between citizens as sources of public tax revenue and government.*

*It has become critical to strengthen global governance as embodied in the United Nations.*

its circle in the political realm, squeezing Arab public life into a small and constricted space. The limited dimensions of this space do not enable civil society institutions to provide effective group protection to citizens who are vulnerable to oppression as individuals. Such weakness affords oppressive powers, both at home and from abroad, free sway to suppress individual freedoms.

As they tighten and grow, the constrictions of the chain on freedom, in time, become internal constraints on the self. Suppression leads individuals to become their own censors and to contain every urge to speak or act. This complicated process has led Arab citizens, including some among the intelligentsia, to a state of submission fed by fear and marked by denial of their subjugation. Yet - even among segments once considered pillars of the restrictive status quo - there are signs that this state of affairs cannot continue and that the human urge to claim freedom will re-surface in society.

#### **A mode of production that strengthens authoritarian governance**

The rentier mode of production opens cracks in the fundamental relationship between citizens as a source of public tax revenue and government. Where a government relies on financing from the tax base represented by its citizens, it is subject to questioning about how it allocates state resources. In a rentier mode of production, however, the government can act as a generous provider that demands no taxes or duties in return. This hand that gives can also take away, and the government is therefore entitled to require loyalty from its citizens invoking the mentality of the clan.

#### **A longing for freedom and justice in popular culture**

There is no stronger indication of the thirst for freedom and justice in the Arab conscience than the way these concepts recur in a popular culture rich in depictions of struggles against oppression and injustice.

The greatest literary manifestations of that tradition are glowing examples of the elevation of the "dream of freedom". The siras (life stories) profoundly expressed popular anger

against injustice, oppression and, tyranny in the Arab dark ages of disintegration and weakness. In calling for unity and liberation of the land, in voicing the dream of a better world, in nourishing the popular spirit by creating popular or epic heroes capable of overcoming adversity, they lifted people's souls and minds above their trials.

Popular aspirations for freedom are abundant as well in the myriad folk songs and poetry of the Arab world.

#### **AN INHOSPITABLE GLOBAL AND REGIONAL ENVIRONMENT FOR FREEDOM**

It is not possible to understand the problem of freedom in Arab society without also considering the effects of regional factors and of influences coming from outside the region, particularly those related to globalization and global governance.

Globalization has the potential to buttress the freedom of the individual as a result of minimising the State's capacity to repress people, particularly their ideas and aspirations. It can also, expand people's opportunities to acquire knowledge and broaden their horizons by facilitating communication and the circulation of ideas.

In particular, globalization can support freedom by strengthening civil society through wider networking among its actors, using modern information and communication technology. Yet globalization also entails the selective restriction of certain liberties world-wide through restrictions of vital knowledge flows and on the free movement of people.

With globalization, the State lost part of its sovereignty to international actors, such as trans-national corporations and international organizations, notably in the areas of economic activity. It has thus become critical to strengthen global governance, as embodied in the United Nations. However, this has yet to come about. The advent of a uni-polar world has resulted at times in the weakening and marginalization of the world organization. This has had adverse consequences for freedom in the Arab world. The US's repeated use, or threat of veto, has limited the effectiveness of the Se-

curity Council in establishing peace in the region. Such marginalization has been among the factors contributing to continuing or increased human suffering and to the creation of new facts on the ground, such as the establishment of new settlements by Israel in the Occupied Territories and the construction of the separation wall that incorporates additional Palestinian land, all of which militate against a just and lasting peace. This has pushed many people in the region to lose hope of obtaining justice from global governance and could exacerbate a tendency towards extremism.

The “war on terror” has also cut into many Arab freedoms. Western leaders have strongly asserted their support for freedom and democracy as the best long-term solution to terrorism; in practice many have also understandably sought to tighten their own security legislation. An unfortunate by-product in some countries has been that Arabs are increasingly the victims of stereotyping, disproportionately harassed or detained without cause under new restrictions. At the same time, in the Arab world, several Governments have cited fear of terrorism as justification for steps to impose even tighter restrictions on their citizens.

