



**Euro-Mediterranean Foundation of Support to
Human Rights Defenders**

HUMAN RIGHTS AFTER THE ARAB UPRISINGS

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From Old to New Threats

While challenging authoritarian regimes with dismal human rights records, and in some instances successfully so, the uprisings and protests that took place in most Arab countries since late 2010 have not led to the general improvement of the human rights situation. Known forms of threats and violations of human rights have been exacerbated in countries where the old authoritarian regimes managed to avoid or survive major protests; in various ways, though perhaps to a lesser extent, they also continue to haunt countries where the old regimes have been replaced or substantially transformed. However, at the same time new threats and violations of human rights have emerged or spread, including in the countries governed by more participatory regimes, and frequently as the result of activities by non-state actors.

Areas of Concern

Current and future threats to human rights in part depend on the nature of the political regimes that have emerged or managed to survive in the countries concerned. The large scale popular protests in 2010 and 2011 have not led to the collapse of all autocracies that over the decades emerged in Arab countries. By implication, they have not led to an end in human rights abuses related to the authoritarian exercise of power; in some cases authoritarian regimes have become slightly more respectful of human rights, in others not at all. However, the new, more participatory regimes that have emerged in other countries are not always and necessarily better guarantors of human rights. To an extent the threats that under the old regimes emanated from government and thus from 'above' were replaced by threats that emanate from society and thus from 'below'. Above and beyond threats related to the type of regime human rights are also in danger of being eroded by more general developments that affect countries independently of the degree of political change they experienced recently (for the origins and consequences of the 'Arab spring' see for instance Achcar 2013; El-Meehy 2011; Gelvin 2012; Kienle 2012a and b).

At present there are at least seven areas of concern for human rights work in the near and medium term.

Measures against (Alleged) Supporters of the Former Regimes

In Tunisia, Egypt and Libya where the protests led to the departure or death of the autocratic rulers, the partial or complete collapse of the old political order, and the emergence of a new such order, important issues of transitional justice need to be addressed. Representatives and followers of the old regimes who are accused of a variety of crimes will have to be given impartial and fair trials at home or in international courts. Proceedings will have to avoid the Scylla of revenge as much as the Charybdis of preferential treatment by judiciaries that had been established and staffed under the former rulers. The issue is all the more complex as even in the old autocracies judges and courts often managed to maintain or gain considerable independence. This is clearly the case in Egypt where large parts of the judiciary regularly and even continuously challenged and opposed the unelected rulers. For instance, the Supreme Constitutional Court in Egypt not only declared non constitutional legislation governing the 2011-12 parliamentary elections won by Muslim Brothers and Salafists, but also several earlier elections won by Mubarak's National Democratic Party, and it did so on very similar grounds (Kienle 2001).

Another thorny question is that of the 'political rights' of individuals who held office before the uprisings. It is a widespread phenomenon that revolutionaries and advocates of new political orders seek to prevent the return of their predecessors in power and to defeat 'counter-revolutionary' activities, real or imagined. However, it remains whether and to what extent participation in a more democratic political order that claims to respect the rule of (democratically drafted and promulgated) law may legitimately be restricted. In addition, some attempts to deprive representatives and followers of the old regimes of the right to vote and to stand for election seem to include ever increasing numbers of people. Apart from new legal restrictions attempts are visible to marginalize and in various ways to discriminate against social groups considered close to the old regimes. This applies to entire families and 'tribes', 'religious communities', possibly even regions, in Libya,

Yemen, and Syria. Many of these groups are 'we-groups' or 'us-versus-them' groups in the sense that they are held together, or seen to be held together, by strong identities and loyalties based on cultural markers such as language and religion (Elwert 1995; also Barth 1969) .

The New Regimes: Defending Positive and Negative Liberties

Basically Tunisia, Egypt and Libya had free elections only once since the former autocrats have been toppled. In Egypt elections were held for both houses of parliament and a new president, but they were held at short intervals with the successful candidates supposed to remain in power for several years. However, only the regular repetition of elections over years and possibly decades indicates a successful transition to democracy. Moreover, the Egyptian military establishment continued to wield considerable power even after the newly elected president, Muhammad Mursi, in August 2012 disbanded the Supreme Council of the Armed Forces (SCAF) that had governed the country since the overthrow of former president Husni Mubarak. In early July 2013 the armed forces removed Mursi from office but were careful to prepare for the rapid inauguration of a civilian interim president.

