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## What Remains of the Arab Spring?

### Challenges Impeding the Achievement of Social Justice in the Arab Region

Case Studies: Egypt, Tunisia and Morocco

Economic and Social Commission for Western Asia (ESCWA)

# **What Remains of the Arab Spring?**

Challenges Impeding the Achievement  
of Social Justice in the Arab Region

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United Nations publication issued by ESCWA, United Nations House,  
Riad El Solh Square, P.O. Box: 11-8575, Beirut, Lebanon.

Website: [www.unescwa.org](http://www.unescwa.org).

# Acknowledgements

*What remains of the Arab Spring? Challenges impeding the achievement of social justice in the Arab region* is the first report in a series on social justice published by ESCWA. It comes two years after the publication of a study entitled **“The Promises of Spring: Citizenship and Civic Engagement in Democratic Transitions”**, which reviewed the backdrop of the so-called Arab Spring and the challenges impeding the achievement of social justice and consensus and of maintaining social cohesion during political transitions. Moreover, the present report is being published following the adoption by the international society of a new development path, known as the 2030 Agenda for Sustainable Development, whose main pillar is social justice.

The Social Justice and Participation Section of the Social Development Division of the Economic and Social Council for Western Asia (ESCWA) prepared this report, under the direction of the **Section’s Chief**, Mr. Oussama Safa. This report is part of the normative research conducted by the ESCWA secretariat to carry out technical analysis and formulate recommendations on policies to achieve social justice in the Arab region, especially social policies that promote equity and equality, economic policies and institutional reforms that encourage participation.

Chapter I was prepared by a team from the Social Justice and Participation Section, composed of Mr. Safa, Ms. Rania al-Jazairi, Ms. Viridiana Garcia and Ms. Nadine Daou. Chapters II to VI were drafted by an ESCWA consultant, Mr. Jamil Mouawad. ESCWA would like to thank Mr. Mohamad Shaban who prepared the case studies on Morocco and Tunisia, and Mr. Rami Jalal who compiled the case study on Egypt.

ESCWA also thanks the experts who participated in a meeting with the ESCWA team and consultants to review and develop the first draft of the report, namely Mr. Nader Mounneh, Mr. Mohamad Khalidi and Mr. Mohamad al-Ajati.

The ESCWA team would like to express its appreciation to Mr. Frederico Neto, Director of the Social Development Division, for his valuable guidance and support, and to other colleagues for their time, expertise and ideas during the revision of the report.

ESCWA welcomes comments from readers, which can be sent to the following address: safao@un.org.



# Executive Summary

Social and economic justice are key to understanding the popular movements in the Arab region and their consequences five years on. A study of social justice draws conclusions on the new social contract between the State and society developed following the movements. In the present report, ESCWA investigates the reality of social justice in countries that witnessed popular uprisings by evaluating their constitutional and political transitions, and sets out case studies on Egypt, Morocco and Tunisia.

To this end, the report studies the path of social justice, from demonstrators' urgent demands thereon to its enshrinement in new constitutions and its implementation through the enactment and amendment of laws.

The report highlights the impact of popular movements by evaluating the status of social justice in new Arab constitutions, on the one hand, and the operationalization of constitutions through the implementation of their principles in legal and legislative systems, on the other. To fully analyse social justice, the report focuses on the following four key issues: the drafting of constitutions and their provisions on the principle of participation; articles in constitutions on social justice; new or amended laws that conform to the provisions of these constitutions; and economic and social programmes developed or implemented to ensure the conditions of social justice. Moreover, the report sets out the principal challenges and obstacles that have impeded progress towards achieving social justice over the past four years.



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# Introduction

At the end of 2010, a wave of popular demonstrations swept through the Arab region, with variations between countries. In all the countries that witnessed social unrest, demonstrators launched numerous slogans, some demanding the fall of the regime and others requesting fundamental political and constitutional reforms. These movements had varying consequences. Some led to armed conflict, as in Libya, the Syrian Arab Republic and Yemen; others resulted in regime change, as in Egypt and Tunisia; and a few caused the existing regime to launch constitutional and reformist initiatives to meet the **people's** demands, as in Morocco.

In Tunisia, where the social movements began, demonstrators marched to chants of **“work is a right, you gang of thieves”**. This slogan demanded jobs and employment opportunities, especially for university graduates, in a country where corruption was rife. In Egypt, the call for **“bread, freedom and social justice”** filled Tahrir Square, which indicates that the majority of Egyptians were primarily demanding a better economic life based on social justice, in addition to political rights, freedoms and human dignity.

The social uprisings were therefore not only aimed at political regimes, but also condemned significant social disparities and job shortages.<sup>1</sup> They were the manifestation of accumulated demands for improved economic and social conditions, affecting all social groups. For example, the Gafsa Mining Basin revolt that occurred in Tunisia in 2008 is considered one of the major movements in the country since

independence in 1956, because it highlighted economic shortfalls, corruption, nepotism and unemployment, on the one hand, and the security limitations of the regime that fiercely attempted to control the demonstrations, on the other. The movement also exposed political weaknesses, underscoring the divide between the regime and society, and between traditional opposition parties and the demonstrators who were finally liberated from both.<sup>2</sup> Tunisia had previously witnessed another popular uprising in 1984, known as the bread riots, which broke out in protest against increases in bread prices.

**Another example is the workers' strike in Mahalla, Egypt, against price rises and wage freezes in 2006,<sup>3</sup>** preceded by the *Kefaya* movement in 2005 that demanded political reform and a democratic transition. In other words, previous demonstrations in the Arab region had created a spark that kindled the recent popular revolts.

Five years after the start of the movements, the present report raises the following question: What remains of these movements, and how can their course be understood? Opinions differ on the role and effects of these popular movements. Some attribute them to the wars and conflicts that followed in some countries, transforming the Arab Spring into the Arab Winter by shaking the foundations of the centralized State in the region and exposing subnational identities and fanaticism<sup>4</sup> that fuelled bloody conflict and terrorism, thus unravelling societies and the basis of the nation States as in the case in Libya, the Syrian Arab Republic and Yemen<sup>5</sup> – this was the result of

authoritarian regimes clinging to power, and it may be premature to evaluate the experiences of such countries that are still affected by armed conflict. However, other opinions focus on countries that, following the popular movements, underwent constitutional reforms or peaceful transitions by drafting new constitutions or reformulating the relationship between State and society.

Social justice was therefore the main motivation behind the Arab uprisings, and was a common demand across countries; it is key to understanding the popular movements, peaceful transitions and constitutional reforms in the region. In turn, it is necessary to analyse the extent to which democratic and constitutional transitions have met the demands of peoples from the perspectives of equity, equality, rights and participation, which are the four pillars of social justice that are still being determined and developed.

The importance of studying social justice lies in the conclusions drawn on the new social contract between State and society, established following the popular movements. Demanding social justice extends beyond practical applications, such as the distribution of wealth and guaranteeing public liberties and participation in decision-making and the protection of human rights, to the reformulation of the relationship between State and society. In other words, analysing social justice includes an evaluation of the nature of a State established following constitutional transition. Studying these transformations is vital, given that conflicts accompanying the revolts ultimately revolved around the nature of the State, thus requiring research into the role of the State in society and the relationship between the two.<sup>6</sup>

Several studies have tackled the issue of social justice following the popular uprisings,

including *Social Justice and the Arab Uprisings*,<sup>7</sup> **which states that “overall, the findings suggest that Arab countries have made limited progress on issues of social justice in a number of areas, but that there still remains a long way to go. Most citizens have insufficient income to meet their needs, and economic concerns continue to trump political and social issues throughout the region. Unemployment remains high, especially among youth leading many to harbour a desire to emigrate abroad”.** Most studies focus on the quantitative aspects of social justice by comparing current unemployment and poverty rates to those preceding the movements. An ESCWA study concluded that the revolts did not positively affect the Arab region, causing economic setbacks<sup>8</sup> that can be attributed to resultant economic instability in some countries, such as Egypt, Libya and the Syrian Arab Republic, which had a detrimental impact on the rest of the region. A quantitative perspective gives only a partial view of the status of social justice, thus raising the need to assess the course of social justice from the start of the popular uprisings through to the ensuing constitutional processes and the consequent government policies.

To this end, the present report studies the **path of social justice, from demonstrators’** urgent demands thereon to its enshrinement in new constitutions and its implementation through the enactment and amendment of laws.

The report sets out three case studies of countries that witnessed popular movements, namely Egypt, Morocco and Tunisia. Each country has its own specificities related to development paths, history and constitutions, in addition to the popular uprisings and institutional transformations witnessed, which are key to understanding the constitutional transitions in each.

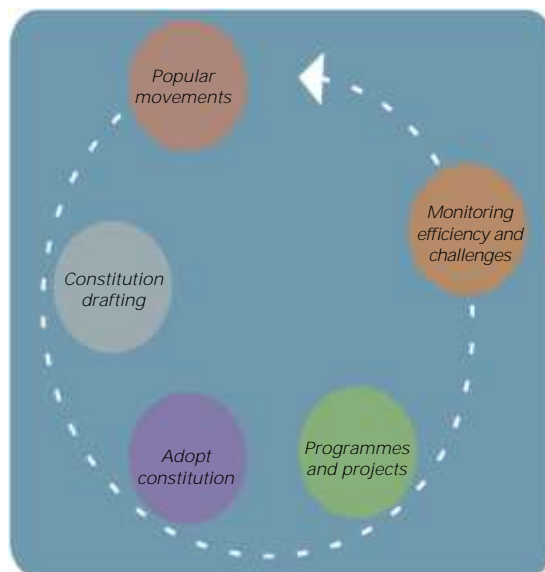
These three countries were selected for the following two main reasons: they witnessed popular movements that led to the drafting of new constitutions; and the revolts did not lead to significant military conflict and the collapse of State institutions, unlike in Libya, the Syrian Arab Republic and Yemen.

The report begins by defining the principles of equality, equity, rights and participation, and the extent to which they are applied in Arab countries. It then reviews the background to the revolts and their consequences in Egypt, Morocco and Tunisia, by evaluating the status of social justice in **these countries' new constitutions and its** application in legal and legislative systems.

The chapters in the present report focus on the following five key issues:

- The process of drafting of constitutions and its observance of the principle of participation that guarantees just representation for all social groups;
- Constitutional provisions on social justice and the principles of equality, equity, rights and participation;
- Laws that have been enacted or amended to comply with new constitutions;
- Challenges and obstacles impeding progress in applying social justice over the past four years.

The report has therefore adopted a dual approach that: analyses constitutional processes and provisions, and evaluates the situation on the ground by looking at programmes endorsed by current Governments aimed at applying social justice. The social justice framework, developed by the United Nations Department of Economic and Social Affairs, has been the basis of all the chapters in the present report, focusing on inequalities in the distribution of income, assets, social services, employment opportunities, and political and civic participation.



The report consist of an introduction and the following six chapters:


- **Chapter 1** presents concepts and definitions related to social justice, especially its four pillars, namely equality, equity, human rights and participation, and the extent of their application in the Arab region;
- **Chapter 2** focuses on the process of constitution drafting, by studying the situation in Egypt, Morocco and Tunisia;
- **Chapters 3, 4 and 5** consider the current status of social justice in Egypt, Tunisia and Morocco, respectively, from the following four perspectives. Firstly, constitutional provisions and the extent to which they meet the demands of social justice. Secondly, an evaluation of the process to operationalize the constitution through various laws. Thirdly, a study of two or three sectors related to social justice components. Fourthly, the challenges impeding the achievement of social justice given the political situation in each country;
- **Chapter 6** contains conclusions and general recommendations.



# 1. Four Pillars of Social Justice: Impact on the Arab Region







Social development and social justice cannot be attained  
in the absence of peace and security or in the absence  
of respect for all human rights and fundamental freedoms

*United Nations, Copenhagen Declaration on Social Development*

# 1. Four Pillars of Social Justice: Impact on the Arab Region

The present chapter covers the four pillars of social justice, namely equality, equity, human rights and participation, with reference to the framework of the United Nations Department of Economic and Social Affairs that highlights inequality in the distribution of income and assets, in decent and paid employment opportunities, in the distribution of social services (under the equality pillar); in social, economic and political life (under the equity pillar); and in civic and political participation (under the human rights and participation pillars). The present chapter analyses those four pillars with regard to the Arab region, highlighting several country examples.

## A. Ensuring equality to achieve social justice

**“Everybody counts or nobody counts”<sup>9</sup>** is an ideal approach to upholding human rights and ensuring the equal treatment of all. Regional and international negotiations now recognize that development policies must tackle equality, equity, rights and participation to secure the greater goals of poverty reduction and sustainable development for current and future generations. Most societies, especially those that have witnessed popular demonstrations, are committed to guarantee justice and equality; however, their achievement in the Arab region is fraught with difficulties.

Articles 1 and 2 of the Universal Declaration of Human Rights, the two international human rights treaties and subsequent texts adopted by Member States of the United Nations provide that all human beings are born free and equal in dignity and in rights, and everyone is entitled to all rights and freedoms without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In practice, the principles of equality require the fair distribution of resources, assets and opportunities so as to allow all members of a society to effectively exercise their civil, political, social, economic and cultural rights.

States, as the principles guarantors of human rights, are responsible for ensuring the protection, respect and achievement of the principles of equality and non-discrimination. This entails including the principles of equality and non-discrimination in national legal frameworks, especially by adopting legislative measures aimed at preventing violations and penalizing perpetrators. Translating these principles into practice therefore demands intuitions that are able to apply equality and non-discrimination standards, and adopt inclusive administrative and political processes. Based on this framework, countries are also expected to enhance equality by adopting tangible measures aimed at tackling the reasons for and consequences of existing injustice. Consequently, Governments, in accordance with available resources, are



encouraged to implement public policies that guarantee equal access to basic goods and services, such as health care, education, food, water and electricity. To ensure equality of opportunity for all, Governments must also identify structural obstacles that impede the achievement of social justice, so as to resolve and compensate for inequalities that disfavour some groups.

Despite significant gains in social, economic and human development in the Arab region over the past two decades,<sup>10</sup> considerable disparities remain in living conditions and in accessing wealth and opportunities. Resentment against injustice and exclusion was at the heart of the popular uprisings that toppled authoritarian leaders in Egypt, Libya and Tunisia, and that revived discussions between public authorities and civil society in Jordan, Morocco and other countries. It is still too early to measure if those transformations will greatly impact social wellbeing; however, if newly established institutions and Governments wish to succeed in the long term, they reform agendas must prioritize combating inequalities. Eliminating obstacles that prevent vulnerable groups from enjoying their rights and benefiting from decent opportunities is vital for building a just and cohesive Arab society.

The present chapter analyses inequality patterns in the Arab region, and how they hamper social justice. In line with the framework of the United Nations Department of Economic and Social Affairs, the study focuses on recent aspects of inequality by assessing income and asset distribution, and access to decent employment opportunities and social services. The chapter also covers inequalities in civic and political participation under the human rights and participation pillars, in addition to disparities in opportunities under the equity pillar.

## 1. Inequality in the distribution of income

Income disparities in the Arab region are mainly driven by inequalities between countries, which highlight significant variations in living conditions as revealed by differences in gross national income (GNI) per capita. Oil-rich countries in the Gulf, namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, which represent around 16 per cent of the total Arab population, are among the forty richest countries in terms of GNI per capita based on purchasing power parity.<sup>11</sup> In contrast, six Arab countries, namely the Comoros, Djibouti, Mauritania, Somalia, the Sudan and Yemen, which represent 20 per cent of the Arab population,<sup>12</sup> are considered least developed countries.<sup>13</sup>

**Consequently, people's living conditions in the region vary according to the country they live in.** These variations are the result of several factors at the international, regional and national levels, including macroeconomic conditions, geopolitical instability and social dynamics, such as population growth and migration patterns. The larger that gap between high-income and low-income countries, the harder it is for those in the lower quintiles to keep pace with living standards, thus negatively affecting regional integration and stability. This point is highlighted by the Lorenz curve showing the cumulative percentage of GNI per capita plotted against the cumulative percentage of the Arab population (figure 1). The extent to which the curve sags below the straight diagonal line indicates the degree of inequality of distribution.

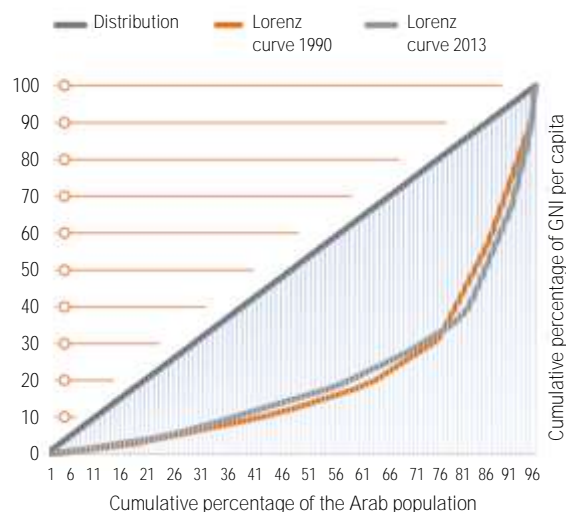
At the national level, inequality is less pronounced across the region. Although global trends have shown considerable increases in income disparities within developed and emerging economies over the past few decades, Arab countries continue to record low to moderate national levels of income disparity compared to other countries, such as Brazil,

Indonesia and South Africa, as indicated by the Gini index for selected countries (table 1). In 2015, the Gini index for Egypt and Iraq was around 30 per cent, whereas in Mauritania and Morocco it exceeded 40 per cent.

In several countries, however, other inequality measures demonstrate greater variations between social groups. Table 2 shows severe disparities in the income levels of the top quintile compared to the bottom quintile in the Comoros, where the richest 20 per cent of households earn nearly 27 times more than the poorest 20 per cent. In Qatar, the ratio is 1:13. Considerable disparities are also revealed when comparing income between urban and rural areas, given that the majority of the poor in Arab countries are rural dwellers.<sup>14</sup> Rapid urbanization, characteristic of most Arab countries, has resulted in the development of a few well-connected cities, which have benefited most from development, whereas smaller cities and rural areas receive more limited development gains. In Egypt, for example, there is a large income per capita gap between urban and rural areas, in particular between the four major cities and the rest of the country.<sup>15</sup>

In Tunisia, human, social and economic development in western rural areas is significantly stunted compared with urban and coastal areas, despite government efforts to reduce this gap between areas. For example, uneducated workers make up over 26 per cent of the population in Sidi Bouzid and 26 per cent in El Kef, compared with under 4 per cent in Greater Tunis and around 5 per cent in the south-east of the country.<sup>16</sup> Inequality in development is also visible within big cities, reflected in the growth of poor neighbourhoods, resulting in considerable income disparities within a city.

**Figure 1. Lorenz curve showing the cumulative percentage of GNI per capita plotted against the cumulative percentage of the Arab population (1990-2013)**



**Source:** ESCWA estimates, based on the World Development Indicators database, June 2015.

**Note:** Data for 1990 and 2013 include all Arab countries, except Palestine and Somalia. Data on GNI per capita for the Syrian Arab Republic are from 2007.

**Table 1. Gini coefficient for selected Arab countries\***

Country	Year	Gini index
Iraq	2012	29.54
Egypt	2008	30.75
Jordan	2010	33.69
West Bank and Gaza	2009	34.46
Sudan	2009	35.29
Tunisia	2010	35.79
Mauritania	2008	40.46
Morocco	2006	40.88
Brazil	2012	52.7
Chili	2011	50.8
China	2011	37
India	2011	33.6
Indonesia	2011	38
South Africa	2011	65

**Source:** World Bank, World Development Indicators, June 2015.

**Note:** Most recent data available.

\* The Gini coefficient is a measurement of the income distribution of a country's residents. This number, which ranges between 0 and 100 and is based on residents' net income, helps define the gap between the rich and the poor, with 0 representing perfect equality and 100 representing perfect inequality.

It should be noted that available data is insufficient to fully evaluate income disparities within Arab countries. Only a few countries regularly conduct household surveys, which are the main source of information on consumption and income. Consequently, available data give only a partial view of reality, necessitating caution in their interpretation.

Recent extreme poverty trends support this last point. Although extreme poverty, defined as the percentage of the population living on less than \$1.25 per day, is relatively low in the Arab region, it has risen lately as a result of armed conflict and political instability in some countries, including Iraq, Libya, the Sudan, the Syrian Arab Republic and Yemen, reaching around 7.4 per cent in 2012.<sup>17</sup> Increases in extreme poverty may slow progress towards limiting disparities and achieving social justice.

## **2. Inequality in the distribution of assets**

The ability to acquire financial and physical assets, such as land, housing and capital, is a key factor in generating income, especially from investments in productive assets. Given the strong statistical relationship between asset ownership and income, high concentrations of wealth and assets in the hands of a few could increase income inequality and limit social mobility. Wealthy households are more prepared to withstand shocks and handle socioeconomic changes, whereas households with no or little savings or capital are more vulnerable to poverty.<sup>18</sup> Considering the challenges of significantly reducing income inequality and extreme poverty in the region, and given the increase in political instability and armed conflict, the risks of asset concentration have risen in Arab countries although not many studies have assessed them.

Attempts to measure wealth disparities in the region have shown high asset concentration in the hands of a few. For example, Lanchovichina<sup>19</sup> states that only a few individuals and households in Egypt and Lebanon control 30 per cent and 24 per cent, respectively, of gross domestic product (GDP).

Regarding wealth distribution, recent data gathered by the Boston Consulting Group indicate that, in 2014, Bahrain, Kuwait and Qatar had the highest number of millionaires globally.

Households in the MENA region with considerable personal net wealth (exceeding \$100 million) increased by a significant 15.8 per cent in 2014, while households with less personal wealth (between \$1million and \$20 million) increased by only 8.8 per cent, thus further widening the wealth distribution gap among the rich.<sup>20</sup> Qatar has the highest number of extremely rich households worldwide.

Wealth disparities between areas are apparent in the region, in line with income disparities. A recent study on socioeconomic disparities in the region highlights significant variations in GDP per square kilometre between areas, particularly in Algeria, Egypt, Jordan and Libya, with Gini indexes exceeding 60 per cent within a country,<sup>21</sup> revealing urbanization patterns which have only benefited large cities where economic, administrative and financial jobs are concentrated that are linked to the global and regional economies. Inequalities in urban development also exist in large Arab cities with rapid population growth, putting pressure on infrastructure and causing the spread of slums around well-serviced central business districts.

**Table 2. Income inequality measurements**

Country	Income quintile ratio	Percentage	Country	Income quintile ratio	Palma ratio
	2012-2003	2012-2003		2012-2003	2012-2003
Qatar	13.3	..	Palestine	5.8	1.5
Saudi Arabia	..	..	Egypt	4.4	1.2
United Arab Emirates	..	..	Syrian Arab Republic	5.7	..
Bahrain	..	..	Iraq	4.6	1.2
Kuwait	..	..	Morocco	7.3	2.0
Libya	..	..	Yemen	6.3	1.7
Oman	..	..	Comoros	26.7	..
Lebanon	..	..	Mauritania	7.8	1.9
Jordan	5.7	1.5	Sudan	6.2	1.4
Tunisia	6.4	1.5	Djibouti	..	..
Algeria	..	..	Somalia	..	..

**Source:** United Nations Development Programme, 2014; Database of the Human Development Reports.

**Note:** The income quintile ratio is the ratio of the average income of the richest 20 per cent of the population to the average income of the poorest 20 per cent of the population. The Palma ratio is defined as the ratio of the richest 10 per cent of the population's share of gross national income divided by the share of the poorest 40 per cent.

Striking gender inequalities are observable across the region in accessing capital, **negatively affecting women's economic** abilities. National legal frameworks uphold discriminatory procedures that deny equal rights for women in matters of inheritance and ownership.<sup>22</sup> Although data on land rights are insufficient, estimates, based on recent agricultural censuses in the region, show that **women's ability to own land remains highly** limited. Only 1 per cent of those with agricultural holdings are women in Saudi Arabia, 3 per cent in Jordan, 4 per cent in Algeria and Morocco, 5 per cent in Egypt, 6 per cent in Tunisia and 7 per cent in Lebanon.<sup>23</sup> The new social development agenda, currently being discussed by Arab Governments **and societies, must promote women's rights to** economic empowerment and review discriminatory systems and legislation to

remove structural obstacles that impede gender equality.