At the regional level, current institutional arrangements for regional co-ordination have failed to give substantive support to Arab development, and to maintain security and peace in the Arab world.

### **A STRATEGIC VISION: ALTERNATIVE FUTURES FOR FREEDOM AND GOVERNANCE IN ARAB COUNTRIES**

Modernization in Arab countries has yielded notable achievements, especially in combating morbidity and mortality, building infrastructure, the quantitative expansion of education and in increasing the integration of women in society. Yet by 21st century standards, Arab countries have not met the Arab people’s aspirations for development, security and liberation despite variations between one country and another in that respect. Indeed, there is a near-complete consensus that there is a serious failing in the Arab world, and that this is located specifically in the political sphere.

#### **Counsellor Yahya al-Rifai: Justice Above Might**

There are two, and only two, ways of settling disputes: with the bludgeon of force or the justice of law, there is no third possibility. With force, a person’s life, honour and property are never safe; he lives like a wild animal, hunting his prey without ever being sure that he will

be able to keep any of it, never planting a crop because the harvest will go to the strongest, never building a house because there is no certainty that he will be able to live in it, and, indeed, afraid to settle anywhere.

#### **The UN Special Rapporteur on Terrorism and Human Rights: The Root Causes of Terrorism**

Some of the actions undertaken in the cause of the global war against terrorism have been the cause of consternation also for the highest officials in the UN system. For instance, the UN Secretary-General

has pleaded on a number of occasions for States to uphold all human rights, stressing that greater respect for human rights, not their curtailment, is the best means of preventing terrorism.

#### *ALTERNATIVE SCENARIOS*

Since present-day regimes have not achieved fundamental reforms from within through which they could correct their course and improve hopes for a better future, Arabs anticipate a number of future scenarios, some of which are catastrophic, while others are hopeful.

#### **The Impending Disaster Scenario**

If the repressive situation in Arab countries today continues, intensified societal conflict is likely to follow. In the absence of peaceful and effective mechanisms to address injustice and achieve political alternation, some might be tempted to embrace violent protest, with the risk of internal disorder.

This could lead to chaotic upheavals that might force a transfer of power in Arab countries, but such a transfer could well involve armed violence and human losses that, however small, would be unacceptable. Nor would a transfer of power through violence guarantee that successor governance regimes would be any more desirable.

#### **The “Izdihar” Alternative**

Disaster can be averted. The alternative is to pursue an historic, peaceful and deep process of negotiated political alternation adopted by all pro-reform segments of Arab society,

*By 21st century standards, Arab countries have not met the Arab peoples’ aspirations for development, security and liberation.*

*Disaster can be averted.*

*The desired outcome is a redistribution of power within Arab societies.*

*Establishing a society of freedom and good governance requires comprehensive reform of governance at three interactive levels: internal, regional and global.*

whether in power or not, on all fronts and by all democratic means, to guarantee rights and freedoms. The desired outcome is a redistribution of power within Arab societies, restoring sovereignty to its rightful owners, the vast majority of people in the Arab world. The process would also establish good governance as a solid foundation for a human renaissance.

### **The “Half Way House” Scenario: the Accommodation of External Reform**

Realistically, a third alternative may well lie in between these two scenarios in the form of a programme endorsed by external forces that would induce a series of internal reforms in Arab countries.

This third or “half way” alternative, falls short of the “ideal” (izdihar) scenario. Measures imposed from outside according to the vision of foreign powers are not necessarily consistent with the concepts of freedom and good governance, particularly those relating to liberation, self-determination and independence.

The challenge facing the advocates of an Arab renaissance is how to harness this alternative such that it enhances internal reform initiatives while the impact of its most critical defects is minimised.

Under all circumstances, co-operation with external non-governmental and governmental actors can be rewarding if all parties respect key principles:

- freedom for all and complete adherence to international human rights law, in particular the right to national liberation
- absolute respect for the tenet that Arabs should find their own way to freedom and good governance through innovation by Arab social forces, without pressure to adopt ready-made models
- inclusion of all societal forces in Arab countries in a system of good governance to ensure popular representation
- full respect for the outcomes freely chosen by the people
- dealing with Arabs in a partnership of equals free from patronage.