At the same time the new regimes that have begun to emerge in the three countries have in various ways failed to respect, or impose the respect for, human rights. In Egypt police and the armed forces continued to arbitrarily arrest and torture citizens before and after Mursi was elected; in Tunisia protestors injured in demonstrations against the old regime are still waiting for compensation; in Libya militias continue to impose their rule over entire parts of the country and to defy the elected government.

One may also question the democratic nature of the processes that have governed the drafting and promulgation of constitutions and legislation more generally. The committee tasked with the drafting of the new Egyptian constitution did not reflect the diversity of political forces in the country and was packed with representatives of the two parties that won the first parliamentary elections. Various provisions of the new Egyptian constitution and other pieces of legislation promulgated since early 2011 fall short of universal standards of human rights. The limits that the new constitution introduced to the judicial review of legislation added additional doubts until the July 2013 coup led to its temporary suspension.

These events and developments remind us that democratically elected governments are not ipso facto defenders of human rights. Positive liberties exemplified by elections, even held at regular intervals, that enable the ruled to participate in the choice of their rulers and to influence policies do not ipso facto entail negative liberties defined as those that the ruled enjoy vis-à-vis the rulers, including elected rulers. The notion of negative liberties refers to liberties, preferably couched in law, that are commonly referred to as civil or human rights such as the rights to free speech, assembly, etc. There is no shortage of historical precedents where democratically elected governments failed to respect such liberties and even rights. In extreme cases the disjunction between positive and negative liberties entails the tyranny of the majority or, depending on electoral laws, even the tyranny of an elected minority (for instance, simple majority vote like in the UK does not guarantee that elected representatives or rulers represent the majority of voters). An important end in themselves, negative liberties also provide guarantees for the survival of democracy because periodic free and fair elections ultimately depend on the freedom of expression, association, movement, etc (on positive and negative liberties, see Berlin 1969).

In order to guarantee the exercise of negative liberties the power even of elected rulers needs to be limited by checks and balances such as the constitutional separation of powers into executive, legislature and jurisdiction. The separation of these powers in law needs to be based on their actual separation in the sense that each of them is in the hands of different individuals and that the selection and departure of these individuals is governed by procedures that guarantee their independence in office as well as their accountability.

In Egypt first the military then the elected president and then again the military repeatedly sought to exercise most powers. In Tunisia the Constituent Assembly ultimately faces no formally established counter powers, precisely because it is the Constituent Assembly in charge of the future constitution.

The Surviving Old Regimes: Authoritarian Rule Reconfigured

While the three countries referred to in the previous section may develop into anything from democracies to hybrid regimes or even new autocracies, most other Arab states have so far remained broadly authoritarian. In some cases like Morocco and Jordan authoritarian rule has been further reconfigured, updated, 'up-graded' or outwardly liberalized but not actually challenged or weakened. No doubt, the new Moroccan constitution allows the prime minister to chair the council of ministers but only if no issues of national security are debated. Most importantly, the King remains the Commander of the Faithful, a title that in the past conferred upon him extra constitutional powers; the new, more restrictive definition of this role needs yet to be tested. In other cases like Saudi Arabia face lifts are even more limited and balanced by new restrictions. By and large in the countries where the old regimes have managed to survive restrictions to liberties and rights continue to be applied to the population at large and even more so to those individuals and groups that are considered to seek change. Repression has even been reinforced in countries such as the United Arab Emirates (UAE) where no major protests took place. To put it differently, authoritarianism has not gone away, nor have the known human rights violations associated with it.

In the major oil and gas producing countries in particular the prospects for significant political liberalization or democratization remain bleak. Major protests only took place in two hydrocarbon states, in Bahrain and in Libya; in both countries the population is deeply divided into 'we-groups' based on strong sub state identities and loyalties (religious, regional, agnatic) with a majority of these groups considering themselves excluded from access to power and wealth. In spite of the recent critical reassessment of the rentier state paradigm it seems that authoritarian regimes in such states are still able to either avoid major contestation or limit it (see Beblawi/Luciani 1987 vs Herb 2003) through the combination of repression and cooptation, partly even legitimacy (for these pillars of authoritarianism, see Merkel 2011). Cooptation in this sense includes the various attempts to preempt or reduce socio-economic grievances through expansionary budget policies to create large numbers of new public sector or government jobs, increase subsidies, pay 'citizens' salaries', etc.

