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**MECHANISMS OF ACCOUNTABILITY IN  
ARAB GOVERNANCE:  
THE PRESENT AND FUTURE OF  
JUDICIARIES AND PARLIAMENTS IN THE  
ARAB WORLD**

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## INTRODUCTION

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In the era after independence, institutional mechanisms of accountability were systematically underdeveloped in Arab governance. In retrospect, the debilitating effects of such a strategy is clear, but it was motivated not simply by a desire of authoritarian rulers to maintain power but also by a determination to build a strong state apparatus capable of guaranteeing security against both internal and external threats. Those countries pursuing a vision of “Arab socialism” generally aimed not simply at self-preservation but also at realizing social justice and national independence. Such goals were sometimes explicitly used to justify avoiding strict separation of powers: old elites resistant to change and hostile foreign powers could not be confronted with a weak and divided state. Those more conservative states eschewing socialism still generally did little to foster genuine accountability.

Such attitudes—whether publicly proclaimed or privately observed—augmented an already existing trend strengthening Arab executives. In most Arab states, an unchecked executive branch antedated the establishment of separate judicial and legislative frameworks. European powers generally sought to insulate executives (over whom they felt they had more influence) from executives during the period of imperial rule.

Yet in the past two decades, many in the Arab world have turned sharply away from acceptance of such ideas. Unchecked executive authority is now often seen as the fundamental problem in Arab governance. Much of the Arab world has thus seen a limited and uneven trend towards enhancement of mechanisms of accountability. Judiciaries and legislatures are generally more independent than they were a generation ago, and they are beginning to use some tools to hold executive authorities accountable to the law and the people. However, leadership commitment to further development in this direction is evident in only a small number of Arab states at present.

Nevertheless, the seeds may have been planted that will allow energetic and imaginative judicial and legislative actors to activate mechanisms long dormant in Arab constitutional systems. The tools available to judiciaries and legislatures differ, as do the nature of the accountability they offer. Judiciaries can work to hold executive authorities accountable to the text of the law (and to general principles of the rule of law). Legislatures can hold ministers and cabinets politically responsible to the popular will and use the legislative and budgetary processes as oversight tools.

Four countries have been selected for specific focus: Egypt, Kuwait, Jordan, and Morocco. All four have taken some serious steps towards enhancing the ability of judiciaries and legislatures to play an oversight role; at the same time, their efforts range at best from the embryonic to the incomplete. Consideration of the four cases will show the possibilities for accountability in Arab governance as well as the limitations of past attempts.

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## ACCOUNTABILITY THROUGH AND WITHIN ARAB JUDICIARIES

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Arab judiciaries seeking to hold the executive accountable have two constitutional requirements. First, they must enjoy autonomy from the executive. Second, they must have the clear authority to hold the executive accountable to clear legal standards. In other words, judges must be independent and be able to use their independence.

Arab constitutions generally do guarantee an independent judiciary but they often do so in vague language. Further, they deny it most of the tools necessary to hold executive authority fully

accountable to the law. The first two sections examine each of these issues in turn.

However, executive accountability to the judiciary is not a panacea. To the extent that judges are able to hold other authorities accountable, however, their own accountability becomes an issue. That is, what mechanisms hold judges themselves to clear legal standards? Or, as the question is often phrased, who will guard the guardians? Khayr al-Din al-Tunisi, the nineteenth century statesman, recognized this problem as soon as the Muslim world began experimenting with written constitutions:

[S]ome form of restraint is essential for the maintenance of the human species, but if the person exercising this restraint were left to do as he pleases and rule as he sees fit the fruits to be expected from this need to have a restrainer would not appear to the umma [community], and the original state of neglect would remain unheeded. It is essential that the restrainer should have his restrainer to check him...<sup>1</sup>

The third section examines mechanisms of accountability internal to the judiciary in the Arab world. The fourth section gives specific coverage of the four countries selected for special emphasis. And the final section focuses on future steps that these countries can take toward using the judiciary more effectively, emphasizing practical and realistic steps.

#### INDEPENDENCE OF THE JUDICIARY

Almost all Arab countries have endorsed the principles of the independence of the judiciary and the separation of powers. In doing so, they have chosen not to emphasize two alternative approaches.

One alternative, based more on constitutional models from the Western Hemisphere (most notably, but not exclusively, the United States) focuses less on building walls of separation among the various branches of government and more on “checks and balances.” In such an approach the various branches do oversee the affairs of the others, but each has sufficient authority and resources to avoid subordination. The various authorities overlap in many areas. (For instance, American judges are nominated by the president and approved by the Senate.) A second alternative focuses attention much less on the judiciary as a whole and more on the individual judge. While there are some traces of such an approach in the Arab world (lifetime tenure for individual judges is common, though not universal), Arab constitutional systems have not fully pursued this option (for instance, by having judges elected independently or by mandating in the constitution that individual salaries cannot be decreased).

Instead of such approaches, Arab political systems seek to build judicial independence through insuring that the judiciary as a corporate body is independent from the other branches of government. The constitution and the legal framework (especially the law governing the organization of the judiciary) are the most important instruments in this regard.

Use of these tools is only imperfectly developed, however. All Arab constitutions proclaim fealty to the principles of the independence of the judiciary, but few provide the specific elements needed to ensure that such independence is realized in practice. True judicial independence would require

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<sup>1</sup> Leon Carl Brown, The Surest Path: The Political Treatise of a Nineteenth-Century Muslim Statesman. A Translation of the Introduction to *The Surest Path To Knowledge Concerning The Condition of Countries* by Khayr al-Din al-Tunisi, Harvard Middle Eastern Monographs, XVI, Center for Middle Eastern Studies, Harvard University, 1967, p. 84.

that the judiciary is autonomous in its own affairs: judiciaries must have control over appointment, promotion, transfer, and other critical matters (such as judicial discipline and budgeting). Arab constitutions tend to be fairly vague about such issues. Many do insist on the establishment of a judicial council to oversee judicial affairs, but they often allow the executive to dominate such a body or simply leave all details to regular legislation.

Thus, to understand the true extent of the independence of the judiciary in the Arab world, it is almost always necessary to move beyond the constitution and examine the legislative basis given to judicial bodies. Arab constitutional texts remain too vague in most cases to provide the necessary protections. And Arab constitutional orders are so dominated by the executive authority in practice that existing constitutional gaps will be very difficult to fill.

To be sure, some constitutional reform would be welcome. However, those interested in constitutional reform would be best advised to consider emerging best practices in the Arab world rather than seeking to adopt constitutional provisions that have arisen elsewhere. In other political systems where the problem of executive domination is less acute, constitutional protections are likely to be insufficient. By focusing on some of the more detailed and carefully-designed constitutional provisions in the Arab world, more appropriate models for constitutional language will be found. There are few such appropriate models in the Arab world, but the constitutions of Egypt, Palestine (in draft form), Yemen, and the United Arab Emirates have a few detailed provisions on judicial structure that may be worthy of emulation elsewhere. In general, these constitutions go beyond vague promises of judicial independence to create specific structures or place specific limits on executive and emergency powers.<sup>2</sup>

Turning to legislation, the critical questions in most Arab countries concern the structures governing the judiciary. This focuses attention on the composition and the competencies of the judicial council, the dominant structure for overseeing the judiciary in almost every Arab state.