### **3. Inequality in the distribution of employment opportunities and paid work**

The availability of decent economic and employment opportunities for all is key to achieving social justice.<sup>24</sup> Finding stable and secure paid employment and accessing social protection programmes are vital to reducing poverty and ensuring social cohesion and fair income distribution, thus deserving special **attention in the region. Individuals' rights to** work and earn a living are recognized in article 6 of the International Covenant on Economic, Social and Cultural Rights<sup>25</sup> and in conventions of the International Labour Organization (ILO). Although most Arab economies have recorded steady growth over the past few years,

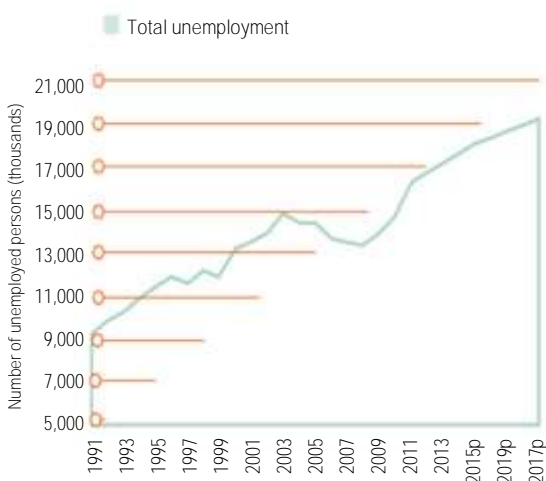
economic development has not led to the creation of sufficient jobs or reduced rampant unemployment in Arab labour markets. According to recent ILO estimates, unemployment in the MENA region in 2015 was the highest globally, affecting 11.7 per cent of the active population (figure 2).<sup>26</sup> Furthermore, some social groups face obstacles to entering the formal labour market, based on age, sex, disability, nationality and qualifications, thus excluding them from the development process.

Undoubtedly, rising youth unemployment is a major challenge that member States must tackle over the coming years. Around 30 per cent of active persons aged between 15-29 are unemployed, and rapid labour force growth is increasing pressure on the labour market.<sup>27</sup> These figures are unprecedented at the regional level, and reflect inconsistencies between business needs and the skills of young people and, including those with higher education. These are also insufficient employment opportunities in the public sector, which is more attractive to young people than the private sector.<sup>28</sup>

The gender gap in terms of participation in economic activities is large and shows no sign of shrinking, as reflected in low women's labour force participation. In 2015, it was estimated that less than 25 per cent of women of working age were actively looking for jobs, compared with 75 per cent of men; this situation has remained unchanged for the past 30 years.<sup>29</sup> Women are more vulnerable to unemployment, with 21.3 per cent unemployed compared with 9.1 per cent for men. Unemployment among young women in the region is the highest worldwide, reaching over 45.5 per cent in 2015 compared with 24.6 per cent for men.<sup>30</sup> In addition to various socioeconomic and structural factors that contribute to weak women's participation,

prevalent patriarchal social values uphold gender roles that complicate women's economic activities and investments and that impede gender equality in accessing financial resources.<sup>31</sup> Moreover, the region still implements discriminatory legislation that limit women's economic opportunities and hamper their access to resources. For example, social security policies and tax laws in most Arab countries discriminate against women. In Jordan, social security laws prohibit women who have been married more than once from receiving their deceased husbands' benefits, but the same does not apply to men. Laws on retirement age and tax do not offer equal opportunities to Arab women, who are generally obliged to retire five years before their male counterparts. They are also, on many occasions, denied tax exemptions or reductions, thus negatively affecting their economic participation. Furthermore, maternity protection measures are weak compared with other regions and fail to protect mothers' needs in the workplace. Reforms would empower women to balance between their work and personal lives, and therefore improve their labour force participation.<sup>32</sup>

**Figure 2. Unemployment in the MENA region**



Source: ILO, 2014.

The informal market partially compensates for disparities in employment opportunities, with estimates showing two-thirds of the workforce in the region employed in informal jobs.<sup>33</sup> The growth of the unregulated informal sector, which does not offer any form of social or job security to employees, has led to increasing disparities between formal sector employees, who enjoy decent jobs and social protection, and the rest of the workforce. Social protection coverage is a good indicator for measuring informal employment. According to World Bank estimates, over the period 2000-2007, 34 per cent of the workforce in Libya had no social protection, 44 per cent in Egypt, 50 per cent in Tunisia, 67 per cent in Jordan and Lebanon, 80 per cent in Morocco, and 90 per cent in Yemen. Recent estimates indicate that these figures are increasing,<sup>34</sup> especially among agricultural and migrant workers. The case of migrant domestic workers should also be highlighted, who face discriminatory procedures and are denied many basic opportunities and entitlements granted to other workers, such as the right to a decent salary and to forming unions. Many countries in the region have made significant progress towards protecting the rights of migrant workers, but most labour systems in the region

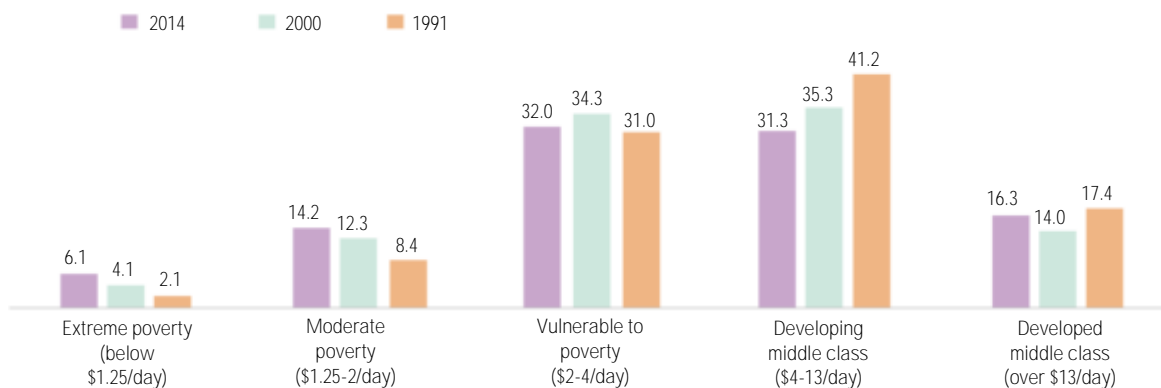
do not meet international standards. For example, the sponsorship system imposed on migrant workers in Gulf countries, Egypt, Jordan and Lebanon makes workers fully dependent on their sponsors, limiting their ability to change employer.<sup>35</sup> In Kuwait and the United Arab Emirates, only migrants are obliged to pay indirect taxes, especially health care and clinic fees.

As a result of all these factors, and despite some improvements over the past two decades, many poor workers still exist in the region, as shown in figure 3. Estimates for 2015 show that 10.5 per cent of workers live on less than \$2 per day, compared with 16.4 per cent in 2000.

#### 4. Inequality in the distribution of services and social programmes

Equal access to basic goods and services for all is enshrined in international human rights law, and is inextricably linked to social justice goals. The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights state that, a dignified life entails decent living standards, decent housing,

**Figure 3. Workforce percentages by income level in the MENA region**



Source: ILO, 2014.

enough food and water, and the highest possible level of health and education. The right to social protection and insurance for all is also a requirement, as indicated in articles 9 and 10 of the International Covenant on Economic, Social and Cultural Rights. States are therefore responsible for providing basic education, health and social protection services, among others, to achieve social justice. State responsibility is not limited to providing short-term security networks in times of crisis or shocks; they should also offer equal opportunities for all and compensation for unfair living standards by ensuring access to basic services and empowering beneficiaries.

Despite progress in the Arab region towards providing education, health, water and sanitation services, considerable disparities exist between countries (oil-rich Gulf countries, middle-income countries and least developed countries) and at the national level (between rural and urban areas). The Inequality-adjusted Human Development Index (IHDI) of the United Nations Development Programme, which measures average inequality in health care, education and income, was above 24 per cent in 2013 in the Arab region compared with 13 per cent in Europe and Central Asia and 19 per cent East Asia and the Pacific.<sup>36</sup> Urban-rural variations also indicate weak rural participation and insufficient health and education services. Rural households are 3.5 times more vulnerable to multifaceted deprivation than urban households.<sup>37</sup> With regard to education, despite higher enrolment rates at all levels, especially in primary education, no significant improvements in education quality were registered. In 2011, primary school enrolment was at 92 per cent, compared with 85 per cent in 1999.<sup>38</sup>

In least developed countries, however, 9 million children are not enrolled in primary education.<sup>39</sup> In conflict-affected countries, development

losses in education have occurred, reflected in lower enrolment rates at all levels in Iraq and the Syrian Arab Republic. Education quality is normally measured through performance assessments, such as Trends in International Mathematics and Science Study and the Programme for International Student Assessment. None of the 14 Arab countries that participated in the 2011 assessments reached the international achievement grade of 500,<sup>40</sup> reflecting outdated education systems that depend on memorization and discourage creativity, innovation and problem-solving. Moreover, education systems in the region are elitist, with a large gap between government and private schools. These factors directly affect **individuals' employment opportunities and**, in turn, impede social justice by favouring the elite and facilitating their access to positions of power and resources.

The same difficulties arise in the provision of health services. Despite the availability of health care, cost and quality impede access to high standards of health services by all, as stated in article 12 of the International Covenant on Economic, Social and Cultural Rights. Although, on average, the health of the Arab population has significantly improved, factors such as gender and urban inequality and place of residence limit health outputs, as measured by the composite health coverage index of the World Health Organization (WHO) which indicates access to reproductive health services and health care for mothers, children and new borns. In Jordan, for example, there are minor difference in the index between the poorest households (bottom quintile) and the richest (top quintile), and between urban and rural households. In contrast, the index shows that in Egypt and Yemen, rural households and those in the bottom quintile have significantly less access to health services than urban households and those in the top quintile, according to the

index (table 3). Child mortality rates highlight contradictions in some Arab countries with available data. In the Comoros, in 2012, the mortality rate for children under 5 was 58.3 deaths per 1,000 children in rural areas, compared with 27.2 in urban areas. In Egypt, in 2008, the child mortality rate was 36 deaths per 1,000 children in rural areas, compared with 28.6 in urban areas.<sup>41</sup>

Consequently, to achieve human development for all, it is necessary to provide health care for all, including the poorest social groups.

Social protection plans and services are the most effective tools for managing disparities in income and human development, by protecting individuals and groups from the risks of disease, old age and disability and during economic slowdowns and natural disasters. They are efficient methods for combating poverty through income redistribution and by promoting social cohesion and mobility. However, social protection programmes in the region continue to focus on protection rather than transformation and reform, and rely significantly on contributory social security plans, social assistance programmes or social safety nets and subsidies. Although formerly there were generous social welfare systems in the region, current social security plans appear fragmented and biased towards some social groups, especially employees of large private corporation and public sector workers. The majority of the population is therefore overlooked by the system, including informal, temporary, agricultural and migrant workers and the unemployed. According to recent ILO data, on average, around 30 per cent of working age people in the region (with significant variations between countries) will receive

pensions upon retirement while the majority will have no income security in old age, thus contributing to considerable income disparities and the spread of poverty.<sup>42</sup> Moreover, non-contributory social programmes, such as remittances, have not sufficiently reduced poverty and inequality. The Arab region still largely depends on oil and food subsidies; these products greatly contribute to **the region's GDP but also increase inequality** and negatively affect social justice, given that high income groups benefit most from these subsidies.

As mentioned above, some social groups, such as migrant workers, face severe discrimination with regard to social protection. For example, in some countries, they are required to pay for health services that are free for citizens or are simply denied access to social protection systems.

Over the past few years, progress has been made in the provision of drinking water and sanitation services in the region, albeit with considerable variations in coverage, especially in rural areas and least developed countries. While 89 per cent of urban dwellers have access to improved drinking water, only 79 per cent are provided with the same service in rural areas.<sup>43</sup> According to the Arab Millennium Development Goals Report, the region performed better in establishing health care facilities than in providing safe drinking water, with rural areas and least developed countries lagging far behind. Such problems are exacerbated in times of conflict, with 50-95 per cent of the population in affected cities<sup>44</sup> living without water or health services and denied minimum living standards.



**Table 3.** Inequalities in accessing health services in selected Arab countries

WHO health coverage index (Percentage)			Place of residence		Economic quintiles				
			Rural	Urban	1 <sup>st</sup> quintile (poorest)	2 <sup>nd</sup> quintile	3 <sup>rd</sup> quintile	4 <sup>th</sup> quintile	5 <sup>th</sup> quintile (richest)
Comoros	2012	Demographic and health survey	58.1	70.7	49.5	58.5	64.6	71.8	68.9
	1996		51.8	59.6	41.0	50.7	54.3	57.8	71.1
Egypt	2008		74.6	81.3	70.1	74.7	77.4	80.5	83.2
	2005		73.0	79.8	67.7	72.9	76.3	79.4	82.2
	2000		68.1	78.2	61.6	67.4	72.3	77.7	81.5
	1995		55.9	70.9	48.0	54.3	62.3	69.7	78.3
Iraq	2011	Survey of multiple indicators	68.5	77.4	65.5	73.8	75.9	79.6	80.7
	2006	Survey of multiple indicators	73.0	81.9					
Jordan	2012	Demographic and health survey	85.3	83.9	82.5	83.6	85.0	83.9	85.7
	2007		81.5	81.9	78.3	81.8	83.4	82.1	Unavailable
	2002		77.0	80.1	76.8	79.5	80.7	80.3	Unavailable
	1997		75.2	78.5	74.7	77.0	79.0	78.9	79.5
Mauritania	2007	Survey of multiple indicators	42.3	59.5	33.4	42.2	51.3	59.3	64.5
Morocco	2003	Demographic and social survey	64.2	80.1	59.5	69.0	73.8	80.9	84.3
Syrian Arab Republic	2006	Survey of multiple indicators	73.2	79.6	67.0	74.2	79.3	79.8	83.3
Yemen	2006	Survey of multiple indicators	42.5	66.8	34.8	38.4	47.7	59.1	71.7

Source: WHO, Global Health Observatory, Health Equity Monitor database.

## B. Ensuring equity for the attainment of social justice

### 1. Equity or equality?

There are tendencies in subsuming equity within the concept of equality, and in collapsing all forms of injustices and inequities into inequalities. It is therefore important to understand the distinction between these two notions. The UN-HABITAT report on **'Equity in Urban Development'** underscores this difference: while *equality* is about enjoying the **'same status in all aspects of life, including income'** and is closely connected to the **'indivisibility of human rights'** revolving around inclusion and non-discrimination, equity is more concerned with the distribution of opportunities, and with **'leveling the playing field'** so that all groups of societies benefit from the socio-economic and political advantages in a fair and just manner. In this sense, equity holds a moral connotation where people should be treated equally on the basis of their differences.<sup>45</sup> Concomitantly, DFID drew a useful and important distinction between gender equality and gender equity by highlighting the distinct **difference between 'equality of opportunity' and 'equity of outcomes', whereby the former** means a situation where people, from all groups have equal rights and entitlements to socio-economic, human, and cultural development, and an equal voice in civic and political life, whereas the latter (equity) is more directed towards the outcomes of the practice of these rights and entitlements that are fair and just.<sup>46</sup> As such, equity embeds an efficiency component that helps the equality process reach out to greater levels of outcomes based on a fair and efficient redistribution of resources, skills, and opportunities, improving productivity and strengthening social cohesion among other things.<sup>47</sup> This in turn removes barriers imposed to the disadvantaged and

creates for them **'equal life chances with equal concerns for their needs'**,<sup>48</sup> inducing sustained transformative change.

Despite these differences in the two pillars of social justice, equity and equality are intertwined and intimately connected, for **'nations with more inequality systematically have less equality of opportunity'**,<sup>49</sup> thereby leading to inequity. In fact, equity cannot be achieved without equality being thoroughly considered, integrated and implemented in policy and practice. Conversely, equality cannot be reached without equity which is a stepping stone towards the process of achieving broad-based equality in societies; by ensuring that unequal relations are not produced or reinforced.

When conflicting or competing interests resurge in societies that embrace equality, the theory and practice of equity, through formal rules and legal systems, becomes instrumental to impose a fair allocation and distribution of resources and ensure that individuals are equivalent to other social actors and that the outcomes are properly, efficiently and rightly attributed to individuals so as to create a feeling of satisfaction and equity among them.<sup>50</sup> Different tools to promote this concept include redistribution of resources and the institutionalization of temporary special measures such as the quota system. Thus, for some scholars, through the use of mentioned **tools, equity is about ensuring that people's** ratio of inputs (e.g. time, efforts, capacity, training, etc) to outcomes (payments, rewards, costs, punishment, etc.) is equitable.<sup>51</sup> Put simply, equity is about giving the disadvantaged and the impoverished an extra weight in the distribution of resources, services, and opportunities so as to reach out to equal outcomes, irrespective of their religious, ethnical, gender or social belongings, and in

accordance with their differentiated responsibilities and inborn capabilities. Equity is a core value of social justice and a vital means towards achieving both equality and human development.

## 2. Equity: from the ideological and theoretical conceptions to practice

The theory of Equity has been viewed by scholars as one of the most influential component of social justice.<sup>52</sup> It has been featured in the earliest sociological and social psychological research as part of the long-standing discussion on 'distributive equity'. It lies within the ancient Aristotelian concept of 'distributive justice' that equates justice with allocating scarce resources in a fair, impartial, and egalitarian way based on the principle of merit and proportionality.<sup>53</sup> It also draws on the definition of the World Development Report 2006 (WDR) that views equity as an overarching value based on the elimination of 'absolute deprivation' so that people do not fall below the minimum standard of need, and the principle of ensuring 'equality of opportunities' through fair processes that preserve liberties and ensure increased capabilities for all.<sup>54</sup> Equity of capabilities has been at the centre of Amartya Sen's capabilities theory<sup>55</sup> that portrays the notions of justice and equity, through the focus on what individuals are capable of doing.

Defining equity is not as straightforward as it may seem as 'equity is an inherently vague and controversial notion'.<sup>56</sup> In a study by Anderson and O'Neil in 2006 that analyzes the concepts of (in)equality and equity in the context of three major UN Development Reports, equity is viewed as a tool to achieving growth and social cohesion, an instrument that is intrinsically valuable to the most deprived as it ensures that their rights are being safeguarded. One way to identify the constructs of the notion of equity is

to distinguish between *Vertical Equity* (VE) that **evaluates the equity of government policies'** impact on individuals with different initial levels of 'wellbeing', and *Horizontal Equity* (HE) that **assesses the equity of that same impact 'across** individuals who are equal in all relevant respects'.<sup>57</sup> These are mostly reflected in discriminatory actions such as the arbitrary control over resources, the disregard or ignorance of differences in needs, and the heterogeneity in preferences that is featured in discriminatory public policies.<sup>58</sup>

Additionally, the United Nations report on "*Social Justice in an Open World: The Role of the United Nations*" **presents equity as 'the most logical reference point in determining what is just and what is unjust with regard to living conditions' and other societal matters.** This is based on the egalitarian Marxist ideal 'from each according to his ability, to each according to his works'.<sup>59</sup> Furthermore, the application of equity involves 'hard choices' within specific country context that require consensus on three priority areas, namely: (1) 'equal life chances', where no differences in outcomes should exist based on factors for which people cannot be held responsible; (2) equal concern for people's needs; and (3) meritocracy, which reflects the distribution of rewards and positions in society based on fair competition that accounts for different abilities and efforts.<sup>60</sup>

Consequently, equity could be viewed as an interdisciplinary approach to social justice in a variety of local and global contexts, where equity and impartiality in the distribution of material and non-material resources and opportunities are guaranteed as means to achieve a situation where societies become fully just and fair and where absolute deprivation and social hardships are eliminated. This requires **'removing or overcoming the barriers that**

hinder certain individuals and groups (such as women, people with disabilities, and the poor) from fulfilling their potential by way of **maximizing their opportunities**'.<sup>61</sup>

For example, persons with disabilities in the Arab region have limited opportunities in accessing employment opportunities and quality education and face inequitable treatment (e.g. only one-third of persons with disabilities are employed, and their literacy rate is four to five times lower compared to the total population).<sup>62</sup> The elderly do not fare better in the region given the absence of accessible social protection schemes, the lack of adequate laws and legislation that protect elderly rights, and the lack of political will to include their needs and priorities in national agendas.<sup>63</sup> Additionally, women in the Arab region are trapped in a cycle of discriminatory laws and policies that prevent them from acquiring equal opportunities for socio-economic, political and judicial rights that men enjoy. Ongoing conflicts have made also women more prone to gender-based violence reflected in cases of rape and sexual violence, trafficking, forced displacement, abduction and arbitrary killing. Violence against Women (VAW) is not only a human rights violation; it additionally **challenges equity by undermining women's** equal access to different social-economic and political opportunities.

### 3. Equity in an evolving development agenda

It is widely recognized that inequity stems from overlapping deprivations which create multi-dimensional poverty.<sup>64</sup> Similar to inequality, overall inequity has a negative impact on several welfare constituents, including educational attainment and enrolment, life expectancy, stability and happiness.<sup>65</sup> As such, equity is gaining greater prominence in policy discourse, and is a fundamental

principle/demand in reform processes of most transition countries.

Amidst a widening gap and disparity between **the 'haves' and 'have nots', and within new** forms of inequality and poverty, characterized in the Arab region by poor infrastructure, feminized poverty, and the marginalization and exclusion of persons with disability, the youth, the elderly, and migrant workers and refugees,<sup>66</sup> the social equity paradigm is being increasingly recognized in public debates and reform policies and is at the heart of the new development agenda. With an estimated number of 30 million international migrants present in the Arab region in 2013,<sup>67</sup> and an increasing number of refugees particularly caused by the protracted conflict in Syria (currently quantified at an **overwhelming four million 'registered'** refugees),<sup>68</sup> the host Arab countries (namely Lebanon, Jordan, Egypt and Iraq) have been challenged with a multitude of barriers that prevented them from achieving social justice and equitable rights and treatment to refugees. These are mainly due to the scarcity of resources in host countries, including food, housing, water, and livelihood opportunities, and overall volatile political and security situations.<sup>69</sup>

The notion of equity is also clearly anchored in the newly formulated Sustainable Development Goals/SDGs (goals 2, 4, 6, 9, 15 and 17 related to education, food security, water and sanitation, industrialization, and environment), where the application of equitable policies and achievement of equity as a means to realizing and sustaining development outcomes is well-recognized.<sup>70</sup> It is also mainstreamed in several development priorities, namely urban development, climate change, water and sanitation, education, health care and other socio-economic and political issues, to ensure a fair distribution of resources, of opportunities

and of outcomes. More importantly, 'gender equity' emerged to provide a good example of how the differentiated capabilities and responsibilities of an often marginalized group of people in a society (e.g. women) and the underlying power relations can be accounted for in policies at all levels.

#### 4. Equity: tools and policy options

Due to limited voice, the interests of the poor are likely to be ignored or downplayed in many situations, which was evident in many Arab countries that witnessed popular revolts. As a result, quality and equity of policies may be eroded and the benefits accrue mostly to those with sufficient influence and power. Inadequate financial resources combined with poor management of these resources have been a major constraint for the delivery of pro-poor and equitable policies in the region. Charging for services also raises some difficult issues regarding affordability and equity. This is particularly the case of healthcare services and health insurance schemes that are not accessible to all people in the Arab region, and remain a legitimate demand for vulnerable groups such as poor populations in rural and remote areas, persons with disabilities, and children. In Palestine, for example, 79.4 per cent of persons with mobility-related disabilities do not have easy access to medical services.

This highlights some of the strategic obstacles facing implementation of pro-equity policies and plans. To these one could add the resistance of elite groups for change and reforms in order to preserve their own benefits and interests and maintain unequal power relationships.

Also, the politics surrounding inequity, the existence of cultural barriers and social norms

that may offset the gains in promoting equity and the difficulty to diagnose and measure equity also constitute major challenges to the policy and practice of equity.<sup>71</sup> This is particularly relevant to the Arab region where the ingrained patriarchal norms and the restrictions imposed by the guardian system in some Arab countries have hampered the equitable treatment of women in the labour market and prevented their broad-based participation in extra-household activities despite the fact that labor codes of the Arab countries give 'equal right to work and equal opportunity to employment in both public and private sectors'. The ingrained patriarchal norms also undermine the empowerment of youth and leads to their marginalization, notably in public and political participation.