The Increasing Importance of Identity Politics

The departure or weakening of authoritarian regimes has not only sharpened societal cleavages between 'we-groups' based on strong identities and loyalties that (allegedly) supported and opposed them in the past but also societal cleavages more generally and thus reinforced identity politics and their usual corollaries ranging from attempts at marginalization and discrimination to open political violence. With the collapse of authoritarian rule the old repressive central power disappeared that kept in check (even though it also created) conflicts among sub state groups that in many ways were fueled by the competition for power and resources within the political arena formed by the state. As the 'lid came off' and centrally organized repression from above decreased, decentralized violence from below increased, pitting growing numbers of actors against each other. Though with numerous caveats, the Hobbesian Leviathan disintegrated into the state of nature. Processes of this sort have unfolded in Yemen, Syria, and Libya where current conflicts among groups cannot all be reduced to their positioning vis-à-vis the former rulers or rulers who continue to cling to power (on identity politics of this sort, see for instance Zubaida 1991 and 2005).

The Dislocation of the State

The collapse of old authoritarian regimes or the weakening of some of their surviving counterparts has also more generally weakened or even destroyed state institutions and therefore state capacity. Even though authoritarian regimes frequently reduce state institutions to instruments serving their own interests they sometimes also continue to provide services to the population such as the payment of pensions, the supply of subsidized goods, state run schools and hospitals, etc. In spite of their frequent subordination to the political objectives of the rulers the police and the judiciary also fight crime and administer justice. At the level of the courts thus the decline and collapse of state institutions may put an end to the biased administration of justice that often served the rulers, their allies and supporters, and their broader constituencies; however, it may do so at the price of replacing injustice with the absence of justice. This is not so say that forty years of tyranny are preferable to a night without government, but in its own way each of these alternatives threatens human rights.

Almost three years after the initial uprisings some basic services have collapsed or are close to collapse. In Egypt for instance the distribution of cooking gas and other subsidized goods to the needy is in danger. Entire parts of Upper Egypt and the Sinai Peninsula and some areas in Southern and Western Tunisia are de facto administrated by local strongman and groups. In Syria, Yemen and Libya state services have largely become a fiction altogether.

Narrow Definitions of Human Rights and their Outright Dismissal

In democratic elections after the fall of the old regimes a considerable share of votes (and seats) has been won by Islamist forces whose leaders or members have repeatedly expressed reservations about human rights as they have been defined in the founding declarations and the various international covenants currently in force. Internally divided, these forces include individuals and groups that adhere to rather different views ranging from declared support for current human rights standards to mere lip-service and reservations or objections. This applies to Al-Nahda in Tunisia as much as to the Freedom and Justice Party established by the Muslim Brothers and its Salafi rival, the Nur Party, in Egypt. Other forces openly reject the notion of universally valid and applicable human rights, not least with regard to gender issues. Thus equality of women and men is sometimes replaced with their 'complementarity'. Sometimes the critics promote alternative concepts of human rights that are far more limited in scope. These differences have been highlighted by debates about the new constitutions in Egypt and Tunisia and will no doubt affect future legislation and practice. Only recently the National Council for Women in Egypt, a state body, openly challenged views expressed in the upper house of parliament, the Shura Council, on the UN covenant on violence against women (see for instance Al-Ahram Online 31 May 2013). Other areas of concern are the rights of religious minorities and non-Sunni Muslims, the rights of agnostics and atheists, and the rights of those who in matters of personal status in particular do not want to submit to unaccountable religious institutions that for instance outlaw civil marriage.