First, with regard to composition, the record of Arab legislation suggests several questions about the members of the judicial council. Is it predominantly or exclusively judicial? If the head of state presides, is this generally ceremonial or a device to bring the judiciary under executive domination? Do many other executive branch representatives serve? In all these matters, there are few positive models on which to draw. Some bodies have established some independence (for instance the Egyptian, the Kuwaiti, and the Palestinian), and significant reform has been accomplished or considered in some other cases (such as Jordan and Morocco). Even these more promising models show some blemishes, however: the Egyptian Supreme Judicial Council, while fully independent, still formally operates under the Supreme Council of Judicial Organizations, which remains under executive domination. The Palestinian Judicial Council was established by presidential decree and has yet to secure an approved legislative basis, much less a constitutional one.

Second, with regard to competencies, most Arab states allow the judicial council full or nearly full authority over appointment, promotion, and transfer of judicial personnel. While in some countries formal appointment authority remains with the head of state, the recommendations of the judicial council are always respected. In many Arab countries, therefore, the focus of attention has turned to more subtle issues. Who has the authority to inspect, investigate, and discipline judges? What is the budgetary authority of the council: is it allowed to propose, review, and administer the judicial budget, or are these tasks monopolized by the Ministry of Justice? Who oversees critical

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<sup>2</sup> Constitutional provisions are considered in more detail in "Arab Judicial Structures" a study presented to the United Nations Development Program by Nathan J. Brown with the assistance of Nida al-Ahmad, August 2001.

support personnel (such as clerks, process servers, and judicial police)? Such matters have been the center of debate in some of the more reform-minded Arab countries.

#### AUTHORITY OF THE JUDICIARY

Even an independent judiciary must be given specific tools and authorizations if it is to play a role in holding the other branches and agencies of the state to clear and legal standards. In this regard, the past few decades have seen some noticeable progress in the constitutional arena. Most Arab constitutions recognize that the judiciary has a role to play in reviewing the constitutionality of legislation, for instance, though provisions vary greatly (and only in Egypt has a strong tradition of constitutional jurisprudence fully emerged). Constitutions also frequently insist that judicial orders are binding on officials, and those Arab constitutions that neglect to add such provisions would be well advised to reconsider the omission.

In addition, many Arab constitutions provide for a separate structure of administrative courts with jurisdiction over legal disputes involving an official body. A separate administrative court structure is not necessary to insure accountability, but it does have two beneficial effects. First, it encourages the emergence of a judicial cadre expert in administrative law. Second, it is generally accompanied by specific legal authorization for the administrative judiciary not simply to rule in individual disputes but also to cancel administrative regulations and decisions that contravene the law or the constitution. While judicial review of the constitutionality of legislation often draws far more attention from non-legal specialists, most instances of official transgression involve not constitutional but ordinary legal issues. In other words, allowing judges to review the legality of decisions and regulations issued by executive branch officials is probably more important on a daily basis than allowing them to review the constitutionality of laws.

For such judicial oversight to operate effectively, laws must be well crafted to make clear specifically what executive branch agencies are authorized to do. Overly vague and general laws will make it difficult for the judiciary to hold up executive actions to legal scrutiny.

Finally, a far more sensitive issue has arisen in virtually every Arab country regarding the ability of the judiciary to hold executive authorities accountable to clear legal standards. Throughout the Arab world, a difficult internal and external security environment has led to the construction of far-reaching security apparatuses. And most executive authorities fear that bringing such apparatuses under any form of judicial scrutiny will rob them of their effectiveness. In general, this has had two results.

First, some areas are walled off from judicial action, either explicitly or implicitly. In an earlier era, it was even more common than it is now for executive authorities to pursue formal, legal measures to move security issues completely outside of the regular legal system. To some extent, this pattern was firmly established in the colonial period, when ruling European powers did not want the local judiciary to review their actions. Security-minded independent Arab states sometimes followed the same path. In more recent years, many states have shied away from such explicit limitations on the rule of law. Nevertheless, few security services are friendly to judicial oversight, pursuing their mission in such a way as to avoid judicial supervision or make it impracticable. Outright defiance of judicial orders, however, has become quite rare (only in Palestine does this remain a persistent problem). Whether the security situation in various Arab states is sufficiently grave to justify such a set of tactics is outside the bounds of this report. However, for present purposes it is important to note that the situation can undermine the morale of the judiciary as well general respect for the rule of law, both within the executive and throughout the society.

Second, a parallel judicial structure—or set of structures—is sometimes erected to deal with

sensitive security matters. Some constitutional documents elsewhere specifically forbid exceptional or special courts, but only Yemen has followed this path in the Arab world. However, the problem is broader than that of exceptional courts: sometimes permanent courts are constructed to deal with security issues, or security issues are assigned to other courts that would normally have more restricted jurisdiction (such as military courts). Practice varies widely within the Arab world, but very few Arab countries have completely avoided constructing special courts or granting permanent court special jurisdiction (the states of the Arabian peninsula are probably most notable for their ability to avoid resorting to such devices most of the time). Should states wish to pursue such a path, there are still steps that can be taken to minimize the damage to accountability. Such courts can be required to follow regular judicial procedures as much as possible, the right of appeal can be maintained, and they can be staffed by regular judges with full professional training and qualifications as much as possible.

#### INTERNAL MECHANISMS OF ACCOUNTABILITY

Ironically, to the extent that Arab states fulfill their promises of guaranteeing judicial independence, they raise another, quite different issue of accountability: the accountability of the judiciary itself. Systems that are based on “checks and balances” rather than “separation of powers” hold the various branches of government accountable to each other. A “separation of powers” approach eschews such an approach in favor of stricter boundaries among the branches. Almost all Arab states follow a “separation of powers” approach. Thus, in the Arab world, the head of state does not depend on the confidence of the legislature, and the legislature is generally independently elected. Each is therefore theoretically accountable to the people through electoral mechanisms (or, in a few cases, monarchy is preferred). However, popular election of judges is generally considered an affront to the professionalism of the judiciary. Discussion of popular participation in the judicial process is generally firmly rejected by Arab judiciaries. Election of judges, appointment of non-professional judges, and the jury system are all anathemas to Arab judiciaries.

Then how are judges to be held accountable, if not to other branches or directly to the people? The most promising avenue in the Arab context would seem to be to hold them accountable to each other by building strong corporate institutions for the judiciary and by developing a strong sense of professionalism and ethics to which judges can hold themselves and each other. (Of course, a critical element of accountability is also provided by the legislative process, in that judges—especially in the civil law tradition dominant in most Arab states—must rely primarily on texts developed by the other branches of the state.) Such a corporate identity and sense of professionalism has certainly begun to take shape in several Arab countries. Several strategies can be used to develop it further:

- **Judicial training:** Basic judicial education throughout the Arab world consists of two phases. First, judges are expected to complete basic law training in a law faculty. Second, advanced training is offered in judicial institutes and training academies throughout the region. Both these phases could be further developed with an eye toward enhancing the professionalism and corporate identity of judges. At the university level, a law degree still serves as a general education for a variety of legal and bureaucratic careers. And in many countries the student body has grown quite large while admissions standards have not been as competitive as in other faculties. Those interested in judicial careers are therefore educated with a large number of other students, many of them less interested in the specific material being taught. Special attention to outstanding students, both at the undergraduate and graduate level, would help produce a cadre of dedicated legal professionals from which the judiciary could draw.