To overcome these challenges, ODI (2009) proposes a set of priorities and actions to address equity at the national level.<sup>72</sup> These include the following:

##### (a) Ensuring universal access to quality public services (including health and education)

Education is critical area for the promotion of equity or equality of opportunity. The Convention on the Rights of the Child in 1989 and the World Declaration on Education for All (EFA) adopted in 1990, reaffirmed that education is a human right, and that it should therefore be made equally accessible to all. As highlighted by the United Nations Committee on Economic, **Social and Cultural Rights**: "*As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities*".<sup>73</sup> In the Arab region, important progress has been **achieved in children's access to primary education**, whereby the number of children out

of school has been significantly reduced from **20% in 2000 to 11% in 2015 whereas girls' presence has still been disproportionately represented.**<sup>74</sup> **This is due to parents' preferences to invest in boys' education rather than girls,** the opportunity cost of sending children to school rather than work, and relatively high registration and school fees in certain countries (e.g. Lebanon). This is compounded by the ongoing armed conflict in several Arab countries, like Libya, Iraq, Yemen, Sudan and Syria where the gains on primary education have been reversed. Due to the protracted conflict in Syria, primary and secondary education enrolment rates dropped from 93 and 67 per cent in 2010 to 62 and 44 per cent in 2013,<sup>75</sup> respectively; in tandem, school-aged Syrian refugee children in host countries are currently deprived from education, engaged in child labour and subject to high levels of violence.

#### (b) Targeted action for disadvantaged groups

Targeted action for disadvantaged groups includes the use of *quotas* that guarantee the access of marginalized and excluded groups to employment, government subsidies, political representation and other resources, and by means of empowering these groups to reach self-sufficiency. It worth mentioning, that quota systems, according to International Law, are temporary special measures, used to accelerate *defacto* equality; to be suspended once this equality is reached. Taking women as an example, in Lebanon there has been strong call by civil society institutions to amend the Lebanese election law and impose **a quota for women's participation in political life.** However, this has yet to unfold amidst the present political impasse, where only 4 out of the 128 parliamentary seats are allocated for women.<sup>76</sup> This under-**representation is mainly due to Lebanon's**

political landscape that is based on sectarianism, hereditary political arrangements, and **"flouted constitutional provisions for the protection of women's rights"**<sup>77</sup> that are often unenforced due to male-dominated politics and discriminatory laws. In the Arab region, quota systems to **increase women's political representation** exist in several countries. Quota systems are also used towards guaranteeing the equal opportunity of other disadvantaged groups to access social and economic opportunities (poor, disabled, minorities...etc).

#### (c) Social protection provision to ensure a minimum level of wellbeing for all

In the Arab region, despite the fragmented and project-oriented approach to development that characterizes social protection schemes and the pluralist approach to service provision, some countries have improved their social protection policies. Jordan has launched its social protection framework and mainstreamed gender in social insurance **reform processes; Morocco's has increased** maternity benefits and introduced pension reforms; Bahrain flaunts a pioneering unemployment insurance scheme; and Palestine has improved coverage of its National Cash Transfer Program that uses a Proxy Means Test-Based (PMT) targeting mechanism and a unified payment scheme.<sup>78</sup>

#### (d) Redistribution of resources as a means to promoting sustained equity

Redistributing resources can be achieved by imposing progressive taxation, reducing taxes on staple goods versus increasing them on property, improving inheritance taxes, and inducing land reforms and redistribution to provide the poor with productive assets.

In this context, Morocco's use of progressive income taxation has increased tax revenues by an average of 8 per cent per year from 2000 to 2009, and in 2010, taxes accounted for **24 per cent of Morocco's GDP and contributed** to many social benefits- such as financing poverty and inequality reduction programmes and resulting in a good increase in public investment in infrastructure. Concurrently, in Jordan, a time-series analysis has shown a strong causal relationship between tax revenue and other economic variables, whereby higher tax revenues can cause an increase of GDP per capita by around 5 per cent, employment rates by 3 to 9 per cent, and household consumption by 10 to 15 per cent.<sup>79</sup>

#### (e) Challenging the entrenched power imbalances in societies

Entrenched power imbalances in societies can be tackled through the empowerment of the disadvantaged groups while improving accountability mechanisms and introducing **reforms to democratic institutions**. Tunisia's new 2014 Constitution, for example, was praised for enshrining the principles of respect for human rights, accountability and equity and paving the way for reforms that can guarantee equitable development.<sup>80</sup>

Finally, to ensure proper and efficient implementation of these priorities within favorable and enabling environments, a strong civil society and objective Media are required to help increase awareness, and change prejudicial attitudes, discriminatory behaviors and harmful perceptions that counter efforts of building a pro-equity social agenda. The active collaboration of development agencies and donors that can separate themselves from internal structures is also instrumental, alongside a strong political will and leadership

to push forward a pro-equity development agenda that favors the poor and the marginalized.

### C. Observance of human rights as a precondition for the attainment of social justice

Social Justice cannot be realized without the full observance of civil, political, economic, social and cultural rights. Individuals cannot have **"equal rights and access to resources and opportunities ...and be empowered to participate in decisions that govern their lives"**, without the fulfillment of that precondition. Human rights are indivisible, inherent, and inter-dependant. One cannot address for example political rights in isolation of economic, social or civil rights. Therefore, when assessing the status of human rights in the Arab region; all rights should be examined. This includes civil and political rights such as the right to life, the right to be free from torture, equality before the law, freedom of thought, conscience and religion, freedom of assembly and **association...etc.** Economic, social and cultural rights also include the right to work, the right to the highest attainable standard of health, the right to education, the right to social security, including social insurance, the right to adequate **standard of living...etc.**

The below section provides a brief overall assessment of the status of human rights in the Arab region, highlighting only the most flagrant violations that undermine social justice. In that context, the DESA framework highlights the importance of provision of social services –which has been covered in the previous section – as well as to civil and political rights for the attainment of social justice, which will be accorded special attention in this section.

## 1. The right to life

The right to life is inherent and non-derogable. It is also a precondition for the enjoyment of other rights. In the Arab region, it is undermined in many countries with the killing of hundreds of civilians and the carrying out of indiscriminate attacks against them, notably in Syria, Sudan, Libya, Yemen, Palestine, and Iraq. In Syria, explosive weapons<sup>81</sup> have been responsible for more than 50% of civilian deaths.<sup>82</sup> With their wide area effect, these weapons are not only responsible for substantive civilian casualties; they additionally cause an enormous damage to the infrastructure and are the main reason behind the wide displacement of civilian population. In April 2014, for example, two mortar shells that landed in the Shagour neighborhood of Damascus killed 17 children and injured 50 others.<sup>83</sup> In Gaza, 2,100 Palestinians were killed including 1,486 civilians when Israeli forces fired explosive weapons into highly populated areas in July-Aug 2014.<sup>84</sup> An aerial offensive launched in Gaza in July 2014 killed more than 538 children.<sup>85</sup> In Lebanon, Lebanese civilians and Syrian refugees were subject to indiscriminate attacks when conflict broke out between the Lebanese army and militia men in the village of Aersal, injuring 489 people and killing 60 civilians.<sup>86</sup> New cycles of violence in Darfur, South Kordafan, and Blue Nile in 2014 resulted in the death of large numbers of civilians and led to the displacement of 450,000 people.<sup>87</sup> In Libya, armed groups were responsible for at least 250 deaths in targeted assassinations in 2014. The list includes judges, prosecutors, journalists, Imams, human rights and political activists, including women.

Summary executions were also on the rise in the region, notably in Iraq and Syria. On August 2014, ISIS executed 15 civilians, including 7 children in Village of Taliliya, North Syria.

Summary executions by ISIS were also reported in Raqqa and Tabka.

The right to life is also undermined in the Arab region due the existence of the death penalty in the penal codes of several countries- despite in some cases a moratorium on execution. In Libya for example, since the overthrow of the Ghaddafi regime, 29 deaths sentences have been pronounced by courts.<sup>88</sup>

## 2. Freedom from torture

Torture and ill-degrading treatment is a serious crime and human rights violation, subject to the principle of *aut dedere aut judicare*.<sup>89</sup> In the Arab region, torture is still practiced by government authorities as well as armed militias. Following a visit to Tunisia, The UN Special Rapporteur on Torture, Juan Mendez stated that the eradication of torture in Tunisia required **“political, institutional, legal, and cultural reforms to strengthen safeguards against torture and rebuild citizens’ trust in the judicial and security apparatus”**.<sup>90</sup>

Recently, in Lebanon, a video filmed inside Roumieh prison, surfaced on social media, showing Lebanese Security Forces committing acts of torture and severely beating detained prisoners. Lebanese Interior Minister stated that the Ministry assumed full responsibility of this incident and had already arrested 5 officers suspected of committing these acts.<sup>91</sup> Lebanon has not yet established a national preventive mechanism to visit and monitor places of detention, as required by the Optional Protocol to the Convention against Torture (CAT), which it ratified in 2008.<sup>92</sup> In Iraq, when ISIS took Mosul in June 2014, several atrocities were committed against civilian population, including torture, summary executions, slavery, rape and torture of Yazidi women and kidnapping and killing of



members of religious and ethnic groups such as Shia and Yezidis.<sup>93</sup>

In June 2013, the UN Committee on the Rights of the Child stated that Israel is accused of torturing many detained Palestinian children, mostly aged 12-17. Palestinian children are normally arrested for charges such as throwing stones, which carry a penalty of up to 20 years.<sup>94</sup>

### 3. Due process and equality before the law

Due process and equality before the law are a precondition and main guarantee for the enjoyment of all rights. International law reaffirms these principles in several International instruments. In its article 14, the International Convention on Civil and Political Rights (ICCPR) clearly states the following minimum standards for the administration of justice:

- “1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt...”.<sup>95</sup>

These minimum civil rights are at times undermined in the Arab region. In many Arab countries, there is no real separation of powers among the different branches of the state, undermining thereby the independence of the judiciary system when the executive branch exerts defacto control over it. In Egypt for example, in March and April 2014, trials in Minya province violated Egyptian and International standards when the death penalty was announced for 528 individuals allegedly involved in two attacks on police that resulted in the death of one police officer. Some of the individuals did not even have access to a counselor.<sup>9697</sup>

Minimum standards for the administration of justice include the right to be tried without “undue delay”. In Jordan the crime prevention law of 1954 is used to place individuals in detention for up to one year, circumventing the regular criminal procedure and the right to be

duly brought to a judge for a speedy trial. In Oman, the 2011 amendment to the criminal procedure code empowers security forces to hold detainees without charge for up to 30 days.<sup>98</sup>

In Libya, detainees are not accorded basic rights or due process such as access to lawyers, and judicial review of their cases. In fact, 90% of detainees have not been sentenced by a court yet. There are currently 6,100 detainees in 26 prisons.<sup>99</sup> In Morocco, the National Human Rights Council (CNDH) reported that 42% of the 72,000 prison population are pretrial, suffering from overcrowding, whereby the average is 2 square meters of space per inmate.<sup>100</sup> Overcrowding also **compromises ICCPR article 10 on the right of "All persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person"**.<sup>101</sup>

Equality before the law is also not respected due to gender considerations. Most countries in the region do not accord the same rights for men and women in courts, notably in relation to personal status issues, such as marriage, divorce, inheritance, custody of children...etc. Although most countries in the region have ratified CEDAW, most of them have expressed reservations on article 16 (rights of women in private sphere) due to their adherence to and interpretation of Islamic Shariaa in governing such matters. **More alarmingly, Arab women's limited access to justice is discriminatory against women, and stems from insurmountable barriers at both the judicial and procedural levels (e.g. ineffective justice institutions, under-representation of women in the justice system, gender bias in the Courts' ruling and jurisdiction), and at the capacity level and social level (lack of women's legal empowerment and awareness of their rights, fear of scandal and family pressure over women victims of sexual harassment and violence.**<sup>102</sup>

#### 4. Freedom of expression and peaceful assembly and association

The DESA framework highlights the importance of civil and political rights for the attainment of social justice. Suppression of freedom of expression and assembly is one of the most widespread civil rights violations occurring in many countries in the Arab region. In Bahrain, the Bahrain Independent Commission of Inquiry (BICI) was appointed in 2011 to officially investigate conduct during anti-government protests. The Commission concluded that unnecessary and disproportionate force was used against protestors leading to the deaths of at least 18 individuals and the detention of many more. In 2014, Bahrain ratified law1/2014, amending thereby article 214 of its penal code providing jail term of 7 years and monetary fines for **"offending the king, Bahrain's flag or the national emblem"**.<sup>103</sup>

Although Egypt Constitution includes provisions on the protection of free expression, peaceful assembly and association; yet a law introduced in November 2013 empowers the Ministry of Interior to ban and forcefully disperse protests **based on "impeding citizens' interest"**.<sup>104</sup> Also in practice, authorities have been detaining individuals based on offences such as **"possessing flyers or commemorating the death of 817 individuals during the Rabaa dispersal"**.<sup>105</sup> In Iraq, government violent dispersal of peaceful demonstration in 20 December 2013 triggered a renewed armed conflict in Anbar between residents, local militias and Iraqi government forces resulting in civilian casualties and the displacement of some 500,000 individuals between January and September 2014.<sup>106</sup>

In Sudan, government officials used live ammunition in September 2013 to disperse a protest over austerity measures, leading to the

death of 170 people. The UN Human Rights Council called Sudan for establishing an independent investigation over the killing of protestors.<sup>107</sup> To date no prosecutions or arrests took place in relation to the 2013 killings.<sup>108</sup>

In some Arab states, individuals are being prosecuted for criticizing governments and governmental institutions in Social Media. Thirteen individuals were prosecuted for this offence in Kuwait in 2014. In Oman, the 2002 **telecommunication act penalizes “any person who sends by means of telecommunication system, a message that violates public order or public morals”**.<sup>109</sup> In United Arab Emirates, the 2012 cybercrime law was issued to prosecute critics of the government. Five were sentenced to prison and monetary fines in accordance with this law.<sup>110</sup> In Tunisia, a violation of the 2011 decree law 116 on audiovisual media occurred when in July 2014 the head of government suspended two radio stations, a contradiction to the media law, which empowers only the High Independent Authority for Audiovisual Communication to suspend the work of media institutions.<sup>111</sup>

## 5. Violence against women

**Women cannot attain social justice, i.e “...have equal rights and access to resources and opportunities ...and be empowerment to participate in decisions that govern their lives” if they are not free from violence.** Despite progress in combating VAW in the Arab region, women are still unprotected from different forms of violence such as early marriage, female genital mutilation and domestic violence. Furthermore, women in conflict situations are increasingly facing sexual violence, enslavement, torture and death. Sexual violence perpetrated against women

has been regarded in the literature as a tool of **war or a ‘warfare tactic’ to shatter the** demographic structure of societies and frighten their people,<sup>112</sup> further impeding the observance of human rights.

UNICEF estimates that in Yemen 11% of girls are married before the age of 15 while 32% are married before the age of 18.<sup>113</sup> In 2013, a Yemeni child of 8 years old died of internal injuries on her wedding night, following a forced marriage with a man three times her age.<sup>114</sup> Following the national dialogue which took place in Yemen and its proposed reforms, a draft law has been submitted to cabinet on setting 18 as the minimum age for marriage. The draft law is still pending cabinet approval.

### **In UAE, national laws allow “ chastisement by a husband to his wife and minor children”**

provided it does not leave physical marks, according to a UAE federal court ruling.<sup>115</sup> Some Countries in the Arab region, such as Jordan, Algeria, Kurdistan province in Iraq, KSA and Lebanon; have enacted laws to protect women from domestic violence.<sup>116</sup> In addition, many draft laws on the protection of women from domestic violence have been presented to several Arab parliaments, and are awaiting endorsement.

Following nine publicized incidents of sexual assault that took place between 3-8 June in 2014 in Tahrir Square, in Egypt, a new law was enacted by Egypt to define and criminalize for the first time acts of sexual harassment.

In conflict situations, women face sexual violence, enslavement, torture and death. As of January 2015, an estimated 3500 Yazidi women are still in captivity by ISIS. Yazidi women are sold in the ISIS slave market, treated as sex slaves and forced into servitude.<sup>117</sup>

## 6. The rights of migrant workers

The definition of social justice clearly **highlights the need to “...pay particular attention to the removal of barriers that hinder the empowerment of disadvantaged groups to fulfill their potential to participate in decisions that govern their lives”**. **Migrant workers**, especially domestic workers, are considered a vulnerable and disadvantaged group due to the rights violation that they experience in host countries. Migrant workers experience in some cases excessive working hours, physical and sexual abuse, unsafe housing, unpaid wages and passport confiscation. In Morocco, children as young as 8 years old work as domestic workers in private homes up to 12 hours a day for as little as 11\$/month.<sup>118</sup> Currently, a draft law in Morocco to regulate domestic work is still pending adoption.<sup>119</sup> It is worth noting that in Morocco the work of children under 15 is prohibited, however enforcement measures, especially in rural areas are still lacking.<sup>120</sup>

The lack of legal protection for this category of workers – domestic workers- is due to the fact that in most Arab countries, they are excluded from the laws and regulations of the Ministry of Labor, that apply to laborers working in other sectors. To rectify the situation, many Arab countries, such as UAE for example, undertook revisions of the standard contract to include rights such as weekly days off and minimum 8 hours of rest within any 24 hours. Revision of the standard contracts however is not a substitute for the enactment of a comprehensive law on the protection of the rights of domestic workers. The GCC member states are currently discussing a unified regional contract for domestic workers.

## D. Participation as a main pillar of social justice

This section examines participation as a main element of social justice. Participation, its importance, functions and objectives could mean different things to different societies and could vary across political systems, depending on the policymaking cycles and the modes of decision-making that prevail in certain systems. The meaning of participation and citizen engagement mutates in relation to the interests, ideology and motivation behind those interests and the political weight and urgency attached to the issues raised. The range of participation is very wide and could vary from simply seeking information and demanding transparency to bringing down a regime and altering the power structure in society – attempts of which were witnessed in several Arab countries in 2011.

Much ink has been spilled on studying participation, the logic of massive public action, the motivations that drive citizens to seek change, mobilize and take action. Yet there is a remarkable absence of consensus on the usefulness and effectiveness of participatory processes that range from information, consultation, dialogue, public debate, conciliation/mediation, joint decision or joint action. Information and consultation are characterized by passive citizen engagement while joint decision making ranks as genuine participation. There are equally shy attempts by governments to call for participation to be enshrined as a policy, principle or even a right – with the exception of the Moroccan government that has dictated participation as a clause in the 2011 constitution. Common sense dictates that involving as many citizens in public decisions in however way possible is sound policymaking.

The form of such involvement and whether it is opposition in nature will certainly vary across societies. Participation serves as a two-way beneficial transaction.<sup>121</sup> From the perspective of government and influential interest groups, it is a way to seek legitimacy, support and consent over policy decisions that may sometimes be unpopular. For citizens, participation becomes a medium to influence alter and improve public policies that impress on their lives. Participation and citizen engagement are fundamentally political processes – notwithstanding upon which final claims they are rested. Popular mass action calling for better social policies for instance is essentially an attempt to influence the way politics works in a given society – though masked by the social dimensions of the demands. Such **concepts as ‘representative government’, ‘power to the people’, ‘consent of the governed’, and ‘all men are created equal’, among others, are but a few of the inextricable principles that should guide a healthy participation process.**

Since government is designed to serve its citizens, the input of the latter becomes a necessary part of public decisions. Hence public policies should be designed in such a way that decisions are made *with* the public instead of *for* them. Old adages such as **“No taxation, no representation’ or ‘no taxation, no participation’ in this case would have to be** jettisoned if a society is to emerge from a conflicting citizen-government relationship into a social détente. By being a potential generator of consensus, participation is also a conflict reduction and a conflict prevention mechanism.<sup>122</sup> Getting involved will mean citizens will revert to direct exchanges of information, trust building and increasing transparency all of which will lead to collaboration – hence fewer conflicts. It is worth mentioning here that participation can also highlight differences and lead to discord if it is not adequately structured with clear

expectations, procedures and necessary measures of transparency.

## 1. Preconditions of successful participation

Participation and citizen involvement should be dialogue-driven and not debate-focused. In the former, an equitable exchange takes place where the objective is to listen, understand and act jointly for a win-win outcome informed by diverse views. In debates, the emphasis is on winning a one-sided argument and defeating other declarations, the outcome is a zero-sum win over all other arguments. Confounding both concepts of dialogue and debate can frustrate participation processes and drive the schism wider between decision makers and citizens. For a true dialogue to take place, equality of rights and opportunities as well as freedom of expression coupled with unfettered access to public information are a must if genuine participation to take hold. This would require a certain degree of democratic governance and representative elites which in themselves are conduits of participation. The question becomes how to ensure representative forms of government and massive citizen involvement go hand in hand in smooth alteration. Additionally, effective participation and dialogue will also pose the question of the power structure in society and how it might be altered within the framework of citizen involvement. Will enhancing the latter mean that incumbent elites will devolve the exercise of power to the masses? Will it mean that with a more representative elected system there will be a lesser need for participation? Some observers caution against direct democracy as a potential for the dictatorship of the masses and dismiss it as an unrealistic state of affairs. Others see in an elected representative system as an exclusion of the people who were not represented in the vote.<sup>123</sup> This will perhaps remain an unsolved dilemma and the objective

becomes striking a balance between adequate representation and active participation.

Clearly, participatory processes in policymaking work best at the local community level where the spheres of influence and cycles of decision making are clearer and more accessible to citizens and where local government is easily accountable. The more we move to the national level and the more representative the government is the less the ability to participate and influence decisions, particularly when avenues of access are less clear and where the belief in genuine representation is higher. This derives from the fact that it might be hypothetically possible to have mass governance at the community level but less possible to do so at the national level in a modernized industrial society. Additionally, in strongly led participatory processes it might be easy for the strong to dominate the minority and hence hijack decision making within the citizen engagement plan itself; nor does a participatory process in decision making guarantee that all relevant interest groups are represented.

Another unresolved question about participation is its effect on existing power structures and poles of aggregate interests. Will participation lead to challenging power holders and alter the existing arrangements of decision making? How will participation be effective enough so as it fans out a feeling of justice and a true practice of individual liberty away from despotic governance? These and many other conceptual questions need to be resolved to ensure that participation is less of a nebulous concept and more of a functional approach that serves citizens and government alike. Additionally, the question of boundaries of participation and where does effective citizen engagement stops is another dilemma to deal with, particularly in transition societies. Mass participation to overthrow existing regimes

stopped short of ensuring the installment of truly representative and liberal governing structures in some Arab countries in 2011, while it continued on in other places to ensure a participatory constitutional process. When and how a participation process grinds to a halt remains a debatable question. Tunisia seems the only Arab country to have forged a path forward towards genuine participation. In 2014, it became the first and only Arab country to have implemented a participatory budgeting initiative in four different governorates where citizens debated and voted on 29 projects.<sup>124</sup>

## 2. Participation and democracy

Ever since Rousseau laid the foundation of direct democracy by arguing that each citizen must directly participate in the making of decisions that the question of effective participation has been the subject of debate. Participation and genuine citizen engagement are considered intrinsic parts of a democratic society and citizenship. The act of public **participation contributes to increasing citizens'** civic skills and competence and renders them more capable and confident in taking part in decision-making.<sup>125</sup> The consensus that participation could generate ensures that the rules of the game are fair and acceptable to all – which in turn contributes to a feeling of justice. This also means that citizen engagement alone is not enough and does not automatically lead to genuine participation. The latter requires activism and the practice of dialogue, bargaining and the dynamics of giving and taking. Deliberations shape the pro-active parts of participation and hence the latter is no longer a passive form of consultation. Just as genuine dialogue is a fundamental part of a participatory **process, 'deliberative democracy'**<sup>126</sup> is a necessary and unavoidable part of exchange, mutual concessions, free expression and ultimately satisfaction with the outcome.

Another important dimension to deliberative participation is the fact that it provides a sense of justice by giving equal voices to citizens and allowing minorities to contribute to decisions being made.