Continued Challenges to Economic and Social Rights

In the countries where major popular contestation led either to prolonged conflict or to the full or partial collapse of the old regime the dynamics of political change have further dented economic growth that had already suffered from the global economic crisis (including its early manifestations in the form of rising commodity prices). Certainly, economic growth under the old regimes had not been accompanied by equitable distribution and had mostly benefited certain constituencies close to the rulers (see for instance: Amin et al 2012; Diwan 2012; Farah 2009; Kienle 2001; Marotta et al 2011; Sabry 2010; even IMF 2013; World Bank 2013). However, considerable economic growth is necessary (even though not sufficient) to create enough and decent employment opportunities for the unemployed and new entrants to the labor market. Current growth figures, even if nominally positive, are insufficient to create these employment opportunities (e.g. Amin et al 2012).

Where proceeds from the export of hydrocarbons are low (e.g. Egypt, Tunisia) income from rent cannot compensate for the effects of the economic downturn. The situation is even worse in Syria where limited income from rent is mainly used to prop up the current rulers. Consequently, companies close, jobs are destroyed, salaries and wages decline, poverty and impoverishment increase while attempts to palliate these effects through additional social expenditure like subsidies are insufficient and yet increase the budget deficit and public debt. The decline in income and opportunities necessarily further erodes economic and social rights.

'Orthodox' economic policies of neo classical and neo liberal inspiration (such as the varieties on the themes of macroeconomic stabilization and structural adjustment including austerity measures) that international financial institutions and the global North but also major political forces in the countries concerned consider necessary to overcome the current crisis will at least in the short term further accentuate economic hardship for the less well-off who form the bulk of the population. Past economic reforms of this type have negatively affected economic and social rights in the MENA area and beyond. In various respects they also failed to contribute to sustainable economic development even though in some countries they temporarily led to relatively high growth rates (see above). The question arises whether and to what extent they may be crafted in ways to avoid such consequences, and whether there are viable alternatives. The trouble is that earlier policies of state centred development also failed to lead to sustainable economic and human development and the effective preservation of economic and social rights (Heydemann 2007).

Outlook

The fall of the old authoritarian regimes is unlikely to lead quickly to a new political order built on democracy and the respect of human rights. In a sense, the current conflicts over power and resources in these countries are only natural after the end of generalized repression from above. The different political forces are testing their relative strength on the ground to see how far they can go. Some of them may prevail and dominate their counterparts, others may lose and be dominated or worse. However, these forces may also find that they are too weak to dominate others, or that all out conflict is too dangerous as it may go either way. When all political forces are similarly exhausted, they may be ready to reach a compromise and share or pool power. They may even discover the merits of democracy which allows the temporarily stronger actor(s) to govern and the temporarily weaker actor(s) to survive, at the cost of course that their roles may be inversed in the next elections. This is how political forces in so called established democracies like France, the UK and even Switzerland ultimately resigned themselves to democracy. Possibly political actors in Tunisia, Egypt, Libya and yet other countries may come round to this conclusion more quickly than their European predecessors who fought each other for decades and centuries. However, the process will take time and hardly lead to tangible results in the short term, and certainly not within an electoral cycle of four or five years that determines policy making in Europe and North America (e.g. Rueschemeyer 1992 and 2010; Tilly 2007). By implication, the threats and violations to human rights discussed in this paper will have to be monitored and countered for a considerable span of time.

Implications for Human Rights Work

The political and historical dynamics sketched out above once again illustrate the limited effects of the accustomed, 'classical' measures intended to promote democracy and (thus) the respect for human rights. Education, training, support for activists, international treaties and covenants, and positive and negative conditionalities inherent in, or independent of, such treaties are no doubt useful activities and instruments to promote human rights. However, on their own they are unlikely to tip the balance definitely in favour of more democratic political regimes that offer better (though never complete) guarantees for the respect of human rights.

As for education and training more specifically, they may well convince individuals of the pragmatic or moral merits to act in certain ways. However, human action is not only governed by moral values and lofty considerations of the general interest but also by incentives to obey and thus to accept existing relations of power. Put differently, even individuals who defend human rights in principle are able to commit human rights abuses if ordered to do so by superiors able to sanction and punish. More generally, human rights policies based on education and training ignore the fact that human action is heavily influenced by the opportunities and constraints offered and imposed by institutions in the broader, institutionalist sense. These opportunities and constraints range from legal action or extra legal violence characteristic of openly visible relations of power to the mobilization of reinforcing or competing values and norms, derived for instance from tradition.