At the level of judicial training academies, existing bodies often complain that they are forced to complete the basic legal education that law schools should have covered.

As a result, many do not have the luxury of developing innovative curricula to deal with emerging subjects such as judicial ethics, information technology or recent developments in international law. It is during this period that initial professional relationships are constructed, and the opportunity must be well used.

- Continuing education: Opportunities for continuing education for judges do exist in the Arab world, but most judicial training academies have been forced to concentrate their efforts instead on educating new judges. Obviously greater attention to continuing education is necessary to ensure that judges remain current in legal developments, but a secondary benefit of such efforts would be to increase a sense of responsibility and corporate identity among those trained. There is currently some international support for such efforts (with advanced judicial training sometimes contributed by donor states) but greater attention needs to be given not simply to short international training efforts but to sustained domestic ones.
- Judicial discipline: One salutary effect of maintaining maximum judicial control over judicial evaluation and discipline is that it helps develop a strong sense of professional ethics and corporate responsibility. In most Arab countries judges have some role in the task of evaluating judges and investigating misconduct, but it is also generally the case that the executive branch retains a role as well. This is not only an issue for judicial independence from the executive, however. It is also an issue for judicial professionalism: judges are likely to develop a stronger sense of professional ethics if they are to be judged primarily by their own colleagues.
- Judges clubs: In some Arab countries, judges have been allowed to form social associations or “judges clubs.” The purpose of such organizations is partly social, but it also to allow judges an opportunity to develop their own voice in issues of professional interest. Some clubs have sponsored conferences and published journals.

It should be noted that pursuit of corporate independence for the judiciary does have its costs. To the extent it is successful in constructing internal mechanisms of accountability, the judiciary will have emerged as an autonomous force—autonomous not only from the executive but perhaps from the broader society as well. Judges may therefore distance themselves from the understanding of the problems and perspectives of their fellow citizens. It is partly fear of this that has led some countries to prefer a “checks and balances” to a “separation of powers” approach. Yet in the Arab world, the task at present is to build up the autonomy of the judiciary. Excessive attention to breaking down barriers between the judiciary and the society as a whole may only undermine the independence of the judiciary. Indeed, something of the sort happened in some Arab countries during the socialist era.

#### SPECIFIC CASES

Arab countries are generally moving fitfully in the direction of allowing their judiciaries greater independence and professionalism, though progress is both slow and uneven. Indeed, if a long-range historical perspective is adopted, progress has been slow indeed. The current judicial structure in most Arab countries can be dated back to the period of Ottoman rule, or sometimes to pre-imperial or imperial governments. Thus, in the late nineteenth and early twentieth century, civil courts were constructed and the judiciary emerged as a body separate from the group of specialists trained in Islamic knowledge and law. During this era, the judiciary was founded as a modern profession, but it generally lacked critical features, whether under independent or imperial rule: the executive retained a strong hand over judicial affairs, and the judiciary had few mechanisms to hold executive authorities

to the law.

The post-imperial era did not necessarily improve the position of Arab judiciaries. The struggle to build powerful states to pursue national independence, national security, and economic development concentrated further authority in the hands of the executive. Some countries removed the few tools the judiciary possessed to maintain autonomy. Yet at the same time, most Arab states undertook a verbal commitment to the principle of the independence of the judiciary. Constitutional provisions for judicial independence, though vague, were written in virtually all Arab countries.

In recent years, external and internal interest in accountability has grown greatly. And Arab states have taken some definite steps to increasing judicial autonomy and granting some of the tools necessary to ensure that other political authorities are accountable to clear legal standards. But much of the work has only begun.

*Egypt:* The Egyptian judiciary has one of the longest traditions in the Arab world of professionalism and perhaps the strongest corporate identity. The country's current constitution, promulgated in 1971, promises the judiciary independence, and protects the right of citizens to resort to their "natural judge." But it fails to allow for full independence and includes some provisions that would seem to limit the authority of the judiciary. For instance, the constitution enshrined the office of "Socialist Public Prosecutor," an institution which many worried might supplant the regular public prosecution (staffed as it is by members of the judicial corps). The constitution also calls for popular participation in the judicial process, which many judges regard as a possible threat to their professional standing.

The ambivalence of the 1971 constitution can be explained partly by its timing. Egypt saw a strong attack on the idea of the separation of powers in the 1960s and the judiciary was brought under executive domination in 1969. Large numbers of sitting judges were dismissed and the judiciary was brought under an executive-controlled "Supreme Council of Judicial Organizations." The 1971 constitution—written just two years after the 1969 measures were taken—reflects some of these measures but also limits others.

During the 1970s and 1980s, most aspects of judicial independence were restored and some were even strengthened. Judges in Egypt now have unquestioned dominance over their own affairs, and the various segments of the judiciary (the civil courts, administrative courts, and Supreme Constitutional Courts) have a large degree of autonomy in their internal affairs. An active Judges Club allows judges to cement their professional identity and present their needs to political authorities. The Egyptian government has devoted some attention in recent years to improving the position of judges. Such measures may not have been sufficient, however, as senior judges complain that they are no longer able to attract the best law-school graduates to judicial careers.

Significant obstacles still remain. The most egregious aspects of executive domination of the judiciary have been removed, but some judges would like a greater measure of autonomy in some financial and administrative matters (for instance, judicial inspection and discipline, while carried out by judges, is still a function of the Ministry of Justice rather than the judiciary itself). Perhaps most controversially, emergency sections of state security courts and military courts continue to handle sensitive political cases, and some courts have clashed with the security services over allegations of torture. The upsurge in political violence in the early 1990s in Egypt led the leadership to resort to some harsh measures that bypassed normal legal and judicial channels; the calmer political atmosphere of the late 1990s, however, did not lead to an abandonment of such stern tools.

In sum, Egypt is an imperfect model for other Arab countries. Its judiciary is the largest and



oldest in the region, and it continues to boast a strong tradition of dedication to the rule of law. The Egyptian court system still lacks all the resources necessary to play its role efficiently, however, and the security situation in the country has undermined some of the regime's commitment to allow regular judicial organs full sway.

*Kuwait:* Kuwait's judicial system was constructed in the era before and after independence in 1961, generally along lines similar to the Egyptian (indeed, Egyptian legal experts assisted in establishing the Kuwaiti legal, judicial, and constitutional systems). In 1962, a constituent assembly drafted a constitution that was then issued by the country's amir. The 1962 constitution, like the Egyptian constitution of 1971, promises judicial independence but is fairly vague on details. It does have some stronger provisions—for instance, the constitution restricts military courts to trying military personnel, allows a special administrative chamber or court, and provides for judicial review of constitutional disputes.

