

Parliamentary Reform after the Arab Spring

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>> Following the dissolution of the Egyptian parliament by the Egyptian Supreme Court in June 2012, the security forces conducted a search of the parliament building. Among the ‘shocking’ secrets they revealed to the public was evidence that parliamentarians – predominantly from the Muslim Brotherhood affiliated Freedom and Justice Party – had prepared an alternative budget to that of the interim government. In many democracies around the world, such a role for parliament is an accepted norm. In the Middle East and North Africa (MENA) region it is very much an exception.

Parliaments in the Middle East and North Africa region have been at best reactive and at worst pliant tools of the executive. In the aftermath of the so-called ‘Arab Spring’, elected representatives must be empowered to hold executives accountable, and to address the concerns of their constituents in an effective manner. M. Steven Fish has argued in *The Journal of Democracy* that the strength of a national legislature may be ‘the institutional key to democratisation’. In choosing which system to adopt, MENA countries can draw upon lessons from parliaments in other countries around the world that have recently emerged from dictatorship.

PARLIAMENTS IN THE MENA

Not all MENA parliaments are completely toothless or ineffectual. Iraq, Kuwait, Lebanon and Yemen have legislatures with some tangible powers and where strong criticism is often expressed against the executive. However, none of these countries offer a happy template to be

HIGHLIGHTS

- For the first time in decades there is a window of opportunity for Arab parliaments to hold governments to account.
- In order to make parliamentary oversight effective, the critical weaknesses of parliaments in the region due to lack of experience, knowledge and resources need to be addressed.
- Informal networks of governance or conflict resolution must not replace parliaments as the primary institution where citizens hold the executive to account.

»»»»» followed by other countries. The Kuwaiti parliament, with the power to scrutinise budgets, summon ministers for questioning and initiate legislation, is locked in an almost constant dispute with the country's royal executive that has at times paralysed government in the country. The legislatures of Lebanon and Iraq are perceived as being divided along acrimonious sectarian lines with positions of patronage distributed commensurately. Yemen's parliament has been known to call ministers to account but it is generally reactive, almost never initiating legislation despite enjoying nominal powers to do so.

In Egypt, after years of stagnation, regime cooption and harassment, the parliament enjoyed a rebirth in the aftermath of the first democratic elections in late 2011 and early 2012. The elections resulted in a strongly Islamist parliament with the Freedom and Justice Party (FJP) taking 47 per cent of seats followed by the Salafist al-Nour party with 24 per cent. But parliament did not sit for long; the lower house was controversially closed in June 2012 when the Supreme Court claimed the election of representatives of political parties to seats reserved for independents was unconstitutional. However, the Egyptian courts declined to also close the new constituent assembly - the key body charged with writing a new Egyptian constitution - that had been selected by the now dissolved lower house. The powers of parliament under a new constitution are still very much up for debate and decision as of the time of writing. Meanwhile Egypt's new president, Mohammed Morsi, is becoming accustomed to governing without any parliamentary oversight and is widely believed not to favour a strong legislative check on his powers in the future.

In Libya, a bitter dispute over the formation of an interim government in the summer of 2012 delayed the start of a constitution writing process. Deep suspicions also remain over the formation of a 'Committee of Sixty' that would produce a constitutional draft. Pro-federalists in the east are particularly concerned that their rivals in the General National Congress (GNC) were trying to disproportionately influence the membership of

the Committee of Sixty. After recent turmoil in the GNC, including the removal of a prime minister after a month, some are now questioning whether a parliamentary system of government can work in Libya. Others, including the newly appointed prime minister, Ali Zidan, wonder if any other form of government - other than one based on transparent compromise in parliament - can work in a country so riven with regional divisions.

In the aftermath of the Arab Spring, Morocco's King Mohammed VI announced a number of reforms to strengthen parliament and reform electoral practices. In the 2011 parliamentary elections, the Justice and Development Party (PJD) became the largest party in the lower house. Following the PJD victory the King named its Secretary General, Abdelilah Benkirane, as prime minister. However, the King can rule by decree and dismiss ministers as he sees fit, and his shadow cabinet of 'royal advisors' continues to call the shots on important dossiers such as security and foreign policy, raising doubts about the real power and autonomy of Benkirane's government. Parliamentarians in Morocco are still not at liberty to directly criticize the King - 'injurious remarks to the monarchy' are punishable by law. The new relationship between parliament and ministers is also uncertain. The prime minister can dissolve parliament as he sees fit and call new elections. But the extent of parliamentary scrutiny over the workings of cabinet is a work in progress, fraught with potential difficulties due to the disparate number of political parties represented in the lower house and the opaque, enduring power of the palace over government.

