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NEW CHALLENGES IN DEMOCRACY

Lessons to be Learned from the Middle East

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I. INTRODUCTION

Somebody has described the recent Presidential elections in Egypt as “more than a referendum but less than an election”. This may be an accurate and sharp description of the reality of elections in the Middle East.

The introduction of democratic principles and values, the change of long lasting and deeply rooted believes about the relationship between those who rule and those who are ruled, and the encouraging of a comprehensive, inclusive and genuine dialogue aiming at fostering an effective reform process continues to be a pending issue in the region.

In order to efficiently engage in such dialogue and to successfully launch the much desired reform process, a professional exercise is needed to analyse existing conditions and impediments, and to explore the most appropriate remedies. Such exercise must ensure that the whole process is owned by its own beneficiaries, by taking into account at all times the specific and characteristic cultural, historical and religious circumstances of the people in the region.

This presentation intends to contribute to the encouragement of the so much commented dialogue that is urgently needed at all levels. It is structured into two main parts, referring the first one to some important general aspects of elections in the Middle East, while the second has been dedicated to some of the most needed electoral reforms, as part of the democracy building process.

II. ELECTIONS IN THE MIDDLE EAST: GENERAL ASPECTS

Throughout the last two decades of last century there have been many forms of public plebiscite in a number of countries in the Middle East (ME). Nevertheless, such exercises could hardly be classed as genuine democratic elections. They have usually been mere consultations without the minimum guarantees for a free and fair expression of the public will. Therefore, elections as such in the ME may be regarded as new to the

political life in the region, however instrumental in encouraging an incipient expression of ideological diversity and for the dissemination of unknown democratic principles and values.

The organization and conduct of several elections in a number of countries over the last few years have not led yet to a real and tangible change, and have not been able to foster a genuine transition to democracy. Unfortunately, many such elections have instead led to strengthening the control of ruling regimes that are known to have increasingly restricted public freedoms and citizens rights. This is due to a large number of factors, including the basic aspects of the electoral process and the way it is usually administered among the most important of them. Considering that the analysis of such factors clearly exceeds its purposes, this presentation will only focus on the general aspects of elections in the ME.

1. The Legal Framework

With very few exceptions, countries in the ME have not gone through a comprehensive, participatory and inclusive legal reform process. In addition, attempts to reform the legal framework of elections have usually been limited to electoral laws and provisions, without taking into account all other laws and regulations that directly or indirectly affect the electoral process. It is common to see that constitutional provisions, mainly those that refer to safeguarding basic citizens rights and the tools to protect them, as well as many other laws including political parties laws, criminal codes, administrative provisions and media regulations among others, are not dealt with in away that makes them consistent with the pretended reforms in the legal framework of elections. It is also common to find different electoral laws that regulate elections for different levels of representation and public administration, which are not fully consistent with each other.

Many election laws in ME countries are outdated, and the reform process, if any, is limited to introducing consecutive and, at times, simply cosmetic amendments, instead of engaging in the drafting of new legislation through a consultative process that is inclusive of all stakeholders and political forces and tendencies.

2. Political Parties

Election systems in the region, in most cases, do not encourage the establishment and consolidation of a political party system. Instead, and at the expenses of political parties, electoral provisions and arrangements seem to be meant to strengthening the role of individual/independent

candidates, who have usually been local traditional leaders loyal to ruling regimes.

Specific laws that deal with the freedom of association and political parties are either non-existent, full of restrictions that empty them of their genuine purposes, or are completely suspended under long-lasting states of emergency and martial laws.

Political parties other than the ruling party, where they exist, are generally weak and lack good structural and internal democratic organization. The one-party system and, in many cases, the complete confusion of the ruling party with state structures and institutions is another compelling element that obstructs the development of a democratic party system, as a key element of democracy and alternative government.

3. Women Participation

For cultural, but also political reasons women, who are not simply and completely excluded, have traditionally been discriminated and marginalized in the decision-making process. It is clear that the recent attempts to find remedies and foster women participation have not been successful. In many cases they have even been counterproductive, thus diminishing yet more women's role in the electoral process and the representation of citizens' interests. The percentage of females in public offices and representative bodies is alarmingly low. This, among other factors, may be behind the fact that in most ME countries there are no gender-sensitive policies that are oriented towards the improvement of women conditions in society. The conclusions of the latest versions of the Arab Human Development Report of the United Nations Development Programme are very illustrative in this regard.