Kuwait built upon this general constitutional framework slowly. Judicial independence has been a frequent object of dispute between the country's government and the parliament. The parliament has generally insisted on firm legislative guarantees for judicial independence from the executive branch. The executive, for its part, has come to accept greater independence and has sometimes charged parliamentary deputies with hypocrisy by insisting on prosecution in specific cases (thus inserting themselves in a judicial matter). While the debate over judicial independence has sometimes been noisy, the result is a fairly solid legislative basis by regional standards. A 1996 reform grants the Supreme Judicial Council greater independence from the executive. State security courts and martial law courts have been used in Kuwait but they have been abolished. Thus, the instruments exist for a judiciary that is independent from the executive branch.

Yet it is unclear if the Kuwaiti judiciary is likely to emerge soon as a force holding the executive accountable to clear legal and constitutional standards. In most sensitive political cases, Kuwaiti courts tend to shy from issuing clear judgments. The Kuwaiti Constitutional Court, for instance, has been faced by some of the most vexatious constitutional disputes over issues including press freedom, women's suffrage, and emergency rule but avoided ruling on them, often through a legal technicality. Other Kuwaiti courts have been similarly reluctant to rule in sensitive cases.

The professionalization of the Kuwaiti judiciary and the building of corporate identity are also slowly building. A judicial training academy was established in the mid-1990s, and some Kuwaiti judges have discussed founding a judges club. But the practice of hiring foreign judges on term contracts sharply limits the degree to which such efforts can provide a real measure of corporate identity. Kuwait has not been able to train enough Kuwaitis to fill all judicial positions, leaving the country dependent on other Arab countries. Some judges are seconded from their own home countries and others are hired independently by the Ministry of Justice in Kuwait. In either case, the foreign origins of the judges, their identification with their home country, and their direct relationship with the Ministry of Justice undermine efforts to enhance corporate judicial identity in Kuwait.

*Jordan:* Jordan's constitution, like others in the Arab world, provides for judicial independence but lacks specificity. In addition, the Jordanian constitution specifically allows special courts to be constructed. The legislative basis for judicial independence is stronger than the constitution. A council oversees some judicial affairs and is largely judicial in composition. The Ministry of Justice is still highly involved in judicial matters, however, though a new judiciary law has been under discussion that would transfer some responsibility over to the judicial council.

The Jordanian judiciary lacks some of the tools that have been devised in some Arab countries

for holding executive authorities accountable to the law. Judicial review is only weakly established, and the government has balked at the construction of a constitutional court. A past assertion of judicial activism earned the Jordanian judiciary a public rebuke from the king in 1998. (The Jordanian High Court had struck down a press law on the grounds that it had been issued by a decree that did not meet the constitutionally-mandated standard of a defense-related emergency.)

Yet the Jordanian judiciary has been able to establish a measure of corporate identity. Jordan has operated its own judicial training academy since 1988. The body has had to concentrate its attentions on training new judges, but it has offered some programming for senior members of the judicial corps and has even hosted non-Jordanian judges for training.

*Morocco:* As with the other states, Morocco has taken some steps to translate vague constitutional promises of judicial independence into reality. In some ways, Morocco provides the weakest constitutional basis for judicial independence, since its judicial council is headed by the king, with the minister of justice as vice-chair of the body. A constitutional council is mandated but is not independent of the head of state.

The legal basis for judicial independence also shows some significant weaknesses. The cabinet can refer individual cases to military courts to keep them out of the jurisdiction of the regular courts. The Ministry of Justice remains fairly involved in administrative affairs of the judiciary. And the public prosecution (a part of the judiciary in most Arab states) remains directly under the executive.

Yet Morocco has also shown a greater determination to pursue reform in recent years than virtually any other Arab country. Indeed, a reform-minded justice minister has worked to increase resources devoted to the judiciary, combat corruption, and increase independence. And Morocco's judicial training institute is one of the most prominent in the region, showing a special interest in human rights law. The Moroccan and Egyptian academies have the strongest record in conducting judicial training for judges coming from other countries.

#### FUTURE STEPS

This review of the Arab world shows that much work remains to ensure that the judiciary can be independent and exercise the tools it needs to hold the executive accountable. Similarly, the level of professionalization of Arab judiciaries can be improved despite past accomplishments. But there is also some record of efforts, especially over the past couple decades, in these areas. While no Arab state shows an unqualified commitment to enhancing the role of the judiciary in ensuring accountability, most have shown some willingness to entertain reform proposals. In this regard, two sets of reforms deserve the most serious consideration.

*Judicial independence:* In much of the Arab world, the struggle for judicial independence has come to focus on the composition and authority of the judicial council, the body overseeing judicial affairs. With regard to composition, some countries have taken steps to ensure that the council is largely judicial. With the judiciary in several Arab countries subject to a form of executive oversight through the council, such steps are important in allowing the judiciary greater independence. But even in countries where the council is effectively independent of the executive, its authority might be enhanced. Budgetary matters are especially important in this regard. Some Arab states maintain administrative matters affecting the judiciary under the control of the ministry of justice; others allow their judicial councils far more direct oversight over the internal affairs of the judiciary. Some go so far as to allow the judicial council to refer its recommendations over budgetary matters directly to the cabinet and the parliament, a mark of confidence in their own judiciaries.

*Internal accountability and professionalization:* While some affirmative steps have been taken to

increase judicial independence, measures to increase the professionalization of the judiciary are just as urgent; indeed, in some countries, they are probably of more pressing importance. All Arab states have succeeded in building a competent and professional judicial corps, but further professionalization would be a welcome step everywhere. Attention must often be focused first and foremost on judicial training. All three levels of education must receive attention (study in law schools; initial period of judicial training; and continuing education for judges). There may be no area where regional cooperation could be as fruitful, given the similar needs of most Arab states and the strong resemblance among most Arab legal systems. At the level of the law schools themselves, greater consciousness might be shown that they are training students not merely for government service or the legal profession but for the judicial corps as well. Special programs to attract the most promising students to judicial careers would help the judiciary maintain and even improve its human capital. At the level of judicial training academies, the complaint is commonly heard that they are compelled to repeat the training of law schools; more effective legal education at the universities would allow the academies to move beyond basic education to incorporating more material on specific areas of law, judicial ethics, and aspects of court administration under judicial control. Finally, at the level of continuing education, regional academies might pool their resources to ensure that advanced training and peer learning could be more fully developed.

Beyond education, several fairly easy steps could be taken to help foster further professionalization of Arab judiciaries. Responsibility for judicial inspection and discipline might be transferred from the Ministry of Justice (where it is located in most countries currently) to the judicial council. Judges clubs—an important if informal mechanism for developing a strong sense of corporate identity—might be founded in countries that lack them; an effort to constructing regional rather than national organization might also be worth exploring. Finally, judges have occasionally sponsored publication of books and journals; a more sustained (and perhaps regional) effort in this regard would enhance the prestige of the judiciary besides encouraging research on topics relevant to judicial needs.

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## ARAB PARLIAMENTS: POTENTIALITIES AND PROBLEMS

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All Arab states have now had some experience with popular assemblies. In most Arab states, such assemblies are elected and have primary responsibility for the legislative process. In that sense, they resemble parliaments in other constitutional systems. But few Arab parliaments have been able to realize their potential. Since most Arab states follow the principle of “separation of powers,” the head of state is completely independent of the parliament. In a few countries, the parliament plays a role in selecting the head of state but even in those countries, the head of state does not remain politically responsible to the parliament once selected. The result is often that the head of state and even the entire executive branch operate without effective parliamentary oversight.