On the other hand, participation and deliberative democracy can have long lasting impacts in society. Evidence suggests that, in addition to being informative about public issues through consultations and public scrutiny, dynamic deliberation also contributes **to citizens' understanding of the policymaking cycle.**<sup>127</sup> It also contributes to transforming **citizens' views of public officials more favorably,**<sup>128</sup> possibly by developing trust and a minimum of a joint working relationship. The same evidence suggests that an open process of deliberation empowers citizens to feel more responsible and willing to address community issues – hence more engaged in public life.<sup>129</sup> While participation remains motivated by self-interest, the evidence collected in some studies suggests that the interest in a rational collective decision is an equally powerful motivation.

### 3. A Look at the process

Deliberative participation runs the gamut of opening public space for citizen contribution all the way to actually having citizens decide and influence the outcome of major policy decisions. While the general aim of participation and citizen engagement is to give citizens real influence on decision making, certain ingredients of social justice can in reality be served. First, participation is inclusive and can give a serious voice to minority and excluded groups if the process is open enough. Participation contributes to the creation of a civic culture of deliberation, public meetings, dialogue and free expression of preferences and opinions hence a realization of the right to self-expression. Finally, participation leads to more

legitimate decisions and in return citizens feel that their voices have been heard and their contributions heeded which would inevitably reinforce a sense of equity.

There are various models of participation that can range from citizens being informed to citizens gaining control and influence over the decisions being made. However, several process stages warrant attention if an assessment of the genuineness of participation is to be made. The political context in which democratic deliberations and citizen involvement is happening is the benchmark for judging the seriousness of the participatory process. In highly restrictive and illiberal environments, even the best attempts at involving citizens would have a limited outcome if it restricts the free and open exchanges that should characterize such an exchange. Some argue that democracy is not enough it should actually be liberal democracy.<sup>130</sup> The other issue to look at is the perception that participants – citizens and officials alike – have of the process and the deliberations. If the entire exchange is seen in a zero-sum mentality where the prevailing a decision would be considered a **'win' for some groups and a 'loss' for others,** this would prevent the creative and reciprocal exchange that should characterize a genuine deliberative forum. Third, the issue of putting together the agenda for discussion and deciding what issues will be included there and whether they are strategic or operational, procedural or substantive would go a long way in defining the genuine characteristic of the deliberation process. Issues of process design are other criteria by which to judge the representativeness of a participatory process.

How to structure a participatory process of deliberations is a vital sign of the viability and seriousness of that process. Many attempts at promoting citizen participation fail for the lack of

clarity about the level of participation, or due to the creation of unreal expectations. Citizens end up disillusioned when they take part of a process that means different things to different participants. For example, providing consultation or giving input through focus groups, for instance, can hardly be considered participation. How much control citizens will have over the process and final decisions can also go a long way in ensuring satisfaction or giving way for disillusionment. Power **dynamics and participants' commitment and competence** are additional elements that need to be considered when structuring a process. Forming a process with too many powerful stakeholders will ensure a lopsided process and end up in depriving some participants of their equal opportunity to take part of the deliberations. Such a process will also reinforce the exclusion of minorities who are supposed to have a voice in the deliberations.

The best process is one that moves away from rigidity, includes balanced representation, contains a fluid and non-linear path and aligns **expectations**. *"As the number and diversity of actors expecting to be part of any community decision increase, so must the process for making these decisions become more accessible. Bringing diverse players together – finding common ground, defining shared interests – is a process of self-realization whereby all community members can discover that they have the talent and ideas necessary to improve life for themselves and their neighbors".*<sup>131</sup> The ability to demystify and comprehend the policymaking cycle is as much a priority as is impacting the process. This is a requirements for citizen engagement in decision making and ultimately for the accountability of decision makers. Any successful process of deliberation and genuine participation needs to include a deadlock breaking mechanism and an exit strategy.

#### 4. Institutionalizing participation?

Meaningful participation cannot just happen, it would have to be institutionalized and be supported by a representative government **willing to connect citizens' voices** to policymaking processes. In doing that, genuine participation that citizens would be involved in process design and structuring, developing the agenda, and clarifying expectations. Often times, when government is clear about its policy preferences participation ends up being manipulated to seek nominal participation and build the legitimacy of decisions.<sup>132</sup> Participation can sometimes turn into a competition instead of collaboration. How you manage that competition constructively will directly impact the outcome of decisions. Additionally, genuine participation can compensate for the absence of a clear electoral majority in a representative system by giving a voice to those citizens that are not represented.

The cost of the lack of genuine participation and effective deliberations can be onerous on society. First, the legitimacy of decisions is questioned and hence resisted or at best passively received if it were not reached collaboratively. If participation is by nature inclusive then the lack of it excludes minorities and marginalized groups who sometimes make the silent majority affected by the policy being decided – which would adversely impact efforts aiming at social justice. Limiting participation can also adversely impact the quality and creativity of decisions being made by missing a major opportunity for a diversity of points of views and creative exchanges that are usually the result of well structured deliberations. Exclusion from deliberations creates resentment and the feeling for wanting **'to get back' at those** who made them. It also alters feelings and reinforces the perception of corruption and the despotism of the ruling elites, in addition to



stymieing transparency and accountability demands. Finally, the lack of participation results in imperfect decisions being made that do not reflect the actual needs of the people they were made for.

The influence of the Arab spring has subsided and gave way to aspirations of social justice characteristics. In this context participation as a right should be seen as a remedy for the situations of transition in which many countries in the region find themselves. States are invited to remove the barriers to participation and allow for trust to build with citizens so as to establish and institutionalize practices of effective participation with genuine deliberations in a structured, pressure-free environment. Only then will a sense of equality and equity in treatment will start to take hold.

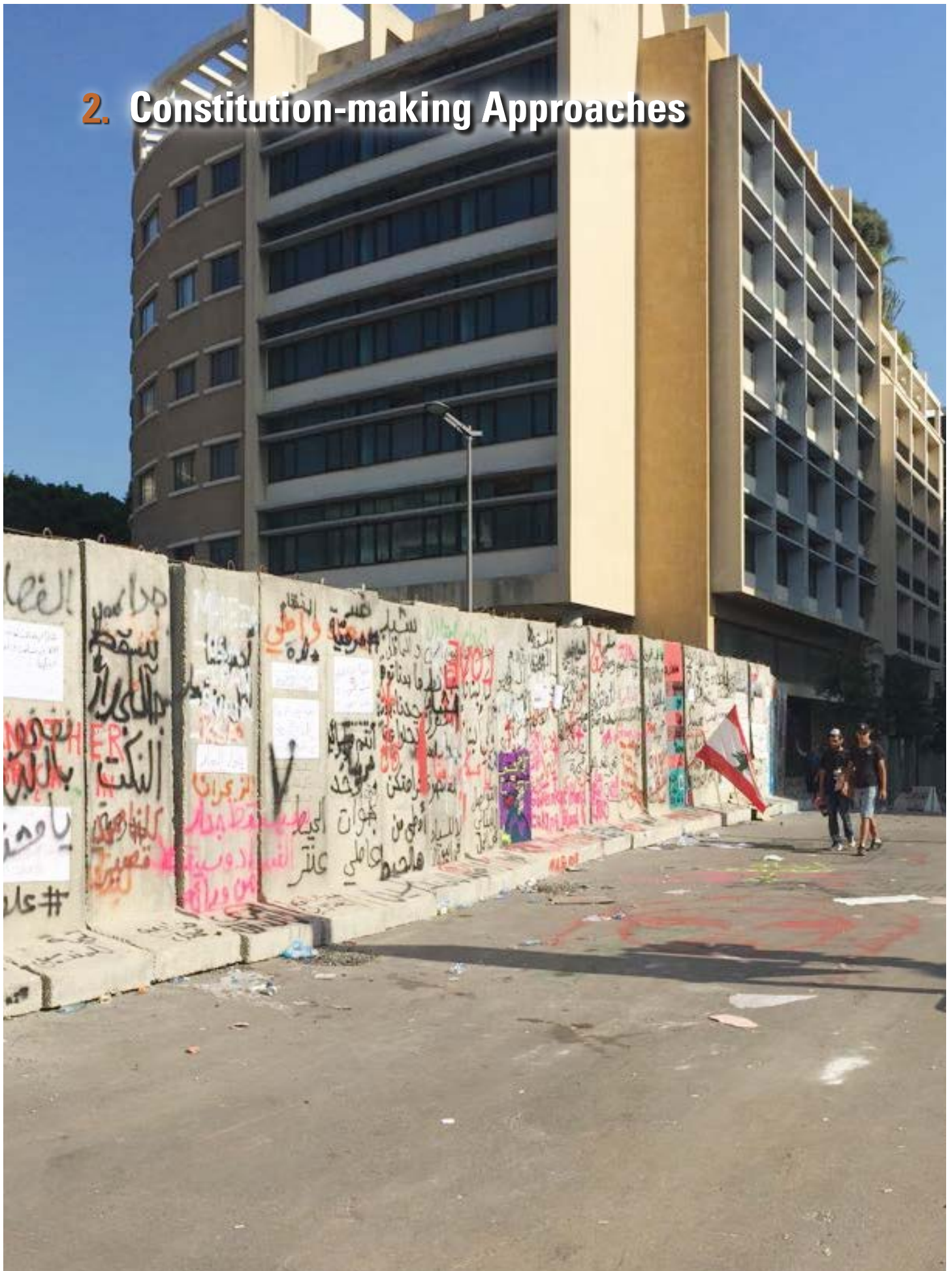
## E. A new era has begun?

Despite several challenges in reaching equality, equity, human rights and participation; the Arab region seems to be on the right track towards transformative change. Article 46 of the new Tunisian Constitution clearly reiterate the need to maintain acquired rights for women and affirms the need to achieve parity in elected assemblies. In addition article 73 for the first

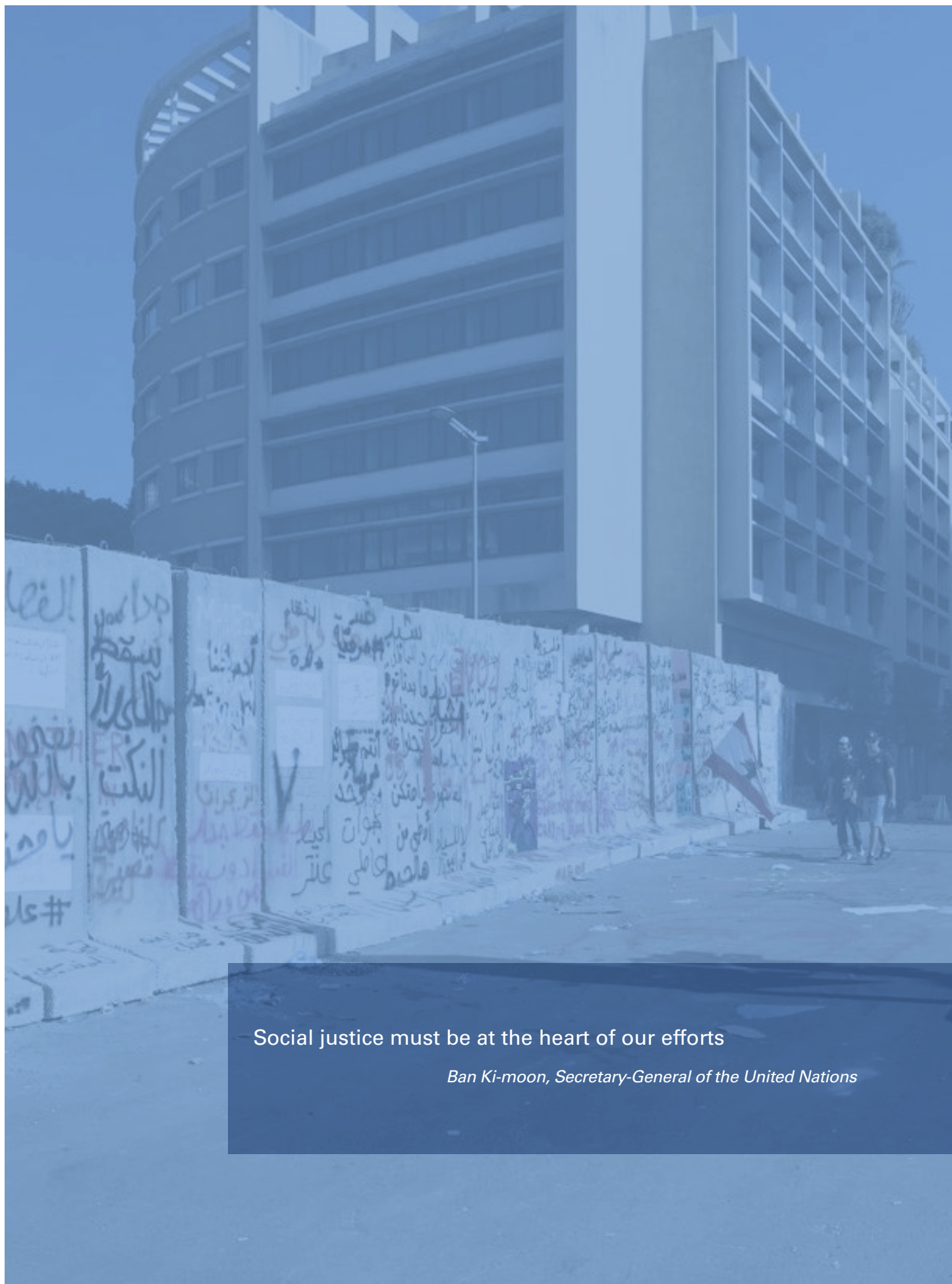
time in the Arab region clearly and explicitly empowers both men and women to run for president. A new unified contract for domestic workers will soon be adopted by GCC member states, hopefully paving the way for full adherence to migrant workers rights, as stipulated by International instruments. Furthermore, achievements in access to education, health, water and sanitation, are expected to translate into better standards of living, empowerment, and sustainable human development for many people in the region. This is expected to positively affect the achievement of social justice.

The following chapters will focus on three case studies examining progress in the area of promoting social justice as well as *de jure* gaps that still hinder its achievement, by analyzing the legal frameworks (constitution, legislation, and laws) mainly in Tunisia, Egypt and Morocco. The case studies will also examine progress and challenges in the *de facto* government application of main policies, strategies and action plans in pertinent sectors (employment, poverty eradication, education, social protection) which affect directly the achievement of social justice in these three selected states, in an attempt to answer the question of what is left of the Arab Spring.

## 2. Constitution-making Approaches







Social justice must be at the heart of our efforts

*Ban Ki-moon, Secretary-General of the United Nations*

## 2. Constitution-making Approaches

The present section highlights the constitution-making approaches in three selected countries, namely Egypt, Morocco and Tunisia. In the first phase, a body is formed tasked with formulating the final draft of the constitution. There are many mechanisms for establishing this body, such as appointed or representative committees or bodies elected by the people. In the first phase, participatory standards are taken into account to ensure that the draft constitution represents the largest number possible of social groups and components. In the second phase, the constitution adoption mechanism is determined; the constitution is adopted either through a direct vote by representatives of the people, or through a popular referendum. Prior to comparing the three possible approaches to drafting and adopting a constitution, it is necessary to consider the best standards for arriving at the finest possible constitution, especially in transitional or foundational stages.

In transitional stages, specific standards must be followed to ensure a participatory constitution that represents all social groups. These conditions are highly significant, because a constitution, especially in transitional stages, is the basis for a new social contract determining the economic, social, political and cultural values of a society, and the nature and conditions of the relationship between the State and society.<sup>133</sup> A study on post-conflict constitutional transition stresses the need to ensure pivotal factors guarantee a more just and participatory constitution.<sup>134</sup> Such factors include the following:

- Ensure the widest participation possible by all stakeholders within a country, so that the constitution represents all social groups and does not prioritize the interests of one group at the expense of another;
- Pre-prepare the constitution drafting phase **to facilitate the drafting committee's work**, in line with consensus and confidence building standards;
- Ensure decision-maker participation in the negotiations;
- Take note of international instruments as references for the constitution;
- Benefit from the technical experience of international institutions.

In practice, a constitution-making approach is influenced by the power balances of various political actors and the historical and constitutional heritage of a State, in addition to the political context within which a constitution is drafted. These factors, to varying degrees, play a fundamental role in determining the contents of the Egyptian, Moroccan and Tunisian constitutions. The following sections set out the mechanisms employed to draft constitutions, standards for ensuring participatory conditions, and the drafting period.

### 1. Mechanisms employed to draft constitutions

The three countries used varying mechanisms to draft their constitutions. In Tunisia, an elected representative council was tasked with drafting the constitution. In Egypt, the acting President, Adly Mansour, appointed a

representative committee to draft the 2014 constitution.<sup>135</sup> In Morocco, King Mohammed VI appointed an advisory committee to review the constitution.

### Tunisia

The process to draft a new Tunisian constitution was launched following the popular election of the National Constituent Assembly in 2011, in which the Islamic Revival Party gained the majority of seats. The elected National Constituent Assembly was responsible for drafting the constitution. The work was divided over six main committees, each comprising around 20 members from all parties in Constituent Assembly, in line with its number of seats. The Renaissance Party chaired four of the committees.<sup>136</sup> On 26 January 2014, the Tunisian constitution was endorsed and the National Constituent Assembly voted thereon, with 200 members voting in favour, 12 voting against and 4 abstaining. The 2014 Tunisian constitution gained 92 per cent of the National **Constituent Assembly's votes, a rate far removed** from those registered during votes on laws when the former President, Zine El Abidine Ben Ali, was in power. In reality, this significant support for the constitution reflects consensus between the various political powers and parties.

### Egypt

Since the January 2011 uprisings, three constitutions have been drafted in Egypt, the last of which was drafted in 2014 by a representative committee known as the Committee of 50, whose work was prepared by the Committee of 10. The final draft of the constitution was adopted through a popular referendum. The Committee of 50 comprised representatives from several Egyptian entities, including religious bodies such as the Al-Azhar Mosque and the Coptic Church, youth

representatives, trade unions and institutions, political powers and parties, and public figures. The constitution gained 98.1 per cent of the vote in the popular referendum.

### Morocco

In Morocco, the popular movements that began in 2011 were known as the February 20 Movement in relation to the day when several opposition groups met to demand political and constitutional reforms. The Moroccan popular movements, unlike in other countries such as Tunisia, did not demand regime change but rather focused on constitutional and political reform. As a result of these movements, King Mohammed VI, in a historic speech given on 9 March 2011, admitted the need for democratic change in Morocco, especially the importance of comprehensive constitutional reform.<sup>137</sup> He decided to form a special committee to review the constitution and present the amended version to the people for approval. The next day, he established an advisory committee to review the constitution, which communicated with relevant parties and bodies to ensure their participation. The committee completed the draft constitution in three months, and a referendum was held in which the new text gained 98.47 per cent of the vote.<sup>138</sup>

## 2. Participation

Participation is a key aspect of constitution-making. To what extent is the process open for consultation and gives all social groups a voice? Firstly, it should be noted that the Constituent Assembly in Tunisia is the only elected body in all three countries to draft the constitution; in Egypt and Morocco, the committees were appointed. To ascertain the extent to which participation is guaranteed in the process, it is necessary to take into account the political context in which the constitution was drafted.

## Tunisia

Many researchers see Tunisia as the “Arab exception” with regard to peaceful democratic transition in countries that witnessed popular uprisings demanding the fall of the regime and the achievement of social justice. The transition process began following the ousting of Zine el Abidine ben Ali in 2011. This period reflected the rich constitutional heritage of Tunisia that directed the process and prioritized constitution-making over all else.<sup>139</sup> In addition to constitutional heritage, civil society played a key role in the political and institutions transition process. The Constituent Assembly faced several obstacles in its work. These included the ideological rift between Muslims and seculars on various topics **such as women’s issues and the role of religion in determining State identity,**<sup>140</sup> as well as other challenges including numerous political assassinations that led to popular uprisings against the Renaissance Party government, resulting in the resignation of 60 members of the Constituent Assembly. Consequently, civil society, particularly the Tunisian General Labour Union, the Association of Human Rights, the Bar Association and the Federation of Employers, mediated a national dialogue to avoid the collapse of the transitional contract. This mediation process led to the resignation of the Government and the appointment of a government of technocrats that supervised new elections,<sup>141</sup> which facilitated the drafting of the constitution that was adopted in 2014. This outcome reflects the consensual nature of the constitution resulting from political agreement between all stakeholders, thus establishing the Second republic of Tunisia. Reports show that that the Constituent Council succeeded in developing an internal participatory approach that contributed to the success of the constitution-making process despite numerous obstacles. However, they highlighted shortfalls in communication with the public beyond the Assembly.<sup>142</sup>

## Egypt

In Egypt, the 2014 constitution was drafted after the ousting of Mohamed Morsi following the 30 June protests. The committee of 50 was appointed by the Egyptian President Adly Mansour, which was appointed by the army to lead the transitional process after the fall of Morsi. The Committee of 10 prepared the work for the Committee of 50 for adoption in a final draft that was put to a referendum. Given that the Committee of 10 comprised eight judges, the provisions of the constitution inevitably reflected the interests of these judges. For example, the Committee did not amend the majority of provisions related to the benefits of judges in an attempt to strengthen the judiciary and maintain certain benefits. Some analysts indicate that that composition of the Committee of 50 represented a large portion of Egyptian society but did not reflect its reality. The preceding elections had given power to an Islamist majority who were not represented in the Committee of 50.<sup>143</sup> The Muslim Brotherhood was not part of the Committee because a presidential decree had banned it from political work under the pretext that it was a terrorist organization.

**The ‘community dialogue’, aimed at providing a platform for people to express their opinions and suggestions on the constitution’s provisions, was more prominent in the 2010 constitution process with regard to transparency in the work of the Constituent Assembly and the identification of constitution texts. During the 2014 constitution, the Committee of 50 had little time to complete its work, thus affecting transparency and the clear identification of the constitution’s contents. Intensive propaganda was heavily used in places, spaces and the media.**<sup>144</sup>

The participatory process in Egypt was therefore highly limited. While the constitution was being

amended, those who opposed it were being intimidated. Over this period, many activists who protested against the constitution were detained. While the Committee was drafting the constitution, the authorities were enacting laws that restricted the powers of social and political groups who opposed its provisions. A law on demonstrations that was adopted during that period prohibited public protests against the constitution. The aim of such laws was to crush all political opposition, thus restricting monitoring of and participation in the constitution drafting process.

### Morocco

The 2011 constitution process in Morocco was considered a qualitative step compared with previous constitutions, especially regarding consultations and opinions on the provisions of the constitution. The process was consistent with political reforms described by the King in his speech. The King requested the amendments to the constitution and identified its key parts. He also appointed the members of the advisory committee to review the constitution, meaning **that the process reflected the King's political programme.**<sup>145</sup> This may have prompted the 20 February movement to reject the constitution process because it did not conform in shape or **content to the movement's demands for political reform.** However, most of the political parties in **Morocco requested a 'yes' vote on the constitution, Many considered that a 'no' vote would be perceived as a vote against the King.**<sup>146</sup>

In line with tradition, the King appointed an expert committee to draft the constitution, rather than an elected committee like the Constituent Assembly of Tunisia. Consequently, in the eyes of some, the constitution falls into the category of those that are presented to the country by its King, rather than a constitution reflecting the will and sovereignty of the people

through an elected committee.<sup>147</sup> In addition to the expert committee, a follow-up committee was formed tasked with creating a link between the drafting committee and the various political parties and powers. The participatory process in Morocco was characterized by all parties, syndicates and organizations presenting 185 written texts. Despite such participation, the drafting committee maintained full discretion. Moreover, the written proposals respected the ceiling set by the King in his speech.<sup>148</sup> The opposition in Morocco said that the consultations were just formalities, given that the committees simply accepted requests without fully following up on them. The various stakeholders did not receive a draft of the constitution until 8 June 2011. The draft was not written; it was presented orally at a 10-hour meeting. The provisions of the constitution were considered in one night.<sup>149</sup>

Despite all these issues, it cannot be said that the constitution did not offer anything new. Important amendments were made, in contrast to past attempts where minor and insignificant amendments were made, such as basic amendments to the powers of the Prime Minister and some mention of human rights. In general, such amendments were imposed by the King and were consistent with popular demands. The 2011 amendments, although they did not meet all the demands of the people, added a new culture and concepts such as social justice.<sup>150</sup>

### 3. Time period

The time period is a key element of the constitution-drafting process. In Morocco, it took less than three months, prompting many to **conclude that the constitution was 'bequeathed'** by the King without the participation of the people, thus affecting its democratic status because political bodies were not allowed to

express their views thereon.<sup>151</sup> In Tunisia, it took around two and a half years to adopt the constitution. The main obstacle was the absence of a clear vision and road map for the transition period, thus exacerbating public discontent at many stages and in view of economic and social challenges.<sup>152</sup> In Egypt, despite that the Committee of 50 was tasked with drafting the final version of the constitution in two months, excluding holidays, the Committee did not meet this deadline. It presented the final draft after three months. Manipulating the schedule may have been the most daring step carried out by

the Committee, given that it breached to some extent a constitutional document issued pursuant to a presidential decree.<sup>153</sup>

In general, it should be acknowledged that the constitution-drafting process in the three countries was more participatory than before, although it remains flawed. The lesson is to apply the new constitution by amending laws in conformity with its provisions or by enacting new laws based on the texts of the constitution, so as to ensure that these texts are put into practice.