4. The Administration of Elections

It is commonly agreed that the independence, autonomy, transparency and complete neutrality of the electoral management body is a *conditio sine qua non* for credible, free and fair elections. With few exceptions only in recent years, the administration of the electoral process fully lays with governmental institutions in most ME countries. Furthermore, in those cases where a specialised body is established for the administration of elections, the formation and composition of such bodies is questioned. Even when the judiciary is entrusted with the supervision of the process, the independence of the judiciary itself is seriously contested.

This is resulting in the conduct of vitiated elections that are characterised by low degrees of public trust and acceptance, as well as many allegations of fraud and misconduct. The low turnout in many cases (i.e. the recent parliamentary elections in Lebanon and Presidential elections in Egypt) indicates peoples mistrust in the system and their absolute conviction that their vote does not make a difference. This is more shocking in countries where people are anxious for a change that leads to an improvement of their bad living conditions.

5. The Empowerment of Citizens & Civil Society

The much generalised apathy of citizens in the region is a result of the established systems and rules that do not encourage a feeling of empowerment. Citizens simply find themselves excluded. Furthermore, the paramount restrictions that are imposed on civil society organizations that could be called to play a leading role in the opening of the decision making process to effective public participation constitute another important aspect of exclusion.

The transparency of the process constitutes one of the essential aspects of its credibility and inclusiveness. The absence of structured mechanisms for participation, as well as for the proper observation and scrutiny of the decision making process and the election of representatives for public office leads to obscure practice and non accountable government.

Another important aspect in this regard refers to the lack of measures within the system to strengthen a citizenship feeling and commitment. Existing arrangements rather reinforce sectarian and at times exclusive feelings, leading to encouraging citizens' commitment to geographical, ethnical, tribal or religious interest groups rather than to the general public interest that by nature tends to including instead of excluding the other.

III. DEMOCRACY BUILDING AND NEEDED REFORMS

The above considerations are not meant to draw a black picture that obstructs the ways for hope. They are only a laconic description of existing conditions that are, fortunately, starting to have interesting exceptions with reform attempts that help perceive the light that is starting to flash at the end of the tunnel. However, a number of reforms are badly needed in order to seize the opportunity at this high momentum to foster a smooth transition to democracy while preserving social peace.

1. Constitutional & Institutional Reform

Constitutional and Institutional reform complement each other and constitute a milestone in the path towards democracy building. The transition to democracy needs a genuine constitutional reform process that establishes the foundations and provides necessary conditions for the implementation of an efficient reform process of all state institutions. Constitutional reform needs to incorporate into the new supreme norms the values of freedom, justice, rule of law, participation and responsiveness, through effective and concrete arrangements that organize the relationships between the three powers of the state (Legislative, Executive and Judiciary). These values should also guide the constitutional provisions related to the formation, operation, responsibilities and accountability of representative bodies and state institutions.

Institutional reform should be the tangible translation of the reformed constitutional values and principles, resulting in the establishment of participative, democratic, accountable and responsive institutions.

Whenever these concepts are dealt with, elections emerge as a corner stone for any reform process. Indeed, a credible constitutional reform may only be implemented and sustained by an inclusive body that represents all social segments with no exclusions of any nature. This may only be achieved through a free and fair process to elect such a representative body. In order to complete their reform process, state institutions also need to be established through free and fair elections. Freely and fairly elected institutions are a guarantee for the sustainable introduction of democratic values and practice. It is therefore possible to conclude that elections and constitutional/institutional reform are intrinsically interrelated.

Constitutional provisions in the majority of states in the ME include references to democratic values and principles, as well as to a sovereignty that resides in the people who exercise it through their elected representatives. Nevertheless, such provisions suffer from two main and generalised deficiencies. In the first place is the lack of concrete and directly applicable mechanisms for the implementation of such values and principles and for the effective empowerment of citizens, thus turning such constitutional provisions into mere rhetorical declarations with no effect. The second deficiency refers to the absence of an adequate institutional set up that ensures the respect and implementation of those principles, in an effective manner that imposes on both rulers and ruled the real rule of law.