### THE HISTORICAL DEVELOPMENT OF PARLIAMENTS IN THE ARAB WORLD

The Arab world began experimenting with parliamentary bodies in the nineteenth century, led by Egypt and Tunisia (with other Arab regions sending representatives to the Ottoman parliament). In the early twentieth century, all independent Arab states moved quickly to establish parliaments. The abortive Syrian Arab kingdom established the first in 1920 before being suppressed with the imposition of the French mandate. Egypt elected a parliament under the country’s 1923 constitution. States set up under British and French mandates (in Lebanon, Iraq, Jordan, and Syria) followed suit; North African states generally elected parliaments upon independence, as did a few states in the Arabian peninsula (with others adding unelected assemblies later on).

Yet despite the spread of parliamentary structures throughout the Arab world, Arab parliaments have sometimes grown less effective over time rather than more. The first parliamentary bodies in the Middle East—the Tunisian, Ottoman, Egyptian, and Iranian—often clashed with the head of state over their prerogatives (especially the budget and ministerial responsibility), generally losing these battles. The precedent set in the early period of parliamentary experimentation carried over to the twentieth century. And in countries where presidential regimes replaced monarchical ones (Egypt, Libya, and Iraq), elected parliaments were often dismantled and replaced by far more pliant bodies.

To be sure, there has been some limited movement toward revival of parliamentary life in a few Arab countries in recent years. A general (if limited) trend toward liberalization has modestly enhanced the role of parliaments in several Arab countries (such as Yemen, Jordan, Morocco, and Egypt). One older parliament (the Kuwaiti) has maintained a tradition of activism and at least one new one (the Palestinian) has shown some similar signs.

A recent comprehensive study of Arab parliaments (focusing on Lebanon, Morocco, Jordan, Kuwait, Yemen, and Egypt) ranks them on two dimensions.<sup>3</sup> First, are they institutionally central? That is, are the constitutional framework and the basic rules of political life well established and accepted? And do they assign the parliament a genuine political role? Second, do Arab parliaments have the institutional capacity to plan an independent role? Do they have sufficient staff, material resources, and expertise? That study argued that centrality and capacity do not always go together;

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<sup>3</sup> Abdo Baaklini, Guilain Denoeux, and Robert Springborg, *Legislative Politics in the Arab World: The Resurgence of Democratic Institutions* (Boulder: Lynne Rienner, 1999).

indeed, sometimes increasing one can come only at the expense of the other—an executive might grant more resources to a parliament only if it is assured it will remain politically marginal. While it noted a general trend toward increased centrality and capacity among Arab parliaments, the study found no Arab parliament yet ranks high on both dimensions.

In order to focus on issues of accountability, this report will follow slightly different framework for analyzing the positions of Arab parliaments. First, the constitutional basis for parliamentary authority will be examined. Second, the gaps in existing constitutional systems will be considered. Third, attention will turn to the legal framework and the way that specific legal practices can rob parliaments of the ability to exercise the constitutional authority they do possess. Fourth, parliaments in Egypt, Kuwait, Jordan, and Morocco will receive special attention. Finally, practical steps towards enhancing the role of parliaments in ensuring executive accountability will be considered.

## CONSTITUTIONAL PROVISIONS

A quick glance at constitutional authority granted to Arab parliaments generally shows that they have an impressive range of authority, at least in theory.

- **Control over executive:** In most Arab states, the cabinet can only take office with the confidence of a majority of the parliament. Only a small number of Arab assemblies (such as the Saudi) lack any authority over the composition of the cabinet. And generally parliamentary authority goes further. Parliamentary deputies may question ministers or the cabinet as a whole. And they generally may remove confidence not simply from the entire government but also from individual ministers. In no Arab state is the head of state responsible to the parliament; presidents and kings have a separate constitutional standing. Yet in some Arab states, the parliament is consulted in the selection of the head of state. In Egypt, for instance, the parliament nominates the candidate for president. In Kuwait, the parliament ratifies the selection of the crown prince.
- **Legislation and budgeting:** Most Arab parliaments also have a strong role in the legislative process. Arab legal systems tend to distinguish among three levels of legislation. The constitution reins supreme, followed by legislated texts, and finally by administrative regulations. In general, legislated texts are the prerogative of parliament. Executive organs generally only are authorized to issue regulations that are based on legislative authorization. To be sure, Arab heads of state and cabinets have issued legislation that has the status of that passed by parliament, either under emergency conditions or during constitutional interregnums. Such instances aside, however, Arab parliaments are generally supreme in the legislative process. And since the public budget takes the form of a law, parliament is given the tools of fiscal oversight as well.
- **Immunity:** Parliamentary deputies customarily enjoy immunity from prosecution. While charges have been pressed against some parliamentarians, such a measure generally requires the consent of parliament.
- **Emergencies:** Arab executives often assume special authorities because of a state of emergency. Constitutions generally allow parliaments two tools of oversight during states of emergency. First, the declaration of an emergency often requires parliamentary approval. Second, legislation issued under a state of emergency (or by a cabinet or head of state during a parliamentary recess on the emergency grounds) generally requires parliamentary approval (or can be immediately overturned by parliamentary action). Some constitutions explicitly

prohibit suspension of parliament as well.

#### CONSTITUTIONAL GAPS

Despite these constitutional provisions, it is difficult to contest the weak institutional position of most Arab parliaments. How can such weakness be explained, especially when it is considered that the constitutional language was often borrowed from European countries where parliaments have emerged quite strong?

In fact, there are only a few areas in which Arab constitutions show easily identifiable gaps. Perhaps most prominent is the loose way that emergency measures are controlled. While it is common to have to resort to parliament for approval for states of emergency, the system still generally leaves the initiative to the executive and only allows the parliament to react. And many Arab states have lived for extremely prolonged period under martial law or emergency rule, transforming interim measures into a permanent way of conducting political life. Further, when parliament is not in session, executives may issue decrees with the force of law.

Arab states often construct upper chambers of parliament—often through a mixture of election and appointment—and such bodies can act as a check on parliaments. Indeed, in several countries (such as Egypt and Morocco) liberalization in parliamentary life was accompanied by the construction of an upper house as a counterweight to an expected increase in opposition strength in the lower house.

Finally, the strong concentration of authority in the hands of the head of state—nearly universal in the Arab world—makes it more difficult for parliaments to challenge executive action. In most countries, the line between legitimate criticism and sedition is hazily drawn and constantly shifts, especially when it comes to open statements opposing a head of state. Bold Arab parliaments have been willing to challenge ministers and prime ministers, but all have shied away from confrontation from a head of state.

Despite such gaps, however, the constitutional basis for parliamentary authority remains strong in theory. And yet it is rarely exercised. Most Arab parliaments have come nowhere close to removing confidence from a minister or from the entire cabinet. Neither do most parliaments play a dominant role in drafting legislation. To find the weakness of Arab parliaments, it is necessary to look beyond the constitution to the legal framework for executive accountability—a legal framework that, ironically, parliaments have had some role in crafting.