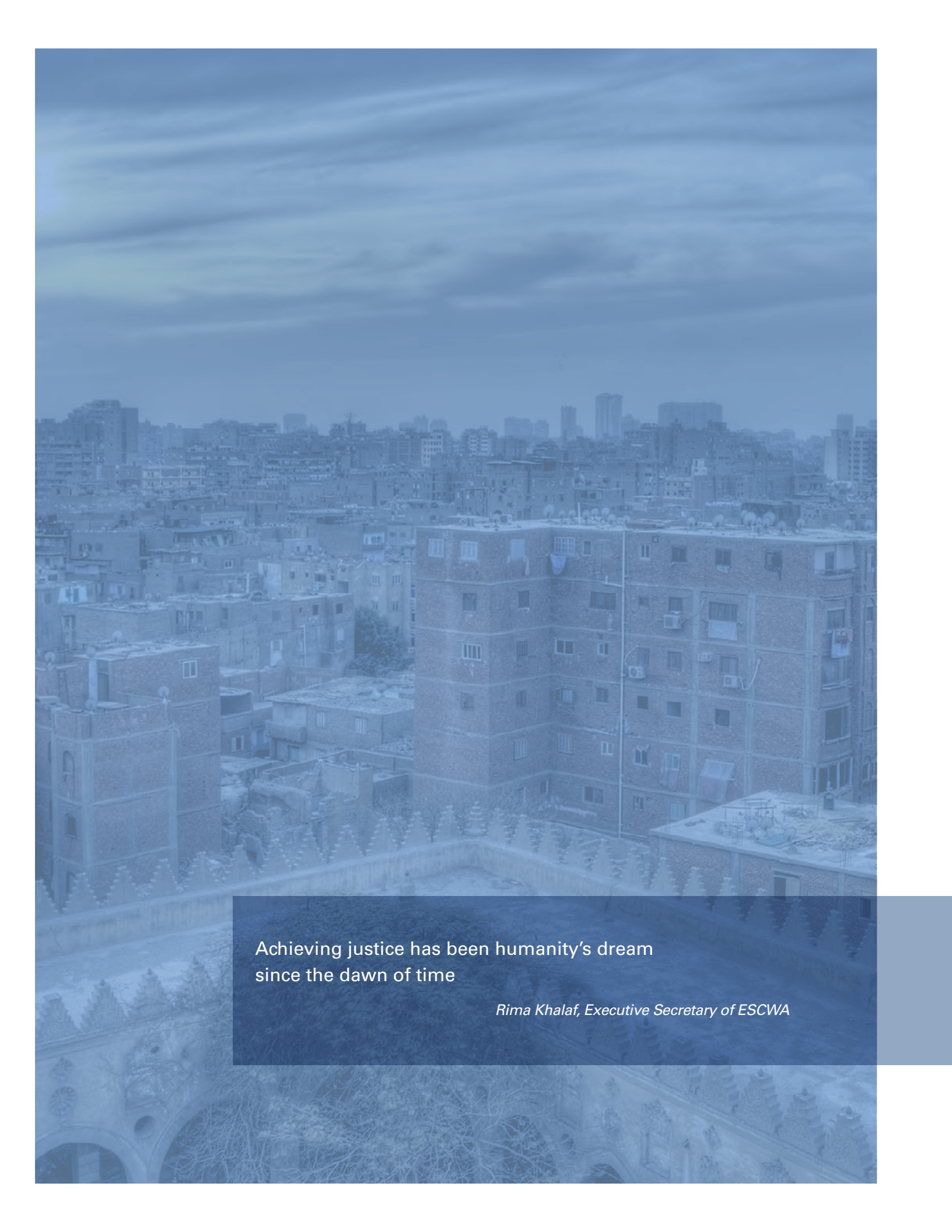




### 3. Egypt: a Faltering Transition







Achieving justice has been humanity's dream  
since the dawn of time

*Rima Khalaf, Executive Secretary of ESCWA*

### 3. Egypt: a Faltering Transition

The present chapter considers social justice in Egypt in the light of the 2014 constitution. It sets out and discusses the provisions related to key elements for achieving social justice. It also tackles the process of operationalizing the constitution, and the role and priorities of the Supreme Committee for Legislative Reform and its influence in the achievement of social justice. It reviews legislation in view of the absence of a parliament elected by the people, and presents key programmes developed by the Government and applied in vital sectors, such as health, education, wages, within the framework of implementing public policies aimed at achieving social justice. This chapter also highlights the role of civil society in monitoring the application of the constitution and laws, and the factors that limit this role.

#### A. Egyptian constitution and social justice

The 2014 Egyptian constitution<sup>154</sup> greatly focuses on social justice with regard to general principles and the elements that contribute to its achievement. The preamble states that the ambitions of the popular movements were not limited to achieving freedom but also social justice as a right for all citizens. The constitution gave social justice a pivotal role by directly linking it to the goals of the economic system aimed at achieving prosperity in the country through sustainable development, as set out in **article 27. Article 93 stresses the State's** commitment to agreements, covenants and international conventions of human rights

ratified by Egypt, which have the force of law after publication in accordance with the specified circumstances. This article aims to **avoid inconsistencies between the constitution's** provisions, supplementary laws and international principles.

Article 8 provides that society is based on social **solidarity, and that the State "commits to** achieving social justice, providing the means to achieve social solidarity to ensure a decent life **for all citizens, in the manner organized by law"**, thus making social justice a State goal as well as a constitutional principle. The constitution also declares that the State shall play an active role in that regard because, according to article 9, the State shall ensure equal opportunity for all citizens without discrimination. Non-discrimination between citizens also includes non-discrimination between men and women because gender equality is vital to achieving social justice, as set out in article 11: the State commits to achieving equality between women and men in all civil, political, economic, social and cultural rights, in accordance with the provisions of the Constitution. Article 11 also provides that the State shall commit to taking the necessary measures to ensure appropriate representation of women in the houses of parliament, in the manner specified by law. It grants women the right to hold public posts and high management posts in the State, and to appointment in judicial bodies and entities without discrimination.

Article 53 confirms that citizens are equal before the law, possess equal rights and public duties,

and may not be discriminated against on the basis of religion, belief, sex, origin, race, colour, language, disability, social class, political or geographical affiliation, or for any other reason. It also stresses that the State shall take all necessary measures to eliminate all forms of discrimination, and the law shall regulate the establishment of an independent commission for this purpose. Articles 53 and 14, which states that public posts are a right for citizens on the basis of merit with no favouritism or mediation and are an assignment in service of the people, formed the constitutional argument put forward by the Egyptian public to protest against a statement by the Justice Minister in May 2015 claiming that the son of a rubbish collector cannot become a judge, thus prompting the **Minister's resignation.**

The constitutions also contains provisions on social and economic rights, including those of marginalized groups. Article 81 confirms the State shall guarantee the health, economic, social, cultural, entertainment, sporting and education rights of dwarves and people with disabilities. The state shall provide work opportunities for such individuals, and allocate a percentage of these opportunities to them, in addition to equipping public utilities and their surrounding environment. Article 78 stresses the importance of achieving social justice: the State shall guarantee citizens the right to decent, safe and healthy housing, in a way that preserves human dignity and achieves social justice. This right is also emphasized in article 63 which states that all forms of arbitrary forced migration of citizens are forbidden. Some analysts have claimed that this article provided an opportunity to litigate against many unjust urban development practices.<sup>155</sup>

The 2014 constitution showed significant **progress on women's rights compared with the 2012 constitution.** It should be noted that the

Constituent Assembly tasked with drafting the 2012 constitution comprised six women only (representing the Islamic movement in general) from a membership of 100; whereas the Committee of 50 that drafted the 2014 constitution contained five women (representing various political orientations).<sup>156</sup> The presence of women in the Committee of 50 assisted in securing notable gains in the 2014 constitution. For example, article 65 of the 2012 constitution stated that national martyrs must be honoured by granting them, their children and wives priority in employment opportunities. This article therefore assumes that all martyrs are men. This article was amended in the 2014 constitution to ensure equality between man and women in the issue of martyrdom. Article 16 of the new constitution provides that the State shall commit to honouring the martyrs of the nation, caring for the wounded of the revolution, elderly war veterans, the wounded, and families of those missing in war, as well as their equals, and the wounded in security operations, their wives, children and parents. It works on providing them with job opportunities. The foregoing will be organized by law.

The 2014 constitution has also enshrined the right of Egyptian women to pass citizenship to their children. Article 6 states that citizenship is a right to anyone born to an Egyptian father or an Egyptian mother. This article was adopted to unequivocally provide that the citizenship on **those whose mother is Egyptian is an 'original not acquired' citizenship based on the right of blood.** As such, citizenship is automatically granted at birth without the need for Interior Ministry approval, as is the case with children who have an Egyptian father.<sup>157</sup> Enshrining this right in the constitution reflects notable **progress in endorsing women's rights.** Law No. 154 of 2004 granted Egyptian women married to

foreigners the right to pass citizenship to their children, and the 2014 constitution enshrined it as a constitutional right as well as a legal right. The law alone, without constitutional guarantees, can be amended in the future if the legislative power so desires. Currently, however, pursuant to article 92 of the new constitution, the rights and freedoms of individual citizens may not be suspended or reduced. No law that regulates the exercise of rights and freedoms may restrict them in such a way as infringes upon their essence and foundation. It is therefore no longer possible for any law to override this constitutional right, **especially concerning women's right to transfer citizenship to their children.**

With regard to women holding public office, it was clear in the first phase that women were prohibited from joining the judiciary, for example, in conflict with article 11 of the constitution affirming that the State shall **guarantee women's rights in filling public posts** and senior administrative positions in the State. In May 2014, an announcement was made for the post of assistant delegate to the Council of State, clearly indicating that the position was open to men only thus blatantly excluding women, in conflict with the constitution. However, less than a year later in February 2015, the High Court Council announced that it was accepting applications for judgeships from members of the Administrative Prosecution and **the State Litigation Authority. Women's organizations considered this a positive towards operationalizing the constitution and women's rights enshrined therein.**<sup>158</sup>

However, to date, the State has not initiated the formation of an independent commission to eliminate all forms of discrimination, in accordance with article 53 of the constitution, which protects all victims of discrimination, including women and children.

The constitution sets out sectoral fields key to achieving social justice. Article 17 affirms that **"the State shall ensure that social insurance services are provided" and that "all citizens who do not benefit from the social insurance system have the right to social security, in a manner that ensures a decent life in the event of being incapable to provide for themselves and their families, as well as in cases of incapacity to work, old age or unemployment".** Some analysts claim that this article has its limitations, given that it limits the right to social insurance to citizens without extending it to migrant workers and refugees. This contradicts the interpretation by the Committee on Economic, Social and Cultural Rights of article 9 of the International Covenant on Economic, Social and Cultural Rights on social insurance, stating that Article 2, paragraph 2, prohibits discrimination on grounds of nationality and the Committee notes that the Covenant contains no express jurisdictional limitation. Where non-nationals, including migrant workers, have contributed to a social security scheme, they should be able to benefit from that contribution or retrieve their contributions if they leave the country. A **migrant worker's entitlement should also not be affected by a change in workplace.**<sup>159</sup> Previously, article 17 of the Egyptian constitution identified who enjoyed this right: those who could not provide for themselves and their families, those who could not work, the elderly and the unemployed. Undoubtedly, article 17 sets out **many benefits, especially "the State shall strive to provide suitable pensions to small farmers, agricultural workers and fishermen, and irregular labour". However, these ostensible benefits do not include any concrete commitment from the State.** For example, a suitable pension in reality may not guarantee a decent life for citizens, in accordance with international standards. It is estimated by the State, meaning that the fate of these groups is linked to State decisions on their pensions.

With regard to health care, article 18 states that **“every citizen has the right to health and to comprehensive health care which complies with quality standards. The State shall maintain and support public health facilities that provide health services to the people, and shall enhance their efficiency and their equitable geographical distribution”**. It also affirms that **“the State shall allocate a percentage of government spending to health equivalent to at least 3 per cent of Gross National Product (GNP), which shall gradually increase to comply with international standards”**. Article 19 provides that **The State shall allocate a percentage of government spending to education equivalent to at least 4 per cent of the Gross National Product (GNP)”**.

However, some analysts maintain that the wording of both articles may negatively affect the achievement of social justice in the long run, given that they indicate the levels of government expenditure of health and education, although a need may arise to change these levels in the future. In 10 years, for example, such levels may be significantly low.

Other analysts, including the Egyptian Medical Syndicate, say that allocating 3 per cent of GNP to health in the constitution conflicts with the Abuja Agreement, which states that signatories shall earmark 15 per cent of the public budget to health care.<sup>160</sup>

The 2014 Egyptian constitution has enshrined social justice rights and tackled economic and social rights and the rights of marginalized groups. It has also enshrined the rights of Egyptian women. However, translating constitutional texts into social policies faces several political obstacles, given that consecutive Governments have prioritized laws on stimulating investment and combatting terrorism.

## B. Operationalizing the constitution and the legislative vacuum

Following the adoption of the 2014 Egyptian constitution, the Egyptian people elected a new President. One of the first decisions taken by President Sisi was to form the Supreme Committee for Legislative Reform pursuant to decision No. 187 of 15 June 2014. The **Committee’s main task was to operationalize the constitution**, by either amending some laws to conform to the new constitution or by enacting new laws. The decision states that the **Committee’s main functions include preparing and researching bills, draft decrees and prime ministerial decisions for adoption or amendment to implement the amended constitution, or those referred from ministries and other entities for review and development and for coordination between them and various legislation, so as to avoid duplication, shortfalls, contradictions or ambiguity and to ensure uniformity and simplicity and consistency with the needs of society and compliance with public policy and State objectives**.

Regarding representation, the Committee is chaired by the Prime Minister. Its membership includes the Minister of the House of Representatives Affairs and Transitional Justice, the Minister of Justice, the President of the State Council, the Mufti of the Republic, the Chief of Al-Azhar, Head of the Council of Ministers, Head of the Legislation Department of the State Council and the Assistant Attorney General for Legislative Affairs, as well as three law professors, two judges, two lawyers and three public legal figures chosen by the Prime Minister. Moreover, Sisi subsequently decided to include representatives of the defence and interior ministries as members of the Committee.<sup>161</sup> The Committee is dominated by the Government, given that most of its members are ministers of representatives of

ministries. Non-official social forces are not strongly represented therein.<sup>162</sup> Women are very **weakly represented**. Many women's organizations have protested against this exclusion, and sent a communication **demanding women's representation in the Committee**, but the Prime Minister refused the request. Women's organizations claimed that the response contradicted article 11 of the constitution, including commitments to combat discrimination against women, especially regarding their representation and participation in decision-making processes.

The Committee has eight subcommittees covering the following: social legislation, economic legislation, national security legislation, litigation and justice legislation, education legislation, administrative legislation, union and syndicate legislation, and national legislation compliance with international treaties. The subcommittees have been tasked with conducting a social dialogue on bill and draft decisions, and preparing a report on the outcomes of the dialogue and its effect on the proposed project.

In addition to its weak representativeness, the Committee worked in the absence of parliament, meaning that the President had sole authority to endorse laws; it has prioritized economic issues.

## 1. First challenge: absence of parliament

Since the dissolution of parliament in June 2012 and of the Shura Council in July 2013 following the ousting of President Morsi, Egypt has not held parliamentary and council elections to date. Some have said that Egypt was not ready for parliamentary elections because of the war on terrorism and the need to allow the President the power to act without restriction in this critical period for the country.<sup>163</sup> President Mansour

followed by President Sisi have, to date, passed legislation pursuant to the constitution. In the absence of institutions that oversee legislative work, the Supreme Committee for Legislative Reform became a de facto parliament, appointed rather than elected, especially considering that its headquarters are in the parliament building.<sup>164</sup>

**Article 156 of the constitution states that "if the House of Representatives has not been elected, the President of the Republic may issue decrees having the force of law, provided that they are then presented to, discussed and approved by the new House of Representatives within fifteen days from the commencement of its session".**

However, it will be highly difficult to review the numerous legislation adopted in the absence of parliament in the 15 days following its election. It is now possible to interpret article 156. Some constitutional jurists see that the current constitution has not tackled this issue and that Egypt, since 3 July 2013 until the election of the next parliament, is in a situation constitutionally defined as the absence of parliamentary life.

There is no text requiring the submission of laws issued by the former and current Presidents to parliament.<sup>165</sup> This practice is opposed by several actors who believe that the constitutional court must decide on the legality of legislation issued in the absence of parliament. President Sisi issued around 300 laws in the year since he assumed power, most notably the signing of the Renaissance Dam agreement between Egypt, Ethiopia and the Sudan that sets out 10 basic principles which will become binding following their ratification by the parliaments of all three countries. In the absence of parliament, the Egyptian President has legislative power, which he has actively used in this context.

## 2. Second challenge: legislative priorities

The second challenge regarding legislative priorities identified by the High Committee for Legislative Reform is economic legislation and



national security laws. The Prime Minister, Ibrahim Mahlab, focused on implementing large projects and enhancing private sector investments. The Government organized a conference in Sharm el Sheikh on investment, and enacted a new law on the issue.

The Unified Investment Law (2015) aims to protect government officials and investors. In effect, consecutive Egyptian governments since the uprisings have delayed implementing judicial rulings on the invalidity of sales contracts and the renationalization of companies privatized under Mubarak. Undoubtedly, the legislative amendments undertaken following the uprisings are aimed at regaining the trust of foreign and Egyptian investors.

Key amendments include protection measures for government contracts from challenges in the Council of State under Adly Mansour, which entailed delaying existing cases and limiting appeals to contracts regarding the privatization of State companies and natural gas exports. This practice was unprecedented, aimed at improving the investment climate by nullifying contracts on the privatization of State companies after years of their transfer to the private sector.<sup>166</sup> In addition to stimulating investment in Egypt, the Government adopted civil service law No. 18 of 2015, which was widely opposed when presented for public discussion by the Ministry of Planning. The main points of contention were salary structures, lack of basic rights for workers, weak efficiency standards, and greater powers for officials at the expense of workers.

### C. Social empowerment

This section focuses on social policies for citizen empowerment, including small entrepreneurs (mostly informal) and informal workers. These

policies can provide citizens with educational and technical skills to increase their competitiveness and innovation for the benefit of society. The success of such policies is **measured according to the Government's ability** to improve the formal employment sector and facilitate the transformation of the informal sector into a formal sector with adequate outcomes.

Table 4 that primary education enrolment rates remained high between 2010 and 2012, at over 100 per cent for boys and girls measured by age group. Secondary education enrolment rates rose over the same period. However, higher education enrolment rates dropped significantly, from 33.5 per cent in 2010 to 30.1 per cent in 2012.

The health sector improved between 2010 and 2013. Average life expectancy rose from 68.2 years to 68.8 years for women, and from 72.9 years to 73.6 years for men (table 5). Infant mortality rates dropped from 19.9 to 18.6 deaths per 1,000 live births over the same period.

**Table 4. School enrolment disaggregated by sex, 2010-2012**

School enrolment	2010	2011	2012
<b>Primary education (Percentage of GDP)</b>			
Boys	114.5	111.8	115.7
Girls	109.9	105.3	111.1
Total	112.3	108.6	113.4
<b>Secondary education (Percentage of GDP)</b>			
Boys	77.2	86.4	87.1
Girls	74.4	84.7	85.5
Total	75.9	85.6	86.3
<b>Higher education (Percentage of GDP)</b>			
Boys	35.1	30.2	30.6
Girls	31.8	27.2	29.5
Total	33.5	28.8	30.1

Source: Global Development Indicators.

**Table 5. Health indicators**

	2010	2011	2012	2013
Life expectancy at birth for girls (years)	72.9	73.1	73.3	73.6
Life expectancy at birth for boys (years)	68.2	68.4	68.6	68.8
Life expectancy at birth, total (years)	70.5	70.7	70.9	71.1
Infant mortality rate (for every 1,000 live births)	19.9	19.4	19.0	18.6

Source: Global Development Indicators.

**Table 6. Public measures undertaken by Governments, 2010-2015  
(Percentage of GDP)**

	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Total expenditure	29.3	29.9	33.5	35.1	32.9
Spending on education				5.3	5.5
Spending on health				2.4	2.6

Source: IMF and the Ministry of Finance, based on the official budget for 2014-2015.

Despite these statistical improvements, there are many challenges that still require solutions. Egypt has made significant progress in terms of facilitating access to education and health services, but the quality of these services has deteriorated over the years. Although these services are free, spending on education and health services (such as private schools and clinics) remains a heavy burden on families, especially the poor.<sup>167</sup> Teachers and doctors earn low salaries, do not receive adequate motivation and are rarely held accountable. According to TIMSS results, Egyptian students have low scores in international exams and Egyptian universities rank low globally. Moreover, there is no consistency in skilled labour supply and demand in the labour market. Even if poor groups invest in and

strengthen their human capital, they are prohibited from benefiting from their investment.

Regarding the allocation of resources to the health and education sectors, table 6 shows that their share of GDP remains similar to that of 2011, with a slight increase over the period 2014-2015 in the budget allocated to these sectors. This increase is a first step towards applying the 2014 constitution that stresses the need for education expenditure to reach 4 per cent of GDP and health spending to total 3 per cent of GDP.

The informal sector has registered significant increases in labour. Data from labour market surveys in Egypt show a rise in employment opportunities in the informal sector, reaching 40 per cent in 2012 from 30.7 per cent in 1998.<sup>168</sup> This increase is attributed to various factors. Firstly, the speed of economic growth is insufficient to create employment opportunities in the formal sector to assimilate the large number of job seekers. Private sector employment rates increased slightly from 13 per cent to 13.5 per cent, while public sector employment rates dropped from 34 per cent to 27.1 per cent over the same period. Secondly, because of living costs, most individuals resort to the informal sector for work opportunities, despite the difficult working conditions.

## 1. Commodity support programmes

Egypt subsidizes basic goods as part of its protection network. However, this mechanism is ineffective, unequitable and unsustainable, although it aims to supplement the real income of poor groups and protecting citizens from shocks caused by price fluctuations of basic goods, especially in an oil-importing country like Egypt.

Figure 4, with reference to household surveys conducted between 2003 and 2009, shows the percentage of beneficiaries from oil, diesel and liquefied petroleum subsidies by income quintile. The bottom two quintiles receive only 3 per cent of total oil subsidies, while the top quintile enjoys 86 per cent of these subsidies. The bottom quintile benefits from 1 per cent of diesel subsidies, while the richest quintile benefits from 71 per cent. This also applies to liquefied petroleum, to a lesser extent: the poorest two quintiles receive 33 per cent of these subsidies.

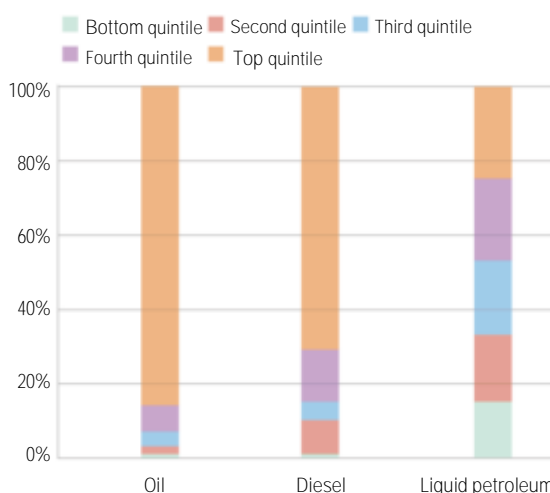
The situation differs with regard to food subsidies, which are more equitably distributed over the five quintiles. Nevertheless, the top quintile receives 1 per cent of bread, sugar and flour subsidies, the second quintile enjoys 17 per cent, and the third quintile benefits from 37 per cent.