The 'classical' activities to advance human rights need to be completed by measures that foster or strengthen an appropriate institutional framework. Such a framework crucially depends on the decentralization of power and thus on the continuous existence of competing centres of power. The latter include strong political parties, civil society organizations, media, and the constitutional powers (or 'branches of government') of the liberal-democratic state (including executive, legislature and jurisdiction); they may also be formed by informally constituted movements and groupings such as the Tahrir protesters who at certain moments and under certain conditions show their strength by converging on the Square. The competition among these centres of powers prevents the emergence of a dominant power able to turn authoritarian and to restrict rights and liberties. Historically, the 'established democracies' emerged out of situations in which power was distributed in ways that no single actor or group could monopolize it (Rueschemeyer 1992 and 2010; Tilly 2007; on equality in terms of resources and democracy more generally, see Boix 2003; Vanhanen 2003).

Ultimately only the coexistence of competing power centres and their ability to independently mobilize resources for the causes they defend protect the rights of people as different as the former supporters of an

authoritarian regime overthrown in the uprisings; the current opponents of an authoritarian regime that survived; victims of restrictive definitions of human rights; and members of we-groups in conflict with other such groups. Only the checks and balances that obtain among competing power centres guarantee the negative liberties of all; they alone allow the individual to resist orders to torture against his or her own better judgment or conviction. While competing with one another these power centres nonetheless need to share some common ground. Only the understanding that they have all the same right to participate in decisions concerning their country guarantees that they sort out differences peacefully.

Where the power centres (claim or attempt to) represent we-groups whose internal loyalty and collective identity is based on ascriptive criteria such as language or religion it may be difficult to find this common ground. Even though these groups are historically constituted rather than 'natural' their conflicts tend to be violent, precisely because the stakes are defined not in terms of interests but in terms of identity; conflicts of interests may be resolved by compromise but challenges based on identity are quickly perceived as matters of life and death. Consequently, consociational democracies (democracies in which the distribution of power and resources including positions in formal political institutions like parliaments and governments reflects the strength of different we-groups) like Lebanon often stand on the brink, sometimes even descend into 'civil' war with the obvious consequences for human rights. However, the alternative option of dividing these countries into (yet) smaller political entities creates as many human rights issues as it resolves. It forces every citizen or inhabitant to join one and only one loyalty group; bilinguals have to opt for one language, agnostics have to opt for a religion. It subjects individuals critical of such narrow definitions of collective identity to the power of frequently unelected and unaccountable political entrepreneurs and religious leaders who use alleged threats by other identity groups as a pretext to establish their own authoritarian rule. Finally, it also threatens to transform conflicts within pluri-lingual and pluri-religious states into conflicts between and among their linguistically or religiously 'pure' successor states. India and Pakistan are just one such example.

Stressing the merits of political regimes based on the coexistence of several power centres means that democracy and human rights cannot be defended simply by defending political forces that seem to champion these causes. Some of these forces have themselves an unconvincing record and, as political actors in established democracies continually demonstrate, may quickly develop a taste for authoritarianism and domination once they are in a position of strength. Rather it means that financial, technical and moral support should be allocated in ways to strengthen competing forces ready to publicly agree on conflict resolution mechanisms such as the constitutional separation of powers and other checks and balances that they cannot dominate alone.

The coexistence of several power centres in no way precludes the existence of a strong state in the sense not of repression but of capacity to protect its citizens and further their economic and social rights. This is the case if a strong state is endowed with strong checks and balances and if its own strength is balanced by other forces such as civil society. Also, only such a strong state is able to impartially regulate markets as level playing field for all economic actors.

No doubt some of these recommendations may challenge currently accepted standards of non interference in the internal affairs of supposedly sovereign states. They may also be difficult to accommodate under international covenants currently in force that govern human rights work in the broader sense. Needless to say, important safeguards would have to be devised to avoid abuse and follies of demiurgic grandeur that inspired neo-conservatives before, in, and after the Iraq war in 1993. It would be hopeless and even dangerous to try and engineer new power centres out of nothing, in situations where local forces are not themselves involved in serious such attempts. Ownership of these processes must remain local, external actors can do no more than cautiously support their efforts and the resulting dynamics. This means also to recognize that in some situations external actors may have to limit their activities to documentation, information, humanitarian aid, and support for refugees.

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