## *REFORMING ARAB SOCIETAL STRUCTURES TO GUARANTEE FREEDOM*

Establishing a society of freedom and good governance requires comprehensive reform of governance at three interactive levels: internal, regional and global.

### **Internal Reform**

Internal reform requires a structural reform of the state, civil society and the private sector to enhance the principles of sound administration. Also required is a correction of the region’s present development trajectory by moving from rent-based economies to more diversified production systems, and thoroughgoing political reform. The latter should consist of:

*The reform of practices:* immediate action must be taken to address three priorities:

- Abolishing the state of emergency.
- Ending all forms of discrimination against any minority group.
- Guaranteeing the independence of the judiciary.

*Legislative reform:* There is a compelling need to modernize Arab legal systems, to make them compatible with international human rights standards and effective in protecting human rights and freedoms in practice. Constitutions need to be reformed to end the permanency of political power and to hold ruling authorities responsible for their actions before the judiciary and elected representational bodies. Political pluralism should be guaranteed by an effective system based on the principle of equality.

It is equally critical that Arab constitutions must guarantee fundamental rights and freedoms. The constitution should clearly provide that it is unlawful to enact any legislation that restricts rights and freedoms.

It is equally critical to reform laws regulating political rights, such that they affirm the principle of equality, and ensure that the principles of citizenship and equality apply to all constituent elements of national society.

Legislation must guarantee that citizens are free to set up civil society organizations and to



enact parties, as well as to protect the right of parties to carry out peaceful political activities. Also necessary is a reform of Arab laws to ensure the protection of personal freedoms, the prevention of illegal arrest, torture, administrative detention and disappearances.

*Political reform:* The way to achieve good governance in the Arab region is through fundamental reform of its political architecture. This means, in particular, ending the executive's monopoly of power, and the marginalization of other state organs, which obstructs the free and healthy development of society's capabilities and potential. In some countries, this requires a clear distinction in both law and practice between the state apparatus and the party in power, so that the party concerned does not enjoy the prerogative of using state services to strengthen its presence, in breach of the principle of equality before the law.

The achievement of these desired reforms confers duties and responsibilities on the state and all societal forces.

The obligations of the State include allowing freedom of expression and organization, starting a direct dialogue with all active forces in society, safeguarding the independence and integrity of governance institutions, as well as carrying out comprehensive structural and functional reform of the security services. All service branches must obey the law, and should be at the service of the people and the nation, and not the ruler, party, sect or tribe.

The élites of political society need to develop a constructive discourse and reject policies of exclusion. They must also strive to find common ground among political forces and create a new mould for the political scene, clearly distinct from past trends of polarization and fragmentation, which could seriously hamper genuine democratic transformation in the Arab region. In addition, the political élites must demonstrate adherence to their own principles, seeking democratic solutions to settle differences.

Civil society has its obligations as well. They include developing appropriate methodologies and conceptual frameworks to adapt civil and human rights work to the local Arab environment; reaching out to include the widest possible social spectrum; securing their

### **Perpetuating power in the name of democracy and the people**

Article 77 of the Egyptian Constitution of 1971 limits the maximum term in office of the President of the Republic to two consecutive terms.

Towards the end of President Sadat's second term of office, this constitutional provision was amended, on 30 April 1980, to permit the President of the Republic to be re-elected for further terms of office with no upper limit prescribed.

The stated reason for the amendment was that the President's term "began before the Constitution was promulgated, and in accordance with article 190 and article 77, his term of office concludes in November 1983. This outcome, resulting from the application of this provision, is not consistent with the democratic principles which our society safeguards."

own independence; and creating networks of associations and organizations with similar goals.