In Tunisia, the Constituent Assembly, tasked with both drafting a new constitution and the functions of parliament, was elected in the country's first free elections in 2011. The Assembly is dominated by the Islamist party Ennahda, which holds 89 of the 217 seats and rules in a coalition government with the leftist Ettakatol and Congress for the Republic. At the close of 2012 a draft version of the constitution

grants strong powers to the country's legislature including strictly limiting presidential powers of decree. Tunisia has no national history to draw on in terms of how an empowered parliament should operate. Moreover, in Tunisia's fragmented political party landscape, members of parliament from a myriad range of political movements will have to find a way to work together to put institution building ahead of their political differences.

In Yemen, the government of former president Ali Abdullah Saleh was often able to get legislation through parliament through a combination of tribal patronage and flawed elections. On occasion Yemen's government simply published new laws without consulting parliament and declared

them in force – an unconstitutional practice that was not challenged by the country's weak judiciary. Moreover, the unelected upper house – appointed by the president – meets in joint session with the elected lower house to consider important legislation. With both houses combined the president is less likely to lose key votes. Since the Arab Spring and the resignation of President Ali Abdullah Saleh

in early 2012, Yemen's parliament has played a useful role in reducing conflict. The unlikely coalition formed in preceding years between disparate opposition parties – the Joint Meeting Parties – consisting of Sunni Islamists, Zaydi Shia representatives and south Yemeni socialists has helped these constituent parts of Yemeni society to find common ground and negotiate more coherently with the new government, even if the outcome has not always been to their liking.

There are a number of weaknesses in parliamentary reform that are common to all the above MENA countries: 1) Parliaments cannot function effectively without clear and enforceable constitutional guidelines on their relationship with the executive; 2) the need for a broad and inclusive number of political parties should be balanced by a responsible attitude towards working to present a coalition in parliament to press for and negotiate demands; 3) a dearth of institutional experience and resources constitutes a grave threat to parliamentary development. In seeking to address these problems, a number of lessons on parliamentary reform from other transition experiences can be drawn on by the MENA.

LESSONS FROM INTERNATIONAL EXPERIENCES

A legislature can take many forms: that of a parliamentary system of government – where the executive is appointed (and can be dissolved) by parliament; a semi-presidential system, in which the prime minister and cabinet, although appointed by the president, are also responsible to the legislature which can usually remove them from office; or a presidential system, in which parliament oversees some of the activities of the executive (e.g. budget) but has limited power to control cabinet business, nominate and remove ministers. Most important in semi-presidential or presidential systems, however, is the power to rule by presidential decree, veto and, in some cases, appoint members of the legislature.

During the last two decades many Latin American countries emerging from military dictatorships have grappled with parliamentary reform. Almost all favoured a strong presidential role, albeit with varying degrees of parliamentary oversight. Some African countries such as Nigeria, Ghana and Malawi have turned from a parliamentary system to a presidential one, due in part to a perception that parliamentarism led to political deadlock, paving the ground for military intervention. But other countries, including some emerging from the former Soviet Union, have reacted to political

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»»»»» crisis by reducing the power of the presidency. Moldova moved away from a semi-presidential system towards a parliamentary regime. Meanwhile, in the aftermath of the 2004 presidential elections crisis, the Ukrainian parliament overwhelmingly voted to change the constitution in order to dilute presidential powers, in effect moving from a full to a semi-presidential system of governance.

A sustained tendency for political actors to strike deals in informal networks can erode the legitimacy of parliament and entrench corruption. In Nepal, where the monarchy was deposed in 2008, ending twelve years of civil war, a failure to agree a new constitution led to the dissolution of the constituent assembly in May 2012. The purpose of the Nepalese parliament had already been called into question as the main political parties increasingly met outside of parliament to discuss key matters such as the constitution and governmental performance. This tendency to strike deals outside parliamentary scrutiny caused considerable alarm among those who were concerned that their future was being decided by corrupt informal networks.