#### LEGAL FRAMEWORK FOR EXECUTIVE ACCOUNTABILITY

The legal incapacitation of parliamentary bodies in the Arab world takes two forms. First, the electoral process is often designed in such a way as to limit the possibilities for parliamentary independence. Second, parliaments often lack the resources to hold executive authorities truly accountable.

*Legal framework for elections.* Most Arab constitutions provide only the most general guidance for parliamentary elections, leaving the definition of electoral procedures to ordinary legislation and administrative regulations. This generally leaves parliament responsible for legislating the basis for elections, though sometimes the basic framework has been laid by decree-law (issued by the executive before a parliament was elected or while parliament was not in session).

Laws governing elections do often provide for some guarantees of free and fair procedures. But they also omit critical safeguards. Elections are generally overseen by the Ministry of Interior.

Entrusting democratic procedures to this body often leads to some mistrust because of the Ministry's traditional emphasis on issues of internal security. And election rules beyond the balloting itself are often tailored to favor specific results. For instance, electoral boundaries are drawn to discourage opposition candidates. Urban areas (where opposition forces are often stronger) are frequently underrepresented. The decision to use single-member districts, multi-member districts or proportional representation often seems to be based on short-term political calculations. Indeed, in some countries the precise rules vary from one election to the next, leading opposition forces to charge that they are tailored to produce a specific result.

In general, parliamentary elections are carried out in the Arab world without substantial international monitoring, and sometimes even independent domestic monitoring is not welcomed. There are some exceptions (such as recent Palestinian and Yemeni parliamentary elections, both subject to international monitoring). More widespread acceptance of such monitoring would likely have significant results, as the sophistication and experience of various monitoring bodies has increased greatly over the past decade.

Perhaps more significant than electoral procedures is the general political climate. Pluralist politics has been the exception rather than the rule in the Arab world, so that voters in parliamentary elections often face a constricted set of choices. Some countries (such as Iraq and Syria) effectively remain one-party states. Other countries (such as Egypt) have moved somewhat away from a single-party system without replacing it with full pluralism. In such countries, a single dominant political party operates with the full backing of the executive and much of the administrative apparatus of the state, but opposition political parties are allowed to operate. Parliament is therefore generally dominated by the governing party, and opposition currents can express themselves but generally with little effect on policy.

Oddly, it is often countries with the weakest parties (or that ban parties altogether) where parliament can be the most independent. The Palestinian, Jordanian, and Kuwaiti parliaments, for instance, are not elected on a partisan basis, and party groupings in the parliament generally operate fairly informally. Yet for this reason, the parliament becomes a little more difficult for the government to dominate: without strong parties to demand loyalty from their members, the government has to negotiate with individual deputies or many small blocs. And members of parliament are dependent for election on their personal standing, sometimes leading to grandstanding and attention-getting behavior.

*Parliamentary resources.* Even where parliaments are able to establish a degree of independence from the executive, they are generally unable to use it as effectively to control the legislative process. In a formal sense, most legislation does receive parliamentary approval (except in those states, particularly in the Arabian peninsula, where the assembly serves only a consultative role). But it is generally the case that the bulk of drafting and review of proposed legislation takes place within the executive branch. Most legislation proposed in Arab parliaments is initiated by ministers or the cabinet rather than by parliamentary deputies. Individual deputies generally lack the expertise and the resources to draft complex pieces of legislation. In recent years, some Arab parliaments have been successful in augmenting their institutional capacity in research and legislative drafting. To date, most resources are concentrated on the parliamentary level (rather than on the level of the individual deputy), but there is still a general trend towards increased institutional capacity.

Yet despite this recent trend, parliaments generally still play a subordinate role. The budgetary process is perhaps the best example of this. While parliaments must approve the state budget, either according to the constitution or the law (or both), in few Arab countries does review of the budget serve as an effective means of parliamentary oversight of the executive. The budget is submitted

with only a short period to review it (for instance, the Palestinian budget law only allows two months for parliamentary review). It is often vague and only intensive work by parliamentarians can reveal many of the proposed budget's critical features. And few parliaments in the Arab world are well equipped to undertake the kind of review that true oversight would require. The result is that the budget is generally approved with parliamentarians having only a limited influence over the outcome.

It is true that Arab parliaments are not unique in this regard. Even in fully parliamentary systems, the government requires a majority of the parliament in order to rule. Once having secured that majority, however, critical decisions are made in the ministries or the cabinet. In Europe, for instance, the institutional capabilities of parliaments is far greater than in the Arab world, but most legislation is still drafted within ministries and so long as the cabinet remains in office with the support of a loyal parliamentary majority, it is unlikely to cause serious embarrassment. Yet there are still ways in which parliaments elsewhere can play a far stronger role than they do in the Arab world. In general, however, this requires a direct access to the public that Arab parliaments often lack.

First, Arab parliaments, unlike their counterparts elsewhere, often have few direct links to public opinion. Broadcast media in the Arab world are under state control, and most only make available limited and edited showings of parliamentary debates. Print media are often freer but still highly partisan, and dominant newspapers are often careful not to take a line regarded as excessively independent by the government or the head of state. Some Arab parliaments have attempted to establish their own direct links to the public that elected them by launching their own broadcasts or publications, but such efforts are generally still in their infancy.

Second, public hearings are an important parliamentary tool to reach not only the public at large but also selected constituencies interested in a particular topic or draft law. The American Congress has probably shown the most extensive use of such hearings to involve interested groups in the process of drafting legislation, though that is probably an unlikely model for the Arab world. But even European parliaments consult with affected constituencies and groups, using parliamentary committees to forge such links and develop relevant expertise. Arab parliaments are moving only tentatively in this direction, however. Parliamentary committees do exist to allow for specialized examination of laws, but only rarely do they reach out to specific groups or work to play a public role.

#### SPECIFIC CASES

The four cases selected for examination show both the positive possibilities for Arab parliaments and the sharp limitations placed upon them. The parliaments in Egypt, Kuwait, Jordan, and Morocco all have substantial histories, are empowered with substantial duties by the constitution, and are show some signs of activism. Yet none is able to exercise all of its constitutional potential.

*Egypt:* Egypt has the oldest continuous parliamentary tradition in the Arab world. The first popular assembly in Egypt sat in Cairo, beginning in 1866. That body was primarily consultative, but it managed to wrest a measure of ministerial accountability in the late 1870s and early 1880s. It was disbanded by the British occupation of 1882, and the British allowed only a consultative body to sit. In 1923, however, after the country's independence was declared, a new constitution provided for a parliamentary monarchy. The boundary between parliamentary and royal authority was drawn ambiguously, however, and Egyptian parliaments found that they were sharply circumscribed by the king (and on occasion by the British as well). In 1952, the new regime suspended the constitution, deposed the king and eventually settled on a presidential system. A parliament was reconvened in 1957, but a series of constitutions limited its authority, preventing it from acting as an instrument of accountability. Egypt's 1971 constitution marked a limited step away from the extreme presidentialism of the post-1952 documents; in 1980, that document was amended to abolish the



single-party system and establish an upper house.