Other important aspects that contribute to putting the issues of constitutional/institutional reform high on the priorities' list for democracy

building in the region, refer to the real separation of power, the rule of law, the independence of judiciary and, what may be called, the necessary laicisation of constitutions, laws and political institutions.

These constitutional/institutional reform priorities clearly have their direct and immense impact on electoral systems design and performance. Indeed, the design of an adequate electoral system that enables the organization and conduct of credible, transparent, free and fair elections, becomes a kind of fallacy if it is not supported, or even preceded by a constitutional set-up that lays down the necessary foundations for a solid democratic system, as well as the tools for the exercise and sustainability of such democracy. It is actually fraudulent and misleading to think that elections may be considered separately from those constitutional prerequisites. In a way elections and democracy conform a one and unique concept, meaning that genuine elections can only be democratic and that no democracy may exist without such elections.

2. Electoral Reform

Democracy is not only about elections and the conduct of more or less enfranchised plebiscites. However, transition to a sustainable democracy cannot be achieved without a comprehensive electoral reform process. Such a process should ensure the design and enforcement of an electoral system that meets the high aspirations of the people.

Electoral reform thus becomes a key element of democracy building, and should therefore include reforms that deal with the legal framework of elections, electoral system design, electoral boundaries, electoral administration, voter registration, as well as electoral practices.

- **Legal Framework**

Reforming the legal framework of elections is the starting point for electoral reform. This process should be a comprehensive one that allows for the review, analysis and reform of all related laws and regulations. As already mentioned above, the legal framework is not limited to election laws, and should also comprehend all relevant constitutional provisions, as well as many other laws including political parties' laws, media regulations, relevant criminal provisions, etc.

The reform of electoral laws and related norms should be completed through a consultative process that takes into account all views and ideologies in a society. It should therefore envisage the use of

arrangements and tools that enable the inclusion of all political and societal groups, with special attention to women, minorities and other disadvantaged groups. This will certainly result in a stronger and more lasting support of the largest number of stakeholders, by reflecting and synchronizing the interests of both the majority and the minorities, which is a critical condition for the sustainability of resulting democratic arrangements.

International standards for free and fair elections derive from a number of international treaties and covenants that deal with human and citizens' rights. Therefore, and taking into account that most of the ME countries are signatories of most of those international instruments, it is very important that those international standards are incorporated, as an integral component of the legal provisions resulting from the reform process, whether these are elections or other laws.

- **Electoral System Design**

The design of an inclusive electoral system is at the same time an integral component of a reform process, constituting one of its tangible outputs, as well as a key element, if not a prerequisite for the successful launch and sustainability of that process. In transitional situations there is usually a sense of urgency for elections in order to quickly generate legitimised institutions that are able and morally empowered to deal with electoral and other reforms. This leads at times to producing fragile or somehow transitional systems that may not be the most suitable in the longer-term. In the ME, almost with no exceptions, the recent electoral history proves that timid reforms to the electoral systems have not led to the introduction of real democracy. They continue to be used by many regimes to pretend higher levels of legitimacy through cosmetic measures that cannot eradicate the fundamental elements of authoritarianism and oppression. There is therefore a need to search for manners to enable the design and implementation of new electoral systems, without hampering the need to maintain the peacefulness of the transition process to democracy.

Although a number of countries in the ME have managed to conduct several elections, these have not produced real changes. Instead of real improvements and increased levels of participation and empowerment, leaving alone the necessary alternation in power, such elections helped to temporarily absorb public anger and demands and, paradoxically, to weaken and fragment incipient democratic opposition initiatives.

Therefore, a genuine and inclusive dialogue needs to be instigated in order to establish a list of criteria and priorities for the design of appropriate electoral systems. In transitional situations, and according to the new version of the International IDEA Handbook on “Electoral System Design”, a new electoral system should:

- ✓ Provide incentives for conciliation (conflict management)
- ✓ Provide effective representation (geographical, ideological, descriptive, etc.)
- ✓ Encourage political parties as a key element for the consolidation of democracy
- ✓ Make elections accessible and meaningful (inclusiveness and empowerment)
- ✓ Facilitate stable and efficient government
- ✓ Strengthen the accountability of both governments and individual representatives (influential vote and periodicity of elections)
- ✓ Promote legislative opposition and oversight (equal opportunities)
- ✓ Make the election process sustainable (tailored and lasting)
- ✓ Ensure neutrality and transparency of election administration (Independent EMB)
- ✓ Incorporate international standards (principles of freedom, fairness, transparency, periodicity, universal adult suffrage, secrecy of the vote and equality).

• **Electoral Boundaries**

One of the most important components of an electoral system refers to its geographical structure, this is electoral boundaries. In fact, the way electoral constituencies and divisions are established has a direct and critical influence on the results of elections. As a matter of fact, the establishment of electoral boundaries has traditionally been used by governments as a hidden tool for the production of tailored electoral results that serve the interests of ruling parties or regimes.

The electoral reform process therefore may not be complete if it does not include a consultative process to review and re-draw electoral boundaries. This process must be inclusive of all interested parties, and must be done in away that safeguard the fairness of representation of all interest groups, with special attention being given to the needs of minorities and other disadvantaged groups. The drawing of electoral boundaries should also come to ensure higher levels of citizenship sense by larger numbers of voters, thus encouraging the harmonization of

interests and the commitment to wider public priorities rather than to fragmented and narrow geographical, ethnical or religious interests.

- **Electoral Administration**

In the transitional phases of a democracy building process stakeholders need doubled levels of reassurance and objectiveness of implementing institutions of the electoral system. Liberating institutions from the control of undemocratic and exclusionary powers thus becomes one of the most crucial elements for credible elections. Otherwise elections may not agglutinate the indispensable levels of common acceptance, trust and satisfaction.

Although many may consider that the absence of an independent body responsible for the management of elections might be the best prove of a well consolidated democracy, unfortunately this level of credibility depends on deep rooted cultural understandings, and may only be achieved following a long standing practice of democratic governance. In transitional situations the need to establish an independent electoral management body that assembles the respect, confidence and acceptance of all stakeholders constitutes an essential element. The electoral system should therefore provide for the establishment of an independent electoral administration that is properly and fairly formed, with adequate structures that enable it to deliver credible, free and fair elections. Such an electoral management body must be compelled to managing elections with complete neutrality, autonomy, transparency and professionalism. The electoral legal provisions should also clearly determine the exclusive responsibility of such administration on all that relates to the supervision, organization and conduct of elections, as well as provide it with adequate tools and arrangements that guarantee the effectiveness of its decisions. Without such an independent electoral administration the whole process may be vitiated and exposed to collapse.

With very few and rather recent exceptions, in most of the ME countries elections are directly managed and fully controlled by governmental bodies (ministries of interior or others). Such bodies are completely loyal to the ruling parties and/or regimes, and have systematically and unfairly geared the electoral processes to safeguard the interests of ruling parties and to diminish the chances of all other political forces and tendencies. This is leading to increased levels of frustration that is many times translated in alarming low turnouts and a strong feeling that the process of change is only a fallacy.

- **Voter Registration**

It is well known that free and fair elections may be impaired through the control and improper manipulation of voters' lists. That is why a person's electoral rights always start with his/her right to be registered as a voter and to exercise his/her control on the update of voters' lists and the accuracy of the data included therein. The existing system of drawing voters' lists based on existing civil registries data in most of the ME countries systematically results in the disenfranchisement of considerable numbers of voters. It is interesting to note that in most cases disenfranchised voters are among those whose loyalty to the ruling party is not clear.

Independent electoral management bodies in transitional situations should have the ultimate and full responsibility for voter registration. And voters' lists should ensure that all qualified voters are included. Furthermore, voter registration arrangements should include affirmative measures to increase women and minorities participation. They should also take into account the aspects of easy access and permanent update of data in order to ensure the highest possible levels of enfranchisement.