Subsidy distribution is not on unequitable, but also distorts the market in terms of production and consumption. Regarding production, subsidies encourage investment in areas with no comparative advantage at the national level. Concerning consumption, such subsidies increase the consumption of scarce goods. More importantly, assigning two prices to the same product in any market encourages speculation, black markets and smuggling. As such, this system places an unmanageable burden on the government budget, especially given that energy and food subsidies constitute around a quarter of government expenditure. It also prohibits it from spending on key issues, and renders the budget unstable because of price fluctuations at the international level.

Following the uprisings, resource scarcity and weak political support offered an opportunity to review the subsidy issue. Attempts were made to stop or regulate them.

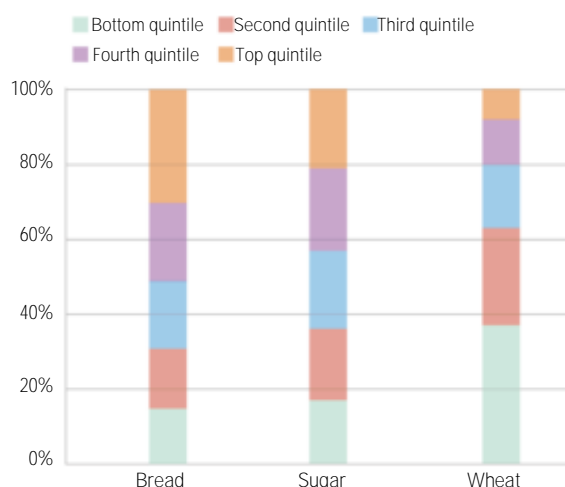
The first set of reforms focused on reducing oil subsidies. Since 2012, petrol prices (octane 95) have risen by 112 per cent for luxury cars, and heavy fuel prices in low energy sectors rose by 50 per cent.<sup>169</sup> In January 2013, household electricity bills rose by 16 per cent, and the prices of natural gas and heavy fuel for electricity generation increased by around a third. In 2014, the Government introduced some amendments to the food subsidy system, which had previously been limited to supplying bakeries with flour for traditional bread. The Government began following an approach based on production, using smart cards allowing citizens to receive five loaves a day.<sup>170</sup>

**Figure 4. Energy subsidy distribution by income quintile in Egypt, 2003-2009**



Source: IMF and World Bank report; Sdrilevich and others, 2014.

**Figure 5. Food subsidy distribution by income quintile in Egypt, 2003-2009**



Source: IMF and World Bank report; Sdrilevich and others, 2014.

Moreover, the Government followed a similar approach for a limited set of basic goods. Previously, citizens received a share of basic goods monthly. Under the new system, they receive only 15 Egyptian pounds per month to spend on their choice of products from a set of 20. If citizens do not spend all their bread subsidies, they are awarded more points to spend on other products using their smart cards.<sup>171</sup> This system provides citizens with more freedom of choice, in line with their desires and needs.

The Government has also begun applying a housing programme for low income groups, assisted by the social housing programme. This initiative was launched after the uprisings of 25 January 2011, pursuant to a ministerial decree. It aims to provide 1 million housing units to low income families. This goal resulted in law No. 33 on social housing, adopted pursuant to a presidential decree of May 2014.<sup>172</sup> Consequently, the Ministry of Housing, Utilities and Urban Development was tasked with

developing and implementing a project on social housing. A social housing fund was also established to provide decent housing to low income groups.

## 2. The Karama and Takaful programme

The *Karama and Takaful* programme is a key security net programme recently established in Egypt. It is an income support programme aimed at assisting poor families whose members include children, the elderly or persons with disabilities. *Takaful* provides conditional income support to families, while *Karama* is aimed at individuals over 65 and persons with disabilities, providing them with unconditional income support and ensuring social cohesion.<sup>173</sup>

*Takaful* aims to reduce poverty and strengthen human capital in education and health through money transfers, in accordance with health and education conditions. Regarding education, children aged 6-18 must be enrolled in school and must attend no less than 80 per cent of their lessons. Concerning health, mothers and **children under 6 must visit a doctor's clinic** twice a year so as to monitor growth, establish health registers, and attend awareness-raising sessions on nutrition, on protecting children from disease and on antenatal and postnatal care. Each household is allocated 325 Egyptian pounds per month as a basic rate, which increases according to the number of children to a maximum of 625 Egyptian pounds. In addition to financial support, this programme provides incentives to complete secondary education. *Karama* grants 350 Egyptian pounds per month to households caring for persons with disabilities, but covers only three persons with disabilities per household, meaning that total assistance cannot surpass 1050 Egyptian pounds a month per household.

Each of the two programme is applied over three stages. The first stage, expected to be completed in June 2015, aims to cover 500,000 households in the 19 poorest areas of Egypt, where poverty rates are 60 per cent or above, located mainly in six governorates in southern Egypt. The second stage, expected to be implemented in late 2016, will cover an additional 500,000 households. The third stage will provide support to another 500,000 households by late 2017.

The total cost of the programme covering 1.5 million households will be 10.89 billion Egyptian pounds (\$1.46 billion). It will assist around 10 per cent of the population, or 37 per cent of the poor. The results of a model show that the programme aims to reduce the national poverty rate by 6.3 per cent, thus reducing poverty by 24 per cent.

The financial assistance is sent via the national post office. Households can withdraw it using debit cards at a post office or from machines provided by the Ministry of Social Solidarity. *Takaful* members receive quarterly payments, while *Karama* beneficiaries receive monthly payments. Membership is open in targeted areas until the optimal coverage is reached. Membership is limited to three years, but households can reapply once this period has elapsed.

To ensure continued financing, the Government has allocated 10-15 per cent of its social reform budget to this programme.<sup>174</sup> The Finance Ministry has earmarked 500 million Egyptian pounds to fund the first stage of this programme over the financial year 2014-2015, managed by the Ministry of Social Solidarity. As such, it can be said that the *Takaful* and *Karama* programme is receiving sufficient funding at the policy and financial levels, and is making significant strides towards success. Currently,

its outcomes remain unclear; some time may be needed before it can be properly evaluated.

### **3. Public works and minimum wage programmes**

The second part of social safety net programmes is related to the labour market, especially the labour force that does not possess the required skills, the unemployed or those on low wages. The first section of the initiative focuses on an emergency labour intensive investment project, while the second section is on changing the minimum wage.

The emergency labour intensive investment project was launched in October 2012, and is implemented by the Social Development Fund, in collaboration with the World Bank. Firstly, it aims to provide temporary work opportunities to unemployed, unskilled or semi-skilled workers in specific areas of Egypt. Secondly, it seeks to provide the necessary infrastructure services to help residents of poor areas.<sup>175</sup> To achieve the first goal, the project aims to support two types of subprojects based on labour intensity. The first type relates to public works projects in small and local infrastructure, such as the cleaning and preservation of canals and the refurbishment of schools, houses and road networks. The second type includes the establishment of subprojects to provide social services. In general, these projects contribute to improving access to water and sanitation services, energy, safe transport, and education and health services.

The emergency labour intensive investment project achieves social justice in numerous ways. It targets the most vulnerable groups by focusing on the poorest 20 per cent of the population in rural areas,<sup>176</sup> especially since there is high youth unemployment in these areas thus making them more eligible to benefit

from the social and economic opportunities provided by the project. It also focuses on the semi-skilled labour force that could benefit from the long-term positive impact of the project by increasing their skills and work opportunities in the future.

This project also achieves social justice from a gender equality perspective. The social services subprojects gives women priority in accessing services and benefiting from work opportunities, especially in the provision of such services. The project also includes mechanisms to monitor in sensitivity to gender equality.

Since March 2015, the project has created 100,000 job opportunities, for women at a 40 per cent rate, and for unemployed youth at a rate of 74 per cent. It has also refurbished 366 schools, 12 youth centres, 77 Km of rural road networks, and 25 Km of the **Nile's banks**. The minimum wage issue is key, especially after the revolution. Some consider that increasing the minimum wage plays an important role in achieving social justice, thus increasing **pressure on Beblawi's interim Government** resulting in a 70 per cent rise in wages in the public sector from 700 Egyptian pounds to 1,200 Egyptian pounds. His Government took another major decision for social justice, reflected in a maximum compensation level for public sector workers of 42,000 Egyptian pounds.

Many employees have benefited from this decision and assuaged demands for social justice, thus allowing the Government to focus on urgent issues such as establishing political institutions, like a new constitution. Despite the **decision's benefits, one cannot overlook** its shortfalls. Firstly, it does not apply to workers and farmers in the private sector, or informal workers. This is a key issue given that around

41 per cent of informal workers earn less than 700 Egyptian pounds per month and 75 per cent earn less than 1,200 pounds per month.<sup>177</sup>

Secondly, the decision focuses on government positions and overlooks the private sector. According to the Egyptian Central Agency for Public Mobilization and Statistics, the average wage in the public sector is 2,600 pounds, whereas it is 1,600 pounds in the private sector. This gives greater importance to the public sector, in addition to the job security and other benefits it provides. The decision may also encourage people to join the informal sector, given that the public and private sectors are already satiated. This means that rising public wages will indirectly raise private sector wages, which may cause two effects: an increase in Egyptian product prices and a decrease in their competitiveness in the global market; and reduced employment opportunities in the private sector pushing people to join the informal sector. This happened in 2003 when the Egyptian Government froze employment in the public sector.<sup>178</sup>

As stated above, these measures undoubtedly are steps in the right direction, but they are not fully integrated like the subsidy programmes, especially energy subsidies. The money transfer programme is only in its first stage. There is also a problem with the provision of housing, sanitation services and water to low income households in poor areas.

However, the Government has set a maximum wage, aimed at reducing great disparities in income which give rise to legitimate sentiments of injustice.<sup>179</sup> The Government has also developed a tax system that promotes labour intensive economic activities.

## D. Monitoring and social justice

The 2014 Egyptian constitution was commended for enshrining the concepts and pillars of social justice. However, many laws enacted following the adoption of the constitution were criticised and opposed, because they were seen as restricting civil society and limiting its role in monitoring the **authorities' commitment to the constitution**. The present section of the report considers the laws issued in the past few years and the extent to which they conflict with the constitution.

In 2013, the Ministry of Insurance and Social Affairs presented a bill on the organization of civil associations and institutions to replace law No. 84 of 2002. The bill was severely criticized, with some considering it an attempt to squash civil work.<sup>180</sup> The bill was not presented for public discussion and civil society organizations did not participate in its formulation. It was criticized as depending on the principle of **'declaration' not 'notification' in the establishment of civil organizations** thus tightening the noose on civil society institutions. Moreover, a coordinating committee was established pursuant to this law to decide on whether civil society organizations posed a threat to national security.<sup>181</sup> In other words, the bill was considered punitive, because it blatantly contradicted the constitution and international agreements signed by Egypt. This bill was enacted at a time when civil society institutions were being harassed, resulting in the closure of 400 non-government organizations in the first nine months of 2015.<sup>182</sup>

From an economic perspective, the former President Adly Mansour issued law No. 32 of 2014 that prohibits legal challenges against State contracts other than from the two parties in the contract, the State and the investor, thus preventing any third party from appealing.

As such, the Government has secured legal impunity for all its former contracts, and a safety net for brokering future deals without accountability or challenges from society, stakeholders or those affected. According to the Egyptian Center for Economic and Social Rights, civil society has played a key role in legal challenges, especially in administrative courts, **to nullify several 'corrupt' contracts, thus reclaiming many bodies and companies that had been sold in suspicious circumstances in the past**. The Center also states that this law aims to stunt such checks and balances by prohibiting appeals from third parties.

Regarding terrorism, President Sisi has adopted law No. 8 of 2015 on organizing a list of terrorist organizations and terrorists. The definition of terrorist organizations or terrorism funding set out in the law was criticised as directly affecting freedom of opinion. Article 1, paragraph 7, of the draft **law defines a "terrorist act" as "the use of force, violence, threats, fear" undertaken with the aim of "disturbing public order"; "harming national unity"; "damaging the environment, natural resources, monuments, public and private entities", or "obstructing the work of public institutions, local councils, diplomatic missions, and places of worship from carrying out their work whether wholly or partially", or "impeding the application of the provisions of the Constitution and the law"**.

The main criticism is that the definition of terrorist bodies is very vague, and could pose a threat to civil liberties, especially given that the law allows the authorities to deal with some protests and civil demonstrations as if they were military or armed operations.

Several rulings have been passed pursuant to this law, known as the ruling on protest laws. A ruling was also issued against a group of young people protesting outside the Shura

Council, the headquarters of the Committee of 50. The aim was to put pressure on the Committee to not adopt the article on prosecuting civilians in military courts. They were tied in a criminal court, considered as specializing in terrorism. The court sentenced them to imprisonment for forming a group of over five people, aiming to threaten public safety, to commit acts of aggression on individuals and public and private property, forcibly and violently influence public authorities in the undertaking of their work, and disrupt public security and peace.

In the same context, President Sisi endorsed a counterterrorism law in August 2016, which was criticised for gagging society.<sup>183</sup> The law aims to restrict public opinion and prohibit social movements from demanding social and economic rights. The definition of terrorist acts in the law is very vague and broad. Article 2 states **that “a terrorist act shall refer to any use of force, violence, threat, or intimidation domestically or abroad for the purpose of disturbing public order, or endangering the safety, interests, or security of the community; harming individuals and terrorizing them; jeopardizing their lives, freedoms, public or private rights, or security, or other freedoms and rights guaranteed by the Constitution and the law; harms national unity, social peace, or national security or damages the environment, natural resources, antiquities, money, buildings, or public or private properties or occupies or seizes them; prevents or impedes public authorities, agencies or judicial bodies, government offices or local units, houses of worship, hospitals, institutions, institutes, diplomatic and consular missions, or regional and international organizations and bodies in Egypt from carrying out their work or exercising all or some of their activities, or resists them or disables the enforcement of any of the provisions of the Constitution, laws, or regulations”**. Critics say that that this text could include civil

disobedience, and allows the authorities to interpret the law at their discretion in a manner that threatens freedom of expression.

The law is also considered a flagrant violation of **media freedom**. **Article 35 states that “whoever intentionally, by any means, publishes, broadcasts, displays, or promotes false news or statements on terrorist acts inside the country or anti-terrorism operations contrary to the official statements released by the Ministry of Defense shall be punishable by a fine of no less than 200,000 Egyptian pounds and no more than 500,000 Egyptian pounds, without prejudice to the disciplinary penalties prescribed”**. The Journalists Syndicate in Egypt opposed this article, because it clearly limits freedom of opinion, publication and expression, and removes the right of journalists to gather information from various sources. The Syndicate added that the law impeded all attempts to ensure that the press reflected the views of all confessions in society, and promoted media and press censorship through laws limiting press freedoms.<sup>184</sup> The Syndicate said that the law contradicted article 70 of the constitution that guarantees the freedom of the press, printing and paper, visual, audio and electronic publication. The Supreme Committee for Legislative Reform that provides emergency guidance to the President did not consider the bill of the counterterrorism law. According to a Committee member, the law was not submitted to the Committee before it was issued and was not consulted in that regard. The Government has passed 95 laws without consulting the Committee.<sup>185</sup>

The above shows that the 2014 constitution includes key additions for social justice in terms of rights and principles. However, its implementation through legislation, focusing mainly on terrorism and protests laws, on the one hand, and economic policies, on the other,



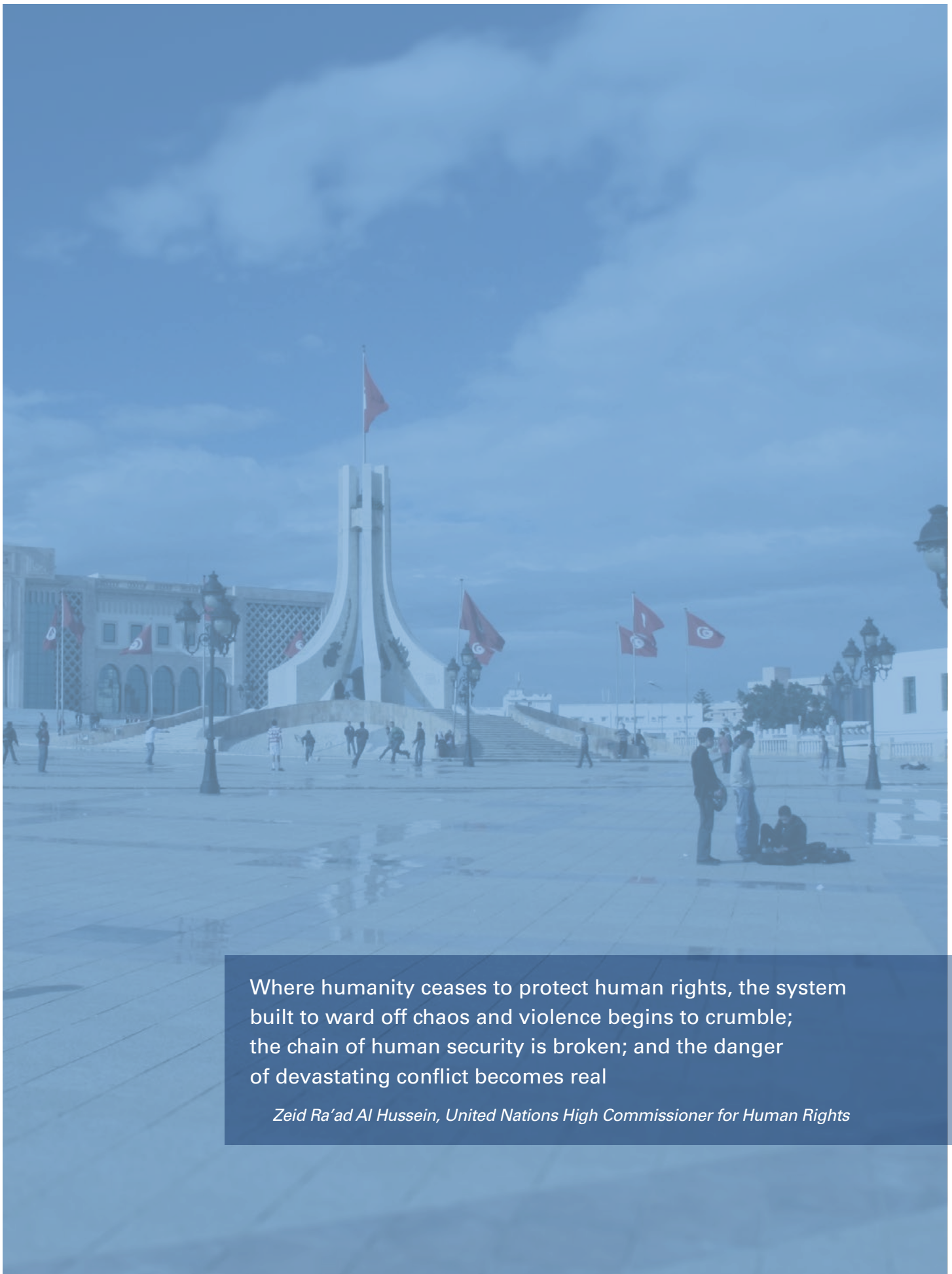
has rendered social justice a weakly implemented principle.

Undoubtedly, the constitutional transition in Egypt was not easy. Consecutive Governments faced several economic and security challenges. Following the adoption of the 2014 constitution, the authorities gave priority to large economic projects aimed at propelling the economy forward. Egyptian society continues to suffer from many economic difficulties, requiring

greater government attention to create work opportunities and expand social service coverage. The authorities have also focused on counterterrorism laws, criticised for restricting civil society and freedom of expression, for distancing society from the State, and for eliminating hope in economic and social change. The Government must reprioritize projects that strengthen the economy while benefiting society, and must stop interfering in civil liberties.

## 4. Tunisia and the “Exceptional” Transition





Where humanity ceases to protect human rights, the system built to ward off chaos and violence begins to crumble; the chain of human security is broken; and the danger of devastating conflict becomes real

*Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights*

## 4. Tunisia and the “Exceptional” Transition

Many researchers believe that the Tunisian constitutional process was a near exception in the Arab region. The process was characterized by negotiations, periodic elections were held, and many dialogues were launched including a social dialogue for a new social contract. Despite its many strengths, the process was also plagued with various obstacles, most notably security challenges. Tunisia suffered terrorist attacks, prompting the Government to prioritize the development of a counterterrorism law before tackling economic and social reforms demanded during the uprisings. The present section considers provisions on social justice contained in the new Tunisian constitution, and the mechanisms for operationalizing the constitution and achieving social justice in Tunisia. It discussed the strengths of the social dialogue, especially participation therein, and its comprehensiveness in tackling economic and social issues. It also presents and analyses key projects and programmes launched by the Government following the adoption of the constitution; and the counterterrorism law and its impact on social movements and on social justice.

### A. Constitution: the Tunisian exception?

The Tunisian constitution adopted by the Government on 26 January 2014 tackled the concept of social justice from various aspects. For the first time in the history of Tunisian constitutions, it enshrined the principle of social justice and directly linked it to the promotion of

**national unity. The preamble states that “our national unity is based on citizenship, fraternity, solidarity, and social justice”.<sup>186</sup> Article 12 provides that “the state shall seek to achieve social justice, sustainable development and balance between regions based on development indicators and the principle of positive discrimination”. Clearly, social justice has been granted a privileged status in the formation of the Tunisian State, and is considered a key pillar in building national unity. The constitution does not only identify social justice as a principle, but also focuses in many articles on the dimensions of a process that, if achieved, would ensure social and economic justice.**

**For example, article 36 stresses “the right to join and form unions is guaranteed, including the right to strike”, clearly indicating the right of unions and workers to protest against government policies they consider unjust. Article 37 states that “the right to assembly and peaceful demonstration is guaranteed”. These guarantees visibly indicate the basic components that should be provided in a country, to form a social movement demanding rights in a peaceful and unrestricted manner.**

In addition to articles stressing rights guarantees, the constitution sets out articles that determine the basic principles for achieving social justice for all social groups. Article 38 **provides that “health is a right for every human being. The state shall guarantee preventative health care and treatment for every citizen and provide the means necessary to ensure the safety and quality of health services. The state**

shall ensure free health care for those without means and those with limited income. It shall guarantee the right to social assistance in accordance with the law". **Undoubtedly, the right to social coverage has become a constitutional right, pursuant to this article, although its application is linked to the law on social funds which suffer from deficits.**

For those with special needs, article 48 provides **that "the state shall protect persons with disabilities from all forms of discrimination. Every disabled citizen shall have the right to benefit, according to the nature of the disability, from all measures that will ensure their full integration into society, and the state shall take all necessary measures to achieve this".**

The constitution also focuses on the right to education. In accordance with international treaties, especially the Universal Declaration of Human Rights, particularly article 26 on free and compulsory education,<sup>187</sup> article 39 of the Tunisian constitution states that education in **Tunisia is "mandatory up to the age of 16" and that the "State guarantees the right to free public education at all levels and ensures provisions of the necessary resources to achieve a high quality of education, teaching, and training".**

**Article 40 states that "work is a right for every citizen, male and female. The state shall take the necessary measures to guarantee work on the basis of competence and equity. All citizens, male and female, shall have the right to decent working conditions and to a fair wage".**

The constitution also mentions several other rights, including intellectual property rights in article 41, which is rarely enshrined in constitutions. The inclusion of this right in the Tunisian constitution is progress in itself, especially given that it is a fairly modern issue

and that the first treaty on the commercial aspects of intellectual property was adopted in 1995. The greater challenge lies in implementing the legal system of intellectual property in Tunisia, which in the majority of cases remains an expression of intent.<sup>188</sup>

Although the Tunisian constitution covers various rights, it overlooks numerous areas that play a major role in cementing social justice in the country; for example, marginalized regions in Tunisia striving to improve their social and economic situations. The constitution mentions **these regions in article 12: "The state shall seek to achieve social justice, sustainable development and balance between regions based on development indicators and the principle of positive discrimination". Some say that the article does not meet the needs or aspirations of marginalized regions, and the word 'seek' implies a repudiation of this goal. The word 'commit' would have been more appropriate.**<sup>189</sup> This also applies to the right to **water. Article 44 states that "the right to water shall be guaranteed. The conservation and rational use of water is a duty of the State and of society", although the initial proposals not adopted in the constitution provided for the equitable distribution of water. The current formulation may affect social justice,**<sup>190</sup> since many province states in Tunisia suffer from drought, including Tozeur in the south. The unequitable distribution of water denies farmers the use of land, unlike in other states.