Thus, under existing constitutional arrangements, the Egyptian parliament does not lack all tools. It is allowed to nominate the president (whose election still must be confirmed in a popular plebiscite). It may also question ministers, who serve only with its confidence. The constitution also provides that one-half the members of the parliament be workers and peasants, a clause remaining from Egypt's socialist period that has uncertain meaning in today's more liberal context.

Yet the independence of Egypt's parliament is limited by the electoral framework. The constitution makes only the loosest of provisions, insisting on judicial supervision over balloting. But other elements of Egypt's electoral system have undermined the independence of the parliament. First, Egypt's party system remains constricted. Even after the disestablishment of the regime's single party, every parliament has contained a massive majority of deputies from the National Democratic Party (which is headed by the president). Second, full judicial supervision of elections was not fully implemented until the 2000 elections, leaving the Ministry of Interior to oversee most of the process. Even after a decision by the country's Supreme Constitutional Court resulted in direct judicial supervision of all polling places in 2000, other aspects of elections remained under executive control in the Ministry of Interior and Egypt showed itself hostile to either domestic or international monitoring. Third, the parliament retains control over its own membership: under the country's constitution the Court of Cassation is to investigate cases of election law violations but can only refer its findings to parliament. Court findings of irregularities in large numbers of races—sometimes amounting to a substantial share of the sitting parliament—have often not even been considered by the body.

It is true that a series of judicial decisions have resulted in a more viable parliament. The Supreme Constitutional Court's requirement that judges supervise polling has already been mentioned; other judicial decisions have granted legal legitimacy to some opposition political parties and mandated that independents be granted the opportunity to run for election (thus overturning a pure party-list system in which voters selected parties rather than individuals). The result has been to grant voters more options and allowed independents entrance to parliament, thus weakening (but hardly destroying) the dominance of the governing National Democratic Party.

The independence of the Egyptian parliament is thus limited but real. And it has some tools to exercise this independence. The Egyptian parliament has perhaps the strongest support services (in terms of research facilities and trained personnel) of any in the Arab world. The resources are centralized (rather than allocated to individual members) but the parliament's leadership insists it is responsive to all deputies regardless of affiliation. While access to official media is not unlimited it is granted, and Egyptian television regularly shows peppery parliamentary debates.

Thus, while the overwhelming majorities held by the National Democratic Party make it extremely unlikely that the parliament will bring down a government, it can embarrass ministers with probing questions, bring scandals to political light, and pressure on matters of specific interest. The parliament generally is pliant on matters of great importance to the executive and has even passed controversial laws with little examination when pressed by the government. The speaker's control of the agenda keeps parliament from becoming too great a challenge. In some ways, the weakening of Egypt's party system (due partly to the string of judicial decisions) has made parliament a more independent body, difficult for the executive to control. Yet Egypt's system remains largely presidential, and parliament can ensure a measure of executive accountability only at the margins.

*Kuwait:* Kuwait has perhaps the most independent parliament in the Arab world. Kuwaiti parliamentarians often trace their history back before the country's 1962 constitution to 1938, when

an assembly briefly met before being shut down by the country's amir. An activist in that early effort to establish parliamentary life, `Abd Allah Salim Al Sabah, had become amir by the time of independence in 1961 and convened a constituent assembly which approved a constitution allowing a measure of parliamentarism within a monarchical framework. Members of ruling family do not serve in the parliament, which has thus proven itself as an independent force. Indeed, on two occasions (1976 and 1986), parliamentary life has been suspended (the first time for five years; the second time for six). On both occasions, the parliament was eventually reconvened.

The Kuwaiti constitution seems to provide for a fairly strong parliament. Parliament may question and withdraw confidence from individual ministers. If the parliament and the prime minister (traditionally the crown prince) are unable to cooperate, the amir may either dissolve the parliament or the cabinet. The parliament has the paramount role in issuing legislation, with the amir either promulgating laws passed by parliament or resubmitting them (the parliament may pass a resubmitted law either by mustering a supermajority or by passing it again in the following session).

These provisions have been honored (except during the periods in which parliament has been suspended). Yet the Kuwaiti parliament has not made use of all the powers granted to it. Withdrawing confidence from a minister or passing a law over the amir's objections are theoretically possible, but the parliament and the executive have always drawn back before such a confrontation actually occurred. Parliamentary relations with the executive are generally more strained than anywhere else in the Arab world, and the Kuwaiti parliament generally keeps a watchful eye on the executive. The explanation for the parliament's independence and watchfulness lies less in the constitutional tools available to it and more in the basis by which it is elected.

There are several features of Kuwait's electoral system that grant the parliament greater independence. First, by tradition, members of the ruling Al Sabah family do not enter the elections. Second, parliamentary elections are not officially partisan; indeed, formal political parties do not exist in Kuwait (though the affiliations and inclinations of candidates are widely known). Thus, deputies must show some individual qualifications, a system that rewards either independence or efficiency in meeting constituent needs. Third, executive interference in the balloting is generally quite rare (some gerrymandering has been alleged, but complaints have grown less frequent). Fourth, Kuwait's small population makes it easy for candidates to reach out directly to their constituencies rather than relying on mass media. Fifth, Kuwait's relatively free press makes possible open discussion of sensitive political issues. Parliamentary sessions themselves are covered extensively in the press, with verbatim transcripts of sessions often published.

Kuwait's independent parliament thus has escaped executive domination. In some ways, the parliament's independence has increased over time, partly because the number of "service deputies"—those dedicated only to serving their constituents and therefore willing to toe the line laid down by the executive—has decreased. And periodic elections have led to shifts of the political balance within parliament (with liberals and Islamists being the two chief ideological polls at present). This independence has had real results in terms of oversight of the executive. Deputies have questioned government expenditures, even probing into sensitive military purchases. They have taken their oversight role of the budget extremely seriously, sometimes resisting fiscal reforms on the grounds that they would harm constituents.

Parliamentary independence has checked but not eliminated executive dominance. Most legislation is still begun in ministries, with parliamentarians generally lacking the support necessary to draft complex laws themselves. The amir himself remains above parliamentary oversight, and critical ministries remain in the hands of the ruling family. Individual deputies have become quite bold in pressing criticism of leading members of the Al Sabah, though the parliament as a whole generally

seeks to avoid confrontation. Ministers (most of whom are not elected deputies) sit in parliament, voting on most matters, generally giving the government a majority on crucial votes.

In a sense, the Kuwaiti parliament at its strongest represents the best that most Arab parliaments can hope to accomplish. It does not dictate the composition of the cabinet but it can bend it; it only rarely initiated legislation, but it exercises its independent judgment; it does not completely control the contents of the budget, but it does use the budget-approval process as an oversight tool; and it does not set policy but it does insist that the government rework its policies to meet its concerns

*Jordan.* The Jordanian parliament is one of the older ones in the Arab world, dating back to 1928. It has fluctuated greatly in its ability to oversee the executive. While there are significant obstacles to its ability to insure full accountability at present, it is probably one of the more important Arab parliamentary bodies and is beginning to play a role similar to that of the Kuwaiti

While a Jordanian parliament was first elected in 1928, its authority was limited to approving legislation proposed by the cabinet. Not for two decades did it get the right to initiate legislation; the ability to hold ministers responsible had to wait for the series of constitutional amendments that followed the union between the East Bank and the West Bank. A Senate was created at the same time. With the enlargement of the kingdom, new independent forces gained election to parliament and Jordan seemed to stand on the brink of becoming a constitutional monarchy. However, divisive forces in broader Arab politics and the confrontational attitude between nationalists in parliament and the king led to a constitutional crisis; opposition forces were expelled from parliament and a more pliant body resulted. The 1967 war and the loss of the West Bank led to a disruption of regular parliamentary life, and parliament was finally suspended in 1978 (with a consultative body taking its place). Not until 1988 did the king agree to prepare for elections for a new parliament (without representation from the West Bank) elected. Parliamentary life has been more stable since that time.