- **Electoral Practices**

Following the above considerations, it is easy to conclude that the incipient electoral history in the ME, although is an encouraging gate for hope, is characterised by many unfair practices that hamper the credibility of the process and endanger its correct development and sustainability.

Therefore, affirmative measures need to be included in the electoral reform process in order to ensure higher levels of transparency and fairness in elections. Effective and binding arrangements are needed in order to put an end to unlawful influence by ruling parties and/or regimes, including aspects related to political parties' and association freedoms, campaign regulations and restrictions, official media abuse, misuse of public funds, voters' freedom of choice and secrecy of the vote, etc. Effective tools are also needed to better define electoral offences and to enforce their corresponding penalties.

It is also critical to foster the establishment of independent electoral management bodies across the region, and to strengthen their capacities where they exist. The availability of adequate education tools and programmes for the exchange of know-how and best practices is

increasingly and badly needed in the region. This should also include the establishment of regional networks and communities of practice that help improve electoral practices through tailored tools and arrangements.

Finally, there is an obvious need for civic and voter education programmes that are geared towards introducing democratic values and principles, as well as to strengthening citizens' conscience of their own basic and political rights.

IV. THE ROLE OF INTERNATIONAL COMMUNITY/DONORS IN THE REFORM PROCESS

Democracy is a universal concept. It may manifest itself through varying forms and mechanisms depending on the cultural conditions and traditions of each society, but it does not belong to a given culture or social structure. No matter what variations it may present, it incorporates common principles and key elements by its own nature, including but not limited to freedom, equality, justice, rule of law, respect for human rights, representative government and free, fair and inclusive participation. Nevertheless, it is clear that there is a deeply rooted negative reaction towards any external attempts to help foster a reform process in the ME, as well as a frequent association between the concepts of democratization and westernisation. Such reaction and association must be very seriously considered. In fact, it is easy to perceive, at the social base levels, a generalised feeling that democracy is an alien concept that does not fit into the Arab culture and traditions. This mistaken perception is carefully abused by regimes and other influential powers to gear the popular postulations against genuine reform initiatives.

Therefore, the enormous challenges for democracy building in the region need to be dealt with through a comprehensive approach, taking into account the specific regional context. An approach that incorporates, as an essential component, considerations of ownership as insistently outlined in the Arab Human Development Reports of UNDP.

External assistance to support the reform process, whether at the regional or national level, should therefore be broad and wide-ranging. Donors should aim at providing well structured assistance programmes that provide expert and material support for a number of varying components that complement each other and are all essential elements of the democratic process as a whole. The international community's support should be

geared towards the transfer of know-how and the exchange of experiences, always with rigorous respect for sensitivities and sovereignty at all levels.

The reform process at large, as well as any associated assistance programmes, should also be inclusive and include all possible stakeholders in its targeted groups. In addition to focusing on civil society organizations and specific groups, governments and public institutions should also be addressed. Bearing in mind the colossal control that governments in the region are used to exercise on the public life in their countries, it is time that a constructive and sincere dialogue is launched at this level in order to direct governments' attention and programmes towards the paths of democracy building. Governments need to be persuaded of the lasting and uncontested benefits of democracy for their own people on the longer-term.

V. CONCLUSION

It is very sad and alarming to note that people across the ME are increasingly losing hope in the reform process and the real possibilities for change. This is more frustrating in a region that is still in the very outset of the democratic process, way behind of what has already been achieved in most other regions around the world.

However, and despite all obstacles, the regional culture and heritage have the necessary foundations to enable the launch of a genuine and effective reform process that openly and bravely addresses all elements, in a manner that is tolerable and digestible for the people of the region, their culture, values and beliefs. Therefore it is very urgent and compelling for all parties, local, regional and international, to join efforts in order to open a door of hope for a smooth transition to democracy in the ME. Otherwise the violent transition will continue to be the fate of many countries for years to come.

The great Mahatma Gandhi said: "you must be the change you wish to see in the world". This is a philosophy that, in my view, is valid for both local initiatives as well as external support efforts in the reform and democracy building processes in the Middle East.

By Ayman Ayoub
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