Articles on women highlight the commitment to the freedoms and gains enshrined in the Personal Status Code of 13 August 1956 under the late President Habib Bourguiba, which remain in effect today. Tunisian women have unique rights compared with the rest of the Arab region, gaining equality to men in many areas. These rights became a controversial issue after the 2011 uprisings, especially under the

leadership of the Islamic Revival Party who came to power following the first elections.

Undoubtedly, women have been granted a privileged status in the 2014 Tunisian constitution. However, it is useful to review the constitutional process in that regard and the ability of civil society and social movements to influence Founding Committee while preparing the draft constitution. The first draft on women, as presented by the Committee and approved by the Ennahda Movement, stated the following: the State guarantees the protection of **women's rights and gains**, in accordance with the principle of integration with men within the family and a partner in development and the nation.<sup>191</sup> Civil society considered that this paragraph described women as partners complementing men, or in a secondary position to men who play a pivotal role in society, which **was seen as conflicting with women's role and rights in Tunisia**. Consequently, civil society carried out a successful movement that directly influenced the constitutional approach to **women's status in society**. The final draft, adopted by parliament, was reworded to ensure that article 46 provided for equal opportunities between men and women in responsibilities in all areas. In other words, women were not **considered 'complementary' to men; the constitution recognizes them as civilians with equal opportunities to men**.

The Tunisian constitution therefore contains many provisions on social justice. However, these constitutional principles may not be implemented without appropriate laws and policies. It is thus necessary to determine frameworks for their implementation. The present section tackles key mechanisms identified by the constitution to endure respect for social justice principles.

Article 49 is of key importance in this context. It acts as a link between the constitution as a principle and subsequent laws that operationalize its contents. Article 49 states that **"the limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defence, public health or public morals, and provided there is proportionality between these restrictions and the objective sought"**. Article 80 provides that **"in the event of imminent danger threatening the nation's institutions or the security or independence of the country, and hampering the normal functioning of the state, the President of the Republic may take any measures necessitated by the exceptional circumstances, after consultation with the Head of Government and the Speaker of the Assembly of the Representatives of the People and informing the President of the Constitutional Court. The President shall announce the measures in a statement to the people"**. This could impede article 49: exceptional circumstances can be extended indefinitely, thus fully suspending economic, social and human rights and civil liberties.

In addition to article 49 that prohibits constitutional and legal amendments that eliminate rights, the constitution gives the Constitutional Court a wide margin to consider the constitutionality of laws, especially in article 120. However, some have highlighted weaknesses in this article, which limits the oversight of the court to the President of the Assembly, the President of the Republic and the



Representatives of the People, thus excluding citizens from the process.<sup>192</sup> The constitution provides for the establishment of other bodies to promote rights, such as the Human Rights Commission in article 128, the Commission for Sustainable Development and the Rights of Future Generations in article 129 and the Good Governance and Anti-Corruption Commission in article 130.

### Box 1. Constitutional Court

- A key strength of the Tunisian constitution was the establishment of the Constitutional Court, with a major role in cementing the independence of the judiciary and respecting the constitution.
- Pursuant to the constitution, the Constitutional Court is the only body with the power to monitor the constitutionality of laws.
- The constitution assigns the legislator the responsibility for organizing the Court and its related procedures and judicial guarantees.

Article 118 sets out the Court's work as follows:

The Constitutional Court is an independent judicial body, composed of 12 competent members, three-quarters of whom are legal experts with at least 20 years of experience.

The President of the Republic, the Assembly of the Representatives of the People, and the Supreme Judicial Council shall each appoint four members, three quarters of whom must be legal specialists. The nomination is for a single nine-year term.

One-third of the members of the Constitutional Court shall be renewed every three years. Any vacancies in the Court shall be filled according to the same procedure followed upon the establishment of the court, taking into account the appointing party and the relevant areas of specialization.

Members of the Court elect a President and a Vice President of the Court from amongst its members who are specialists in law.

So far, the current study has considered provisions on social justice in the constitution, and the legal frameworks that guarantee their protection. The following sections will tackle laws that are fundamental to achieving social justice. Article 20 states that **"international agreements approved and ratified by the Assembly of the Representatives of the People have a status superior to that of laws and inferior to that of the Constitution"**. This invites Governments to amend laws in line with international treaties, considered the main protectors of social and economic justice.

The biggest challenge lies in determining legal **frameworks to implement the constitution's** principles. Political and security considerations are highly influential in this context, given that they could override social and economic concerns. The constitutional process in Tunisia is a double-edged sword. It may restrict core rules of the new social contract that promotes social justice, or it might allow large segments of the population to act according to their commitments as citizens by working together, protecting the basic principles of their uprisings, ensuring that the essence of the constitution is not restricted, and upholding basic rights.<sup>193</sup>

As such, it is vital to consider the social dialogue conducted in Tunisia following the uprisings, aimed at developing a new social contract. Understanding the social dialogue clarifies the dimensions of achieving social justice after the revolts and the adoption of the constitution, as well as the obstacles faced. The importance of the dialogue lies in its contribution to clarifying the concept of social justice and its approach, the role of successive Governments in its achievement, and the role of civil society and parties in demanding that it be placed at the heart of government programmes.

## B. Dialogue for a new social contract: limited participation?

Many researchers believe that the transitional period in Tunisia involves setbacks, such as over-focusing on the positive aspects of constitution drafting, holding successive elections since the fall of Zine El Abidine Ben Ali, and overlooking three key factors in public debate, namely renewal of political elites, legislative reform, and transitional justice.<sup>194</sup> Consequently, these factors were delayed in spite of their essential role, along with elections and the constitution, in securing democratic transition. Elections did not breed new elites with political and social platforms, which could have been endorsed as legislations in the parliament. Although the Transitional Justice Law was approved, its implementation generally faltered. The Truth and Dignity Commission, having an expanded mandate to apply transitional justice to human rights violations committed between July 1955 and December 2013, is still encountering several difficulties in overcoming the political crisis, which threatens efforts to hold human rights violators accountable and reform change-repellent State institutions. Hence, what were the key actions undertaken in this regard? How did society partake in the social contract formulation?

**Since 2012, Tunisia has launched “the social contract dialogue”, which is a series of meetings** between representatives of the Government, workers, and employers. As a result of this dialogue, a social contract was concluded on 14 January 2013<sup>195</sup> between the Government of Tunisia, the Tunisian General Labour Union, representing workers and, the Tunisian Confederation of Industry, Trade and Handicrafts, representing employers. It is worth noting that the date of conclusion of this contract coincided with the second anniversary of the 2011 uprisings, thus demonstrating the importance of

this document in reaffirming popular economic and social demands. The social contract is viewed as a key milestone to shape the future profile of Tunisian social policy and control its implementation programmes. It provides, in its preamble, for a set of principles laying the foundations of social justice at all levels:

- Building development on an inclusive concept that revitalizes the economic cycle, generates wealth and employment opportunities in all regions, and secures sound and just distribution of development outcomes among various segments of the Tunisian population, taking into account interregional balance to achieve social cohesion;
- Consolidating the culture of solidarity among all groups to secure social harmony;
- Safeguarding fundamental rights in employment, decent work, education, training, health, housing, social protection, and equal opportunities of social progress;
- Emphasizing the importance of dialogue and consultation.

Furthermore, the social contract provides for several mechanisms aimed at achieving the desired objectives. It includes five axes that provide an ideal ground for devising social policy objectives and implementation programmes.

### (a) Economic growth and regional development

The social contract emphasized the need for national consensus on a new approach to development grounded in participation of the Government with the economic and social actors, and aimed at achieving inclusive, sustainable, and equitable interregional development, balancing economic priorities and social aspirations, through the following actions:



- Develop economic competitiveness based on knowledge and innovation;
- Generate further decent work opportunities for both genders, particularly within inland areas, to support social cohesion and reduce interregional disparities;
- Consecrate the components of regional development and devise regional development plans in the context of local democracy and decentralization.

#### (b) Labour policies and vocational training

The social contract reaffirmed the need for a comprehensive reform of all educational cycles, including basic and ongoing vocational training, to fulfil economic needs and develop, implement, monitor, and evaluate a national employment strategy on the basis of effective participation.

#### (c) Professional relations and decent work

Signatories agreed to adopt a new approach in regulating labour relations based on supporting employment, promoting secondments, optimizing human resources, securing decent work and ongoing training opportunities, and creating an insurance system against job losses covering workers laid off for economic or technical reasons or the involuntarily unemployed. This system shall be funded by employers, workers, and the State. This part highlighted the need to advance occupational health and safety, and enhance medical coverage of workers.

#### (d) Social protection

The contract called for an inclusive review of social security systems in the light of a study jointly conducted by professional stakeholders. The aim was to endorse appropriate reforms

of such systems and ensure a sound distribution of their financial resources. The contract also stressed the need to rehabilitate public and private health sectors, reviewing the health map for a better interregional balance, securing access to treatment and minimum income for vulnerable groups, and conducting interventions for the sake of targeted groups based on objective benchmarks.

#### (e) Regulation of social dialogue

In view of sustaining and maintaining the climate of social dialogue, it was agreed to establish a tripartite national council of social dialogue that looks into all matters related to professional relations and provides advice on draft legislations that have a direct or indirect social impact. The council is expected to be established within one year as of the date of conclusion of the agreement.

### Box 2. National consultations website

The Tunisian Government is making serious attempts to engage the public opinion and facilitate the participation of Tunisian citizens in the formulation and implementation of policies and programmes via the website: <http://www.consultation-publiques.tn/>. This website was launched in April 2012 to create a space for dialogue and communication with citizens and engage them, along with those who deal with the administration, in public decision-making.

According to the website, 16,000 persons participated in the decision-making on administrative working hours. In 2013, draft legal texts were posted on the website and citizens were called to express their feedback, participate in drafting, evaluate the performance of some sectors, notably the national health insurance fund, and create a code of ethics and conduct for State employees.

Consecrating dialogue as a means to settle labour-related issues, the “four plus four” mechanism was set up to resolve labour disputes in the public sector. This mechanism includes four representatives of the Government and the Tunisian General Labour Union. Negotiations on the contract establishing this mechanism involved in-depth discussions to reconcile views and reach consensus that served the interests and priorities of all parties. The International Labour Office monitored these negotiations and is still supporting various stakeholders in implementing the social contract.

The contract was subject to some criticisms as consultations leading to it were perceived as non-expanded and non-inclusive of civil society, political parties, and many trade unions, particularly the Tunisian Union of Agriculture and Fishery, the Union of Tunisian Workers, and the Tunisian Confederation of Labour. Instead, consultations were viewed as strictly limited to the Tunisian General Labour Union.<sup>196</sup> Hence, many groups objected to the final version of the social contract, which they considered as non-compliant with the principle of expanded participation from a procedural viewpoint. In terms of content, many observers considered that the social contract was generic and void of in-depth analysis. They viewed it as portraying an irrelevant reality, heedless of the Tunisian economic crises.<sup>197</sup>

## C. Social justice: any progress so far?

In 2014, the Tunisian constitution was adopted following two years and a half of negotiations. This relatively long period slowed down the development of laws regulating economic and social life. The slowdown was not felt until recently. Hence, the Council of Ministers endorsed a set of draft laws, which cannot be

enforced until ratified by the Assembly of the Representatives of the People. Key achievements in social justice are: (1) Strengthening gender equality; (2) Enhancing healthcare programmes; (3) Creating the national council of social dialogue.

### 1. Promotion of gender equality

Constitutional debate was marred by political and community divisions about freedoms and gains consecrated for women by the Code of Personal Status. One group was clinging to all provisions of the Code while the other was willing to amend the Code in line with the new context, namely Islamists’ access to power.<sup>198</sup> Nevertheless, the debate favoured maintaining gains for women. Civil society played a significant role along with some political forces and the media in this context. Article 46 of the constitution provides that “the State commits to protect women’s accrued rights and work to strengthen and develop those rights. The State guarantees the equality of opportunities between women and men and works to attain parity between women and men in elected assemblies. The State shall take all necessary measures in order to eradicate violence against women”.

Some consider that the Tunisian constitution was one of the most compliant with the principle of gender equality. Pursuant to article 40, “work is a right for every citizen, male and female. The State shall take the necessary measures to guarantee work on the basis of competence and equity. All citizens, male and female, shall have the right to decent working conditions and to a fair wage”. Article 74 also consecrates gender equality in political representation: “Every male and female voter who holds Tunisian nationality since birth, whose religion is Islam shall have the right to stand for election to the position of President of

the Republic". These articles represent an explicit recognition of women's legal and political right.

In an unprecedented move in the history of Arab countries, Tunisia withdrew its previous reservations on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), particularly article 15 (4), which provides that "States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile". Although all reservations were removed, the Tunisian Government stated that it would not take any administrative or legislative decision, pursuant to this convention, if it contradicts with article 1 of the Tunisian constitution, which provides that Islam is the State religion in Tunisia. This statement raised the suspicions of women's associations, which viewed it as a leeway to maintain the control of religious authority and leaders over women's affairs. The Tunisian Association of Democratic Women expressed its regrets about this public statement, which could be used to restrict women's rights enshrined by the Tunisian constitution.

By virtue of the equality principle, enshrined in the constitution, the electoral law, issued on 26 May 2014, provides that candidatures should be based on gender equality and rotation on electoral lists. This indicates that gender equality should be observed not only in distributing parliament seats but also in developing electoral lists. It is worth noting that this principle was also adopted in the Constituent Assembly elections, where women accounted for 26.7 per cent in 2013 and 28.1 per cent in 2014, compared to the global average of 20.6 per cent and an average of 19 per cent in Arab countries.<sup>199</sup> This gain was strengthened in the elections of the Assembly of the

Representatives of the People in 2014, where female participation amounted to 33.3 per cent.

Suggestions were made to apply the parity principle to candidates chairing electoral lists as well, so as to enable women to access leadership positions and not remain at the grass-root level. Although the electoral law was publicly acclaimed, those suggestions were unheeded. To remedy this situation, the principle of vertical and horizontal equality was suggested to secure a 50 per cent female ratio at the top of electoral lists and eventually enable women to reach decision-making positions.<sup>200</sup> Nevertheless, prerequisites to move in that direction are not yet fulfilled.

Although women assumed a number of senior positions, these successes should not overshadow the myriad of problems still facing women in Tunisia. Female employment ratio remained low compared to men's (26.1 per cent versus 69.2 per cent). The average unemployment ratio among women is high as it stood at 21.5 per cent in the first quarter of 2014 and at 40.8 per cent for women holding higher education degrees.

In view of promoting women's rights, the Tunisian Government submitted to the Assembly of the Representatives of the People a draft law to amend Law No. 40/1975, dated 14 May 1975 related to passports and travel documents. This draft law conveys privileges to women as it allows both parents, without discrimination, to authorize their minor children to issue travel documents and travel abroad.<sup>201</sup>

## 2. Healthcare and social security policies

The present part highlights social funds owing to their significant role in reflecting the reality of governmental policies at the social and economic levels. Social security is considered as

one of the relatively successful sectors in Tunisia. Several legislations were promulgated to expand social coverage, which benefited 81.3 per cent of the active population in public and private sectors in 2013,<sup>202</sup> compared to 72.1 per cent in 2007. The remaining people are benefiting from development programmes and social assistance targeting low-income individuals and those who are not covered by any social protection scheme.<sup>203</sup>

Social coverage is secured by two types of funds in Tunisia. The National Social Security Fund pertains to the private sector (namely the private workforce in agriculture and others), while the National Pension and Social Contingency Fund pertains to the public sector (namely the public sector workforce). Employers handle the registration of their employees while the self-employed can voluntarily register with the social welfare system.<sup>204</sup>

According to the World Bank, contributions of employers and employees in the social funds

account for 29 per cent of wages. Social security contributions are viewed as taxes as they do not reflect the returns expected by employees. As a result, people would rather not work in the formal sector to avert this high “tax” ratio but engage in the informal sector, thereby weakening social protection.<sup>205</sup>

Over the past four years, social assistance systems witnessed some positive breakthroughs. The number of families benefiting from the National Programme of Aid to Needy Families grew from 116,000 in 2008<sup>206</sup> to 235,000 in mid-2012, i.e. by around 9 per cent of the population.<sup>207</sup> The 2015 State budget demonstrates that direct financial assistance and free medical coverage of poor households increased from 62.5 per cent in 2011 to 79.39 per cent in 2012 and remained at this rate in 2013 and 2014. Estimates show an upward trend in this ratio between 2015 and 2017, reaching 87.84 per cent.

**Table 7. Advancing poor and low-income households and achieving social development**

Key performance indicator	Unit	Achievements			2014	Estimates	
		2011	2012	2013		2015	2016-2017
Direct financial assistance and free medical coverage of poor households	Per cent	62.5	79.39	79.39	79.39	87.84	87.84

Source: Tunisian Ministry of Economy and Finance, November 2014.

**Table 8. Operating budget income and expenditure**

Data	Completed in 2013	2014			Estimated for 2015
		Estimated	Completed up to June	Expected	
Income	2,439,405	2,660,989	1,236,713	2,623,057	2,896,384
Development ratio ( <i>per cent</i> )	10.10	-	-	7.53	10.42
Expenditure	2,635,664	2,942,68	1,412,924	2,928,689	3,292,167
Development ratio ( <i>per cent</i> )	13.14	-	-	11.12	12.41
Outcome	<196,259>	<281,079>	<176,211>	<305,632>	<395,783>

Source: National Pension and Social Contingency Fund, 2015 Budget, October 2015.

A number of actions were undertaken to boost the returns and performance of social assistance programmes and reduce favouritism by changing the heads of regional and local committees that are mandated with the distribution of social assistance and engaging civil society organizations, such as the Tunisian Human Rights League and the Tunisian Social Solidarity Union. The creation of a database of social assistance beneficiaries was initiated.

Despite this positive backdrop, social protection systems are still plagued with problems that erode their effective role in achieving inclusive social justice without discrimination. Social security systems, albeit important, did not achieve all expected goals, particularly in terms of narrowing social disparities and covering the most vulnerable groups. The main reason behind this is that informal workers and female workers in agriculture are still beyond coverage. In 2010, informal labour, which is defined as non-registered work with the social security institution, exceeded by 30 per cent the non-agriculture labour in the private sector.<sup>208</sup>

In view of the shift in the demographic structure, social security systems, particularly pension and health insurance schemes, are facing huge financial hurdles. For instance, the budget deficit of the National Pension and Social Contingency Fund reached 196,259 million dinars in 2013 and grew to 305,632 million dinars in 2014. In 2015, this deficit is expected to reach 395,783 million dinars.

An increased deficit threatens the sustainability and ability of those systems to meet their obligations towards citizens. In this regard, the Government suggested a reform package, which mainly included raising the retirement age from 60 to 62 years. Despite the Tunisian General Labour Union's objection, the Council of Ministers approved a draft law, on 14 July 2015,

to extend the retirement age in the public sector to 65 years on an optional basis. This draft law aims to narrow the growing fiscal deficit pending the inclusive review of the social security system. This procedure is considered as a middle **solution between the Government's suggestion** to extend the retirement age by two years for all on a compulsory basis and maintaining the status quo pending the approval of a comprehensive reform package. The Tunisian General Labour Union is calling for a comprehensive reform and for new financial resources other than the contributions of insured workers and employers. Until the law is enforced following its ratification by the Assembly of the Representatives of the People, to assess the extent to its approval and, therefore, its role in enhancing the financial status of the pension scheme, the draft law was subject to many criticisms. Several experts considered that raising the retirement age was not the optimal solution to the crisis but would rather exacerbate unemployment and create an array of problems related to job hierarchy and promotion.<sup>209</sup>

In the framework of consultations about reforming the social protection system, a national seminar was held on 11 and 12 September 2014. It was attended by representatives of the Tunisian General Labour Union, the Tunisian Confederation of Industry, Trade and Handicrafts, the International Labour Organization (ILO), the **United Nations Children's Fund (UNICEF)**, and the World Bank. At the end of the seminar, a set of suggestions and recommendations were agreed and called to:

- Reforming the social protection system as part of consultations and within an integrated strategy for economic and social development in line with the Constitution, the social contract, and the ILO standards while adopting a human rights-based approach that is open to successful experiences;

- Conducting reforms in parallel with other issues covered by the social dialogue, such as promoting regional development and enhancing employment and labour relations;
- Adopting a participatory approach in which negotiations are not solely confined to traditional social actors but also include the largest segments of civil society;
- Defining a minimum threshold for social protection in line with the ILO directives so as to secure minimum decent living for all and provide social and health coverage throughout life stages;
- Expediting structural and comprehensive reforms of social security systems to ensure their sustainability and ability to fulfil their obligations.

With regard to persons with special needs, the Council of Ministers ratified, on 6 May 2015, a draft law aimed at increasing the number of jobs for the disabled from 1 to 2 per cent in public institutions and centres. Pursuant to this draft law, at least one position shall be dedicated to the disabled persons by public and private institutions employing between 50 and 99 workers, and 2 per cent by companies having a personnel size of 100 and above.

### 3. National Council of Social Dialogue

On 3 June 2015, the Council of Ministers ratified a draft law to establish the National Council of Social Dialogue and referred it to the Assembly of the Representatives of the People. This Council resembles to a large extent the pre-uprisings Economic and Social Council in terms of its mandate and composition. Nonetheless, the Economic and Social Council saw the light pursuant to the old constitution, while the Council of Social Dialogue was established by virtue of a legal text. According the draft law, the Council shall be mandated with organizing

social dialogue around the social contract and its management and following up on social and economic topics of interest among social stakeholders.

### Box 3. The mining basin and its direct and indirect impact on achieving social justice

The mining basin is located at Gafsa, southwest of Tunisia. It is a phosphate-rich basin where the extraction industry is the most important economic activity and source of employment in the region. Gafsa is not the only province relying on this activity. Extraction industries benefit other neighbouring provinces as well, such as Gabes and Sfax where chemical industries are based on phosphate transformation.

Gafsa Phosphate Company (GPC) is specialized in phosphate extraction. The region saw an uprising in 2008 owing to an alleged manipulation of the outcomes of a hiring contest at GPC. Post-2010 protests of the unemployed increased, calling for employment at GPC or its subsidiary companies and doubting contest outcomes. Consequently, GPC activity largely suffered as its phosphate production fell from 8 million tons in 2010 to an annual average of 2.5 million tons over the past four years. Since April 2015, phosphate extraction completely ceased for around two months due to a protest organized by the unemployed.

This situation yielded a detrimental impact at several levels:

GPC income considerably plummeted with losses estimated at 2,000 million Dinars (equivalent of over \$1 million); global market losses were incurred as the company's traditional customers moved to other suppliers; the State income declined, especially that GPC is a public institution, which feeds the State budget through its profits; GPC auxiliary services narrowed, namely railway or truck transportation of extracted phosphate, small and medium-sized enterprises, and trade activities; chemical industries using phosphate as a raw material considerably curtailed their production owing to a shortage of supply.

**The Council's main tasks include holding an** effective tripartite social dialogue on issues of common interest, creating a social climate conducive for investment with decent work conditions; monitoring the social climate and observance of social legislations; suggesting implementation mechanisms for the social contract principles and directives; expressing feedback and conducting studies on draft reforms submitted by the Government in the economic and social areas; developing a framework for collective negotiations; reviewing international conventions related to international labour standards prior to ratification thereof and engaging in the formulation of reports submitted by the Government to the ILO.

The Council shall also give advice on draft laws, labour-related orders, labour relations, vocational training, social protection, economic and social development plans, and economic budgets.