Electoral provisions for the Jordanian parliament have been contested because their structure has had great influence on the composition of the body. Indeed, the government has made use of the tool of dissolving parliament and then issuing by decree a new electoral law (as it is empowered to do at times when parliament has not been in session). Opposition forces have bitterly criticized such techniques as designed to favor candidates with local and particularistic followings over those affiliated with broader ideological movements. On some occasions, some opposition parties have boycotted parliamentary elections for this reason. Yet the result has not been a completely subservient body. Since the 1988 restoration, each parliament elected (in 1989, 1993, and 1997) has shown an independent streak, though on critical matters all have bowed in the end to government pressure.

The Jordanian parliament has a similar set of constitutional tools to the Kuwaiti and Egyptian parliament. The head of state generally lies outside of its oversight, but the cabinet is responsible in effect (if not strictly by text) to both the head of state and the parliament. The parliament shies from using the constitutional available to it to bring down the entire government, but individual ministers do come under pressure. And the Jordanian parliament has twice (in 1992 and 2000) moved informally to bring down the government by petition to the king rather than removal of confidence. On neither occasion did the device succeed, but new parliamentary elections were soon scheduled on both occasions.

And as with its counterparts in Egypt and Kuwait, the Jordanian parliament allows the fundamental legislative agenda and the bulk of the drafting to be completed in the cabinet and the ministries. Parliamentary questions directed toward ministers serve as an important tool in bringing issues and policies into public discussion, but do not shape the fundamental policy direction of the

country. And support services for parliament as a whole, parliamentary committees, and individual deputies remain underdeveloped.

Thus on the two chief tools of parliamentary oversight of the executive—legislation and ministerial responsibility—the Jordanian chamber generally presents surmountable obstacles. That it is able to do so ensures some level of accountability in the country, but only in a limited way.

*Morocco.* The Moroccan parliament is currently making significant strides to becoming a far more important body in Moroccan political life after having been effectively sidelined for much of its existence. The Moroccan parliament dates back only to 1963 and was suspended in 1965. A brief resumption of parliamentary life in 1970 was followed by another suspension until 1977. Since that time, it has operated continuously, although new constitutions issued in 1980, 1992, and 1996 have tinkered with the body's authority.

Up until 1996, a combination of electoral procedures, the use of indirect elections for some seats, and constricted public debate combined to produce a subservient parliament. When opposition forces decided to compete, they won a substantial share of the vote, but could not form a parliamentary majority. And the authorities of the parliament were only gradually expanded to grant some genuine oversight tools (in terms of ministerial responsibility and parliamentary questioning). The most recent constitution, issued in 1996, re-established an upper house in the Moroccan parliament, a common device used in the Arab world to prepare for liberalization in the lower house. More than any substantive changes, however, the new draft seemed to augur an enhanced role for parliament and increased tolerance of opposition parties. Most notably, perhaps, the government agreed to creation of an electoral commission, removing some aspects of parliamentary elections from the strict control of the Ministry of Interior. And the first elections under the new procedures, conducted in 1997, resulted not in a loyal parliament but a fragmented one.

Thus, the current Moroccan parliament is unusual in several respects. First, it has been elected under procedures negotiated between government and opposition rather than dictated by the government. Second, the party system is relatively strong, and political parties are recognized as legitimate actors both in the broader society and in the parliament itself (the current parliament recognizes ten parliamentary groupings (ranging from 13 to 55 deputies in size in a parliament with 325 members). Third, the election results for parliament influenced the composition of the cabinet: the fragmented parliament necessitated coalition governments rather than one dictated by the ruling party or head of state. And all this has occurred in a generally liberalizing climate.

And it is this final feature that brings Morocco closer than almost any other Arab system to a true measure of parliamentary oversight. The newly enhanced role of the Moroccan parliament has only begun to be reflected in institutional capacity. Should the parliament attain capabilities for legislative drafting, specialized committee work, and substantive research, it may be able to be a stronger force for executive accountability than virtually all its sister institutions in the Arab world.

#### FUTURE STEPS

This review of existing Arab parliaments reveals that the source of their weaknesses lies not so much in constitutional texts as in more complex (but probably far more malleable) institutional arrangements governing their election and operation.

*Elections.* In most Arab states, election procedures seem tailored to produce a specific result, and they are often modified for each election according to the result desired. The process of regularly modifying electoral laws must end. More important, impartiality both in the general electoral

procedures and in the balloting itself is important. Such goals could be realized with fairly modest steps:

- Designing model electoral laws for the Arab world. While there need not be uniformity among diverse states in the Arab world, greater development is needed in the legal framework for elections. Such a process might be enhanced by offering models of best practice.
- Creation of neutral electoral commissions. Most aspects of the election process could be transferred from the Ministry of Interior to an electoral commission. The commission itself should be as independent from partisan political forces as the courts, though representation by various parties may be critical to its operation. Perhaps no step would do more to enhance the credibility of elections in the Arab world. There are many models for such bodies.
- Independent election monitoring. Domestic and international monitoring bodies should not be viewed suspiciously as adversaries attempting to interfere with elections but as groups whose contribution is likely to be helpful to electoral fairness. The highly politicized nature of NGOs in much of the Arab world is likely to lead many governments to be suspicious, especially of domestic groups. But international standards for election monitoring have evolved fairly quickly, and nervous governments might insist that monitoring groups demonstrate some fealty to those standards.

*Enhancing parliamentary capacity.* Arab parliaments possess significant latent authority, but they are rarely able to use the tools they have because of insufficient expertise and analytical capacity. Some countries have recently taken some significant strides in this area in recent years. In particular, three areas might receive special attention.

- Developing expertise. Parliaments probably need the greatest assistance in budgetary analysis and legal research and legislative drafting. Developing capacities in these areas would allow parliaments to play a far more effective oversight role and participate much more actively in the legislative process. Yet an emphasis on development of capacity is not enough: parliaments must make this capacity available to all members. This must be done through allowing access to individual members, to committees, and to parties or blocs represented in the parliament.
- Great use of parliamentary committees. Arab parliaments do use committees at present to discuss and prepare items for the entire body, but there is room for far more effective use of the committee system. Committees must have adequate staffs, good contacts with relevant ministries, and the capacity to reach out to affected groups within the broader society. It is this last element that is often most in need of development.
- Greater sophistication in constituent outreach. Members of parliament must have regular and institutionalized tools for contact with their constituents. Since Arab parliaments are elected on a district basis, this might be easily accomplished through the construction or enhancement of district offices. Such bodies might serve members not simply in their efforts to serve constituents but also in their work to educate them about the work of the parliament.