In terms of parliamentary representation, it is essential to establish the principle of total equality among citizens and provide safeguards against disqualifying candidates from parliamentary representation on any basis. Also required is the adoption of affirmative action policies targeting marginalized groups. These include allocating a quota of posts in government and the legislature for minorities, and for women while maintaining the principle of competition within quotas. It remains necessary to establish ethics committees for fairness in parliaments to prevent deputies from abusing their political standing.

### **Changes at the Pan-Arab level**

Establishing good governance at the pan-Arab level entails transforming the ineffective regional set-up of the present day into a variety of structural arrangements aiming at integration.

It is suggested that regional mechanisms are set up to settle disputes and support preventive diplomacy between states. It has become necessary for Arab countries to conclude a new Arab Human Rights Convention, fully conforming to the human rights system. The convention should provide the mechanisms necessary to stop violations at the country and pan-Arab levels. Perhaps the most important of these would be an Arab Council of Human Rights and an Arab Court of Human Rights, which would allow individuals to bring action directly against their own governments.

### **Governance at the Global level**

The global system will need to be reformed

*The elites of political society need to develop a constructive discourse and reject policies of exclusion.*

*Establishing good governance at the pan-Arab level entails transforming the ineffective regional set-up of the present day into structural arrangements aiming at integration.*

*The (global) system has to uphold the rule of law on the strong and weak alike.*

to provide effective and peaceful channels for settling disputes and a framework of fair rules that are subscribed to, and implemented by all. The system has to uphold the rule of law on the strong and the weak alike. This would require the development of an international instrument that can serve as an unbiased arbitrator, and provide peace, security and advancement for all humankind on a strong human rights basis, as well as on justice and prosperity for all.

The UN's credibility, which would be enhanced through its development, can enable it to play a crucial role in the process of transformation towards good governance and freedom in Arab countries. The organization can ensure the completion of initial legal reforms assuring civil society organizations the freedom to exist and operate; and guarantee that conditions are met for holding free and fair elections.

#### *ACHIEVING PEACEFUL POLITICAL ALTERNATION IN ARAB COUNTRIES*

The sequence of events leading to a transformation of the present political context passes through several stages. Vision dims the further one peers into the future, and prospects for alternatives multiply. In this light, the first act of this transformation is so crucial that it represents, in our view, the yardstick by which to judge the seriousness of governance reform in Arab countries.

The reform required in Arab countries will be marked by the total respect of the key freedoms of opinion, expression and association in Arab countries and the ending of all types of marginalization of, and discrimination against social groups. It will eliminate all types of extra-legal arrangements such as emergency laws and exceptional courts. It will lay down

foundations for the principles of transparency and disclosure in all organizations throughout Arab society.

As such, this act requires an initial far-reaching legal and organizational reform the crux of which is the guarantee of key freedoms and independence of the judiciary and changes that bind ruling authorities to the law and security forces to their original mandate in protecting the security of citizens and the nation.

The climate of freedom created by unleashing these key freedoms can be expected to secure the remaining conditions for systemic change: high quality institutions within civil and political societies at the national and regional levels; and a political, legal and social basis for subsequent acts in the "izdihar" scenario to unfold.

#### **Epilogue: the furthest lotus tree**

Formidable obstacles stand in the way of a society of freedom and good governance in Arab countries. And this is an undeniable truth. But at the end of this difficult journey, there lies a noble goal, worthy of the hardships endured by those who seek it.

The time has come to make up for the missed opportunities of the past. It is to be hoped that the Arab people will not again fail to take the historic road leading it to its appropriate place in a better, fairer and freer world, one that it will have contributed to bring into being, and in whose benefits it will share.

**Address by the UN Secretary General,  
Opening Session of the General Assembly, New York, 21  
September 2004**

All states – strong and weak, big and small – need a framework of fair rules, which each can be confident that others will obey...yet this framework is riddled with gaps and weaknesses. Too often it is applied selectively, and enforced arbitrarily. It lacks the teeth that turn a body of laws into an effective legal system...Those who seek to bestow legitimacy must themselves embody it; and those who invoke international law must themselves submit to it.