At the organizational level, the plenary assembly represents the backbone of the Council and looks into all the aforementioned issues. An office affiliated to the plenary shall be created to prepare and monitor the plenary meetings. The plenary assembly shall be composed of an equal number of members representing the Government and **the largest workers' unions and employers' organizations in addition to members** appointed in their personal capacity and experts in legal, social, and economic fields. These members shall be appointed as per a governmental order upon the suggestion of the concerned structures and organizations. The plenary assembly shall set up sectoral committees to work on the various issues covered **by the Council's mandate.**

In view of engaging Tunisian diaspora in devising national policies and programmes, the Council of Ministers ratified, on 14 July 2015, a draft law on the creation of a National council for Tunisians

Abroad. This Council shall submit to the Government proposals on legislative measures and arrangements that strengthen the role of Tunisians abroad in achieving national inclusive development and allow them to express their opinions on international conventions and treaties concerning them and on the national policy, which helps to benefit from their expertise and competences. Moreover, the Council shall suggest mechanisms that consolidate the ties of Tunisians abroad with their homeland and preserve their Tunisian identity. The Council shall be composed of parliament members representing Tunisians abroad and representatives of national and civil society organizations that are active in the migration field. It shall be chaired by a representative of associations of Tunisians living abroad.

In conclusion, there is no doubt that the principles and directives of the social contract play an essential role in implementing the reforms sought after by the Tunisian people. However, they have not yet been translated into practice. Up to the present moment, the practical aspect has been limited to labour-related consultations and seminars, educational or health reforms, or social protection. Yet, no progress was achieved in devising equitable development projects aimed at narrowing inter-regional disparities. The legislation on establishing the National Council of Social Dialogue has not yet been promulgated owing to disputes among stakeholders who are divided into two groups: One is calling for the creation of the council pursuant to the Constitution or at least by virtue of a law, and the other simply requests to establish it as per an order.

## **D. Countering terrorism "first and foremost"?**

Post-uprisings Tunisia witnessed several terrorist attacks, the most recent of which being Bardo

museum attack on 18 March 2015 in Tunis and Sousse attack in June 2015. As a result, the President of the Republic declared a state of emergency and believed that the country was in a particular state of war as terrorism aims to undermine the State system and institutions and attack social values... Consequently, the executive authority, represented by the Minister of Interior and the Governor, acquired significant prerogatives to impose curfews, house arrests, and searches of residential places without a judicial injunction.<sup>210</sup> This situation impeded legislative reforms, which could possibly contradict the law on terrorism and its exceptional provisions. On 22 May 2015, the Government withdrew the draft law No. 13 of 2013 related to revising some provisions of the Code of Criminal Procedure. On 2 June 2015, it withdrew the draft organic law No. 55/2014 on the right of access to information, which is a cornerstone for achieving social justice. These **actions triggered civil society's objections**, particularly the executive office of the Tunisian General Labour Union that brandished its support to all counter-terrorism actions but viewed the declared state of emergency as premature in view of the long-term nature of the war on terrorism and of confrontations with the insidious and perfidious terrorist gangs that cannot be curbed by declaring a state of emergency.<sup>211</sup>

The Assembly of the Representatives of the People ratified the draft organic law on combating terrorism and money laundering.<sup>212</sup> While this law was welcomed by many, it was subject to the objection of some civil society organizations and political parties, which viewed it as a threat to public freedoms. The Government gave a top priority to this law to the detriment of economic and social matters.<sup>213</sup> Several criticisms were addressed to this law for various reasons, namely that it provides for the death penalty and gives a

too vague definition of terrorism. Hence, it poses a threat to social movements and to groups demanding change and, in this case, any protest movement could be qualified as terrorist. Some international organizations viewed this law as a real threat to rights and freedoms in Tunisia, and considered that it included several violations of international human rights standards, thus marking a step back compared to the Law of 2003.

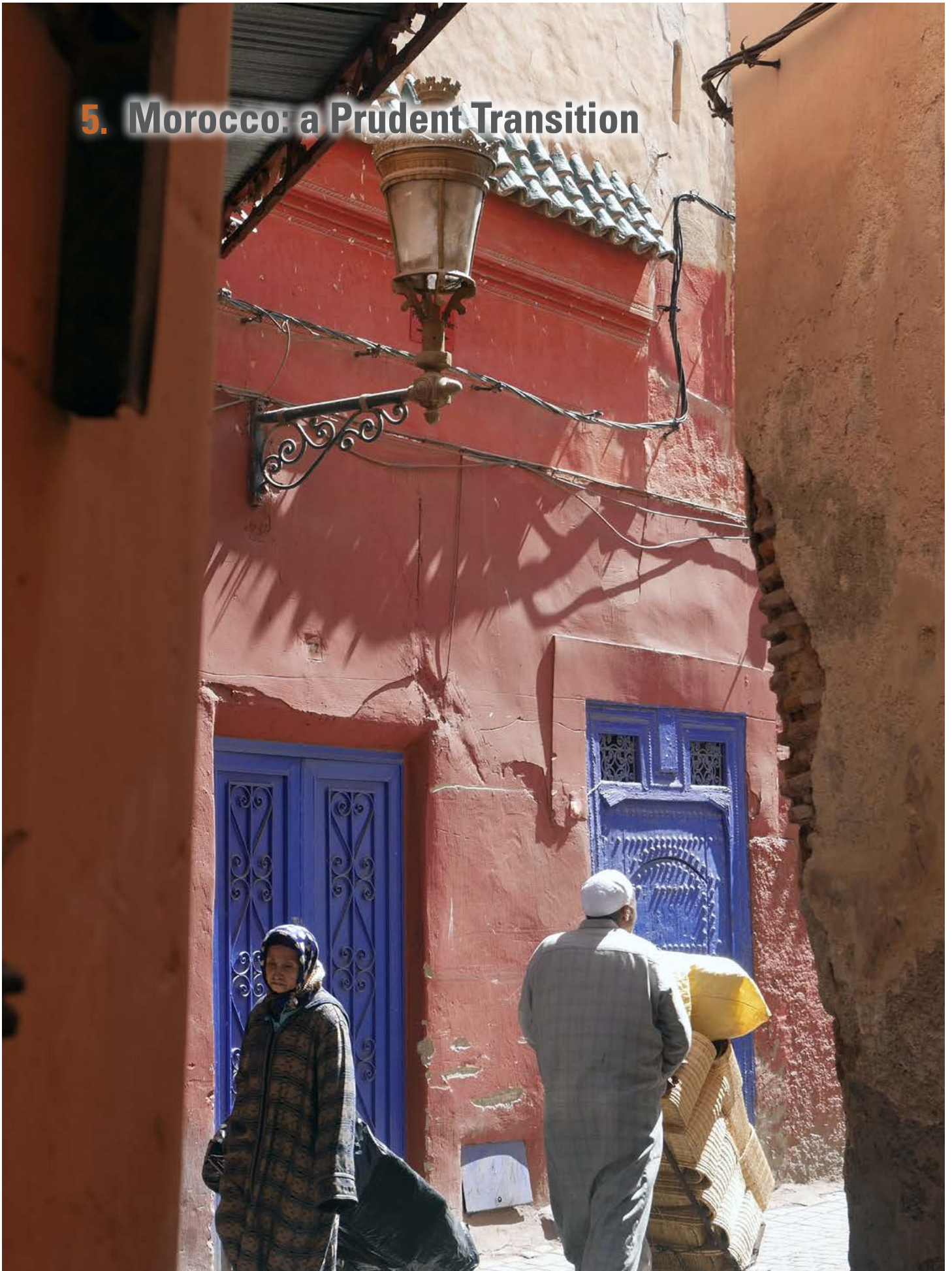
Many deputies objected to that law, which they considered as a potential mechanism to stifle freedoms. They believed that it provided a security-based approach to terrorism, knowing that terrorism cannot be countered by shutting down mosques but by achieving social justice and promoting the independence of the judiciary.<sup>214</sup>

In conclusion, the present chapter covered the constitutional process in Tunisia. It shed light on the remarkable progress achieved in this regard and in the formulation and adoption of laws **compared to previous chapters of Tunisia's** history. It also highlighted the path leading to social justice with a focus on existing opportunities and challenges. Moreover, this chapter tackled economic hurdles facing Tunisia and their adverse impact on the Tunisian society. The security threat is undoubtedly one of the key impediments facing the State. Yet, countering terrorism is not restricted to security measures. It rather requires other highly important factors, such as achieving economic development, upholding the principles of social and economic justice, and consolidating political stability, which will inevitably pave the way for security stability in the country. Following a successful and peaceful constitutional transition facilitated by a combination of factors, namely the role of the Tunisian society, strenuous efforts should be deployed to achieve economic reform in line with social justice principles.





## 5. Morocco: a Prudent Transition







Violations of human rights constitute the clearest early  
warning signs of instability

*Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights*

## 5. Morocco: a Prudent Transition

The new constitution was adopted in Morocco as a result of uprisings and in response to popular demands of political and economic reforms. The present chapter covers the status of social justice in the new constitution of 2011. It discusses prospects of converting the new constitution into laws and public policies, using the new constitutional prerogatives conveyed to the King and opportunities offered to citizens to submit petitions facilitating their participation in policymaking and to make direct contributions to broaden the scope of economic and social reform. The present chapter also sets out key economic and social programmes yielded by constitutional reforms in addition to the law on expanded regionalization, viewed as one of the most important steps towards a balanced interregional development, and eventually social and economic justice.

### A. New constitution and relevant reforms

Social justice stood at the forefront of **Morocco's 2011 constitution. In his speech** delivered upon the adoption of the new constitution on 17 June 2011, the King stated that the new constitution represented a historic juncture in building the State of justice and democratic institutions, and upholding the principles of good governance, decent citizenship, and social justice.<sup>215</sup> Pursuant to the constitution, social justice is an essential goal for Morocco, which is seeking constitutive reforms. Social justice is a core component **within the process of "consolidation and of**

reinforcement of the institutions of a modern **State"**,<sup>216</sup> as stipulated in the Preamble, which is an integral part of the constitution. Pursuant to **the constitution, the Kingdom is "committed" to subscribe to the "principles, rights and obligations" enounced in the respective charters and conventions of international organizations, and "affirms its attachment to the Rights of Man such as they are universally recognized".**

In many of its articles, the constitution linked the principle of rights to the opportunities of achieving social justice. Article 32 provides that the State shall endeavour to secure legal, social, and economic protection of the family, which is the basic cell of society. Article 33 recognizes that the State shall take the appropriate measures to expand and mainstream youth participation in the social, economic, cultural, and political development of the country.

**Article 35 provides for the State's role both in** upholding the freedom of entrepreneurship and free competition and in achieving sustainable human development to strengthen social justice and preserve national natural resources and rights of future generations. The State shall guarantee equal opportunities for all and special care for the disadvantaged social groups. As stipulated by the new constitution, free economy should not contradict with the social justice principles.

Article 36 introduces several positive inputs, **namely that "infractions relative to conflicts of interest, to insider crimes, and all infractions of financial order are sanctioned by the law".** This

article provides for direct protection from the abuse of power and privilege, and from monopoly, hegemony, and all the other practices contrary to the principles of free and legitimate competition in economic relations. In the context of protection, the same article provides for the creation of a National Authority for Integrity, Prevention and Fight against corruption.

Constitutional provisions are sometimes viewed as timid when it comes to economic rights, as these are only covered by ten articles out of 180. Article 35, for instance, provides for property right but the law restricts its scope and practice according to economic and social development necessities. Expropriation may only apply in such cases and procedures as stipulated by the law.

Article 35 provides that State shall uphold the freedom of entrepreneurship and free competition but emphasizes that the State shall seek to achieve sustainable human development to strengthen social justice and preserve national natural resources and rights of future generations. This article concludes with an important provision, namely that **social justice cornerstone lies in the State's efforts to ensure equal opportunities for all and special care for the disadvantaged social groups.**

In spite of the **State's commitment to achieve sustainable development**, it shall be incumbent upon society to put it into practice as stipulated by article 40. The constitution provides that all shall bear, in solidarity and proportionally to their means, the expenses required for development and those resulting from calamities and natural disasters.

**In terms of defending workers' rights, article 8** of the constitution provides for the right of **workers' trade unions, professional chambers,**

**and employers' organizations to defend and advance the social and economic rights and interests of groups they represent.** These organizations shall be established and shall freely undertake their activities in compliance with the constitution and law. Article 29 guarantees the freedoms of assembly, peaceful demonstration, and association. It consecrates the right to trade union membership and political affiliation, provided that the relevant regulatory law later sets out the terms and conditions of exercising these rights.

The second part of the constitution, titled **"public rights and freedoms", states a set of fundamental rights that contribute to consolidating social and economic justice.** These include, as stipulated by article 19, gender equality and the right of men and women to equally enjoy civil, political, economic, social, cultural, and environmental rights and freedoms. The same article provides that the State shall seek to achieve parity between men and women. An Authority for Parity and the Fight against all Forms of Discrimination shall be created to that end. Yet, the State has shown no explicit commitment to work in this direction. The constitution also provides for several articles supporting gender equality, such as article 30 that consecrates the right of every male and female citizen to vote, run for elections, if they have the legal adult age, and enjoy civil and political rights. The law prescribes some requirements that help to promote equal access of women and men to elected positions.

Rights directly pertaining to social and economic justice, such as employment and health, are covered by a single and inclusive article, namely article 31, which provides for the expected positive role of the State in realizing these rights. Along with public institutions and local communities, the State shall mobilize all

available means to allow male and female citizens to equally enjoy the right to:

- Medical treatment and healthcare;
- Social protection, health coverage, mutual solidarity funds or State-regulated funds;
- Access modern and quality education;
- Be educated on clinging to the Moroccan identity and deeply-entrenched national values;
- Vocational training as well as physical and technical education;
- Decent housing;
- Access work opportunities and receive the support of public authorities in search for employment or self-employment;
- Access public office positions on a merit basis;
- Access water and live in an healthy environment;
- Sustainable development.

This article includes several positive provisions as it does not generally stipulate public rights but sets them out in detail, from health to water access. In this respect, rights are all gathered under a single article instead of being scattered under various articles.

The most important segment of the constitution, which is individually tackled by the present part, is titled “Regions and other territorial collectivities”, covering articles 135 to 146. Compared to former constitutions of Morocco, the 2011 constitution recognizes expanded regionalization in accordance with the King’s speech that stressed the need to strengthen regionalization along with national and territorial unity, requirements of equilibrium as well as national and inter-regional solidarity. Article 1 of the constitution provides that the territorial organization of the Kingdom is decentralized and founded on advanced regionalization.

Moreover, several articles of the constitution provided for economic and social reform principles, which are mainly covered by Part **XII, titled “Good Governance”**. This part includes several articles highlighting general principles, namely that public services shall be subject to quality, transparency, accountability, and responsibility standards, and to democratic principles and values enshrined by the constitution under article 155. Furthermore, the constitution provides for establishing authorities and institutions, whose powers shall be defined by the law, with the aim of protecting rights and freedoms and promoting good governance, sustainable human development, participatory democracy, and human rights. Article 20 refers to the right to life as the first right of every human being, and the law protects this right.

Pursuant to the social justice principle, the Economic, Social and Environmental Council was set up by virtue of articles 151, 152 and 153 of the Moroccan constitution. The relevant regulatory law shall define terms and conditions for establishing councils as well as their mandate.

With regard to cultural rights, the constitution referred to the Amazigh language (Tamazight) as an official language alongside Arabic. Until the present date, the State has not promulgated any law regulating the use of this language and has not posted it among languages on the official parliament website.

In a nutshell, the new constitution introduced several principles relating to human rights as well as political, economic, and social rights. However, these rights are yet to be implemented and remain subject to the legal system especially that many rights, under the constitution, are still contingent upon the promulgation of relevant regulatory laws. The

1996 constitution provided for the respect of human rights. Yet, the State has endorsed many laws that contradict with public freedoms, such as the law on political parties and the law on combating terrorism.<sup>217</sup> It is highly imperative to look into mechanisms that contribute to implementing the constitution and achieving social justice.

## B. Ownership and participation: components of political reform

The Moroccan constitution consecrated an array of social, economic, and cultural rights. It is necessary to analyse mechanisms that directly or indirectly contribute to translating constitutional articles into laws, programmes, and public policies implemented by successive governments. The present part tackles two key elements that help to achieve this goal. The first is related to the King's powers and role in devising public strategies and to separation of powers; and the second pertains to the importance of extended participation of society by exploring possibilities for citizens to submit petitions.

### Separation of powers

Understanding the powers of developing public policies and programmes requires casting light on the separation of powers between the King and the council of ministers in Morocco. Article 49 of the constitution addresses the role of the council of ministers in debating various issues and texts that fall under its powers, such as identifying the State policy strategies and approving draft regulatory laws. It is crystal clear that the government is the decision-maker in both areas. Yet, the government is chaired by the King and the main themes of the State policy strategies become more subject to the King's policies than aligned with the

government's or elected parliament's policies. Hence, converting the constitution into regulatory laws and adopting economic strategies become largely affected by the King's political orientations. Under the new constitution, the King remains the mainstay of political, constitutional, economic, and social systems.

Article 41 of the constitution provides that the King is the Emir of the Believers and protector of Muslims and Islam. Article 42 sets out the King's powers. He is the head and supreme representative of the State, symbol of the nation's unity, guarantor of the State's sustainability, and the supreme arbitrator among State institutions. He strives to observe the constitution, maintain the good modus operandi of constitutional institutions, preserve democratic choice, rights and freedoms of male and female citizens and communities, and respect the Kingdom's international undertakings. When this article is construed, the King is perceived by some as explicitly standing higher than all constitutional institutions, notably the Government. This contradicts with article I of the constitution, which provides that Morocco's regime is a constitutional, democratic, parliamentary, and social monarchy. According to the same article, the Kingdom's constitutional system is based on the separation, balance, and cooperation of powers and on democracy, citizenship, and collaboration. It is also grounded in the principles of good governance and accountability.

In terms of ambiguity in the separation of powers, article 47 expressly provides that the King shall appoint the head of government from within the political party that has won parliamentary elections and on the basis of electoral results. Cabinet members shall be appointed as per the prime minister's

suggestions. Therefore, the Government has some form of autonomy compared to former constitutions. Article 89, for instance, expressly provides that the Government shall exercise the executive power and, more precisely, that the government, under the authority of the prime minister, shall implement the governmental platform and ensure law enforcement as the administration remains at its service. The Government shall also supervise and be entrusted with public institutions and enterprises. It is obvious that the Government operates under the authority of the prime minister. Nonetheless, the King still retains important powers that influence the Government's platform and public strategies. Article 47 provides that the King, on his own initiative and after consulting with the head of government, may dismiss one or more members of the Government. The King may also decide to terminate the functions of a minister who submits certain projects that do not appeal to the King. Moreover, the King retains powers that contradict with the principle of independence and separation of powers. Article 104 provides that the head of government may dissolve the House of Representatives, after consulting the King, the head of the House of Representatives, and the president of the Constitutional Court by virtue of a decree issued at a ministerial council...In other words, the King remains a decision-maker when it comes to the power of the head of government to dissolve the House of Representatives. Therefore, the 2011 constitution has strengthened the independence of the Government but did not turn it into a completely independent executive power.<sup>218</sup>

Focusing on the King's powers in this context does not imply assessing the democratic aspect of the constitutional process or system in Morocco. It rather sheds light on the significant role still played by the King in implementing the

constitution and shaping public policies, including social justice. The King still controls the constitution implementation in detail.

In addition to the King's vital role in paving the way for the achievement of social justice, the role of civil society should be addressed.

The constitution dedicated articles to civil society freedom and role. Article 12 provides that associations concerned with public affairs and non-governmental organizations shall contribute, in the framework of participatory democracy, to the development, implementation, and evaluation of decisions and projects at elected institutions and public authorities. These institutions and authorities should organize this participation in line with the terms and conditions stipulated by law. Hence, the constitution provided for an advanced role of civil society organizations and protected their right to participate in policymaking. This right was consecrated by article 13, which expressly provided that public authorities shall create consultation committees to engage various social actors in public policy formulation, implementation, and evaluation. The constitution also stipulated that female and male citizens shall have the possibility and the right to submit petitions to public authorities. A regulatory law shall define the terms and conditions to exercise this right, pursuant to article 16. It is worth noting that ordinary female and male citizens do not need organizational and structural frameworks to directly access constitutional institutions. The constitution upgraded the importance of civil society as it also allowed it to directly suggest various projects to elected authorities.

In 2015, the House of Representatives ratified two draft regulatory laws submitted by the Minister for Relations with Parliament and Civil Society, namely: The draft regulatory



law No. 14-44, which sets out the terms and conditions of exercising the right to submit petitions to public authorities, and draft regulatory law No. 14-64, specifying the terms and conditions of exercising the right to submit legislative motions. These texts aim to implement article 15 of the constitution, which provides for the right of female and male citizens to submit petitions to public authorities and article 14, which provides for their right to submit legislative motions according to the terms and conditions stipulated by a regulatory law.

To undertake the aforementioned actions and eventually promote effective and real participation of civil society in the legislative system, it is essential to overcome two key phases, namely: the promulgation of a regular law specifying the conditions and mechanisms of civil society's participation, which was ratified by the Council of Ministers in April 2015; and formulation of the said mechanisms in the by-laws of elected institutions, decrees, and decisions regulating the work of public institutions.<sup>219</sup> In this regard, the Government relied on the draft law on the legal grounds of the right to petition.

For both legal texts, the Commission on National Dialogue on Civil Society and New Constitutional Roles was established to explore ways of implementing constitutional articles related to civil society. A committee was formed to lead the dialogue under the umbrella of the Ministry for Relations with Parliament and Civil Society. It worked from 13 March 2013 to 13 March 2014 and held a series of consultation meetings and seminars that were attended by around 10,000 associations and various national public authorities and international

organizations concerned with expanding, regulating, and restoring civic engagement.

This committee was opposed by various **associations, which viewed it as a Government's** intervention in the appointment of the committee members overseeing dialogue and an attempt to exclude many other associations, notably **women's and Amazigh associations. Those who** boycotted the committee stated that it had nothing to do with a dialogue on civil society and its relevant stakes as it represented governmental sectors, experts, and think tanks compared to a symbolic representation of national and regional associations that submitted accumulated matters to the National Dialogue for consideration and analysis.<sup>220</sup> The committee was not only criticized for its representation mechanisms and modus operandi, it was also opposed by others who believed that the key reform for the advancement of civil society in Morocco was to amend the funding system of civil society organizations. According to them, this system relies on ties with political parties and is controlled by the Government, which creates pro-government associations in favour of its political agenda.

The proposal related to the legal grounds of the right to petition sets out some relevant conditions, namely that the petition should be enclosed with a list of signatures of at least 25,000 petitioners affiliated to no less than one third of regions, including citizens or foreigners legally residing on the Moroccan territory. Signatures shall be legalized by the competent administrative authority. This proposal raised several criticisms as it is very difficult to mobilize this huge number of female and male citizens, which is not even attained by the constituencies of most Moroccan political parties.

## C. Implementing the constitution and governmental policies

The following themes will be tackled in the light of principles and rights enshrined by the 2011 new constitution, particularly articles 31 and 34 thereof. Article 31 provides that the State, public institutions, and territorial collectivities shall ensure that all citizens equally benefit from healthcare, social protection, medical coverage, and support when seeking new employment or self-employment opportunities. Article 34 provides for devising policies aimed at addressing the vulnerable conditions of women, mothers, children, and elderly; and rehabilitating and integrating the disabled persons into social and civil life.

Even though Morocco made strides in achieving the millennium goals at the social level, the achieved outcomes still need to be improved. Large segments of the Moroccan society still need special care in the areas of education, literacy, healthcare, poverty eradication, or gender equality. Furthermore, Morocco still ranked 129th on the Human Development Index of 2013 while Libya ranked 55th, Tunisia 90th, Algeria 93rd, and Egypt 110th. It still has a long road ahead to achieve human development and social justice that meet the country's potential and economic growth.

The present part will analyse three key areas to achieve social justice and progress, namely: the National Human Development Initiative, health coverage, and employment advancement.

### 1. National Human Development Initiative

The National Human Development Initiative (NHDI), launched since 2005, aims to combat poverty, vulnerability, and social exclusion through special programmes targeting remote and poor areas. It encompasses a set of projects

aimed at supporting infrastructure, developing human capacities, and promoting income-generating activities.

According to those in charge of it, the NHDI relies on a set of principles, such as engaging the concerned citizens in the identification and fulfilment of requirements and promoting decentralization, good government, monitoring, and oversight. The NHDI programmes were completed in two phases, the first from 2005 to 2010 and the second from 2011 to 2015. It contains five programmes, each targeting a group of the Moroccan society.

#### (a) Programme on combating poverty in rural areas

This programme aims to improve living