The experience of Latin America points to the need to develop political party structures so as to improve parliamentary coherence. In a 2007 report entitled ‘Democracies in Development’, the Inter-American Development Bank observed how the lack of a “sufficient concentration of power in the legislature... makes it more difficult for legislators to reach the level of agreement needed to enact necessary reforms.” Moreover, negotiations between governments and a disparate range of representatives can often grind the business of parliament to halt.

A detailed constitutional definition of the relations between the executive and the legislature reduces the risk of prolonged deadlock or abuse of power. Strong presidential veto powers offer no guarantee of political stability. As a general rule, the executive must not supersede the legislature in making laws. Presidential veto and decree powers, including in cases of national emergency, must be clearly

detailed in the constitution – including when these expire and how they can be overturned or rejected by parliament. Detailed constitutional provisions must include mechanisms to resolve fundamental disagreements between government and parliament.

Common practice in Latin America in such cases allows for a presidential veto to override congress or to rule by decree for a limited period. The most powerful presidential veto in the region is that held by the president of Ecuador which congress is not able to override and where the vetoed legislation cannot be reintroduced until the following year. But in spite of this, successive Ecuadorian presidents have been deposed in recent decades, often as a consequence of street protests and military action. The perception of parliament being unable to limit the excesses of the presidency has arguably been a factor in the comparative frequency of street violence and military intervention in politics in the Ecuadorian case. Strong vetoes are also at the disposal of the presidents of Argentina and Mexico where the votes of two-thirds of legislators are required to cancel the president’s veto. In Brazil and Colombia, an absolute majority invalidates a presidential veto. In most countries in Latin America the president can also introduce laws by decree, although there are considerable differences between countries on how, and when, a decree can be overturned by parliament.

Budget transparency – publishing a full and detailed account of government finances – is vital so that the public can evaluate parliamentary and governmental proposals. Parliaments must be empowered to investigate potential conflicts of interest or corruption on the part of government representatives and receive information on government business in a timely manner. In Latin America, oversight powers over the budget have been greatly contested during countries’ democratization. However, it is quite rare for any parliament in the region to draft an entirely new budget to rival that of the president – parliamentarians in Latin America often complain that they lack basic staffing resources to attempt to

do so and necessary government information is not forthcoming. An independent state audit agency can often greatly assist parliamentary oversight.

In Brazil, Chile and Colombia, parliaments are unable to change budgetary allocations or increase the amount - their powers are mostly limited to approving or rejecting a draft sent by the president. In Nicaragua and Uruguay, parliaments can move budgetary allocations around even if they cannot raise the overall budgetary amount. Latin American countries have different contingencies in place if there is a protracted deadlock between the executive and the legislature over the budget. In Chile, Colombia and Peru the president's budget is deemed to be automatically passed if parliament does not approve it by a required deadline or fails to propose an alternative budget in its place. In Argentina the previous year's budget is renewed in case of deadlock between the executive and the legislature. Although the Ghanaian parliament is valued for its vibrancy of debate, its budgetary oversight role is very limited - a problem replicated in many other African countries.

CONCLUSION

The performance of parliaments - the bridge between people and power - is a key indicator of the health of a democracy. Lessons from other countries' experiences include ensuring constitutional clarity on resolving disputes between the

parliament and the executive on legislative, budgetary or other issues such as the removal of ministers; the need to establish effective safeguards against the abuse of veto and emergency powers; and the need for budgetary transparency and wider access to information on government business. Perhaps the greatest current threat to parliaments in the MENA is a continued preference to govern through informal networks outside of institutional scrutiny. Meanwhile, experiences in Ukraine and Yemen show that parliaments can play an important role in resolving conflict.

European donors should assist those MENA parliaments where there is a genuine will and potential for reform. Critical work by European democracy institutes with MENA parliaments - as in Yemen and Tunisia - is ongoing, although often on very limited budgets. Donors must be particularly wary of reinforcing a view that Europe is intent on controlling post-Arab Spring executives and legislatures. Egypt's parliament has already refused support from some international democracy institutes in the wake of the Arab Spring. Europe should seek to allay such concerns by undertaking extensive consultations with a wide range of political movements in the region on the question of parliamentary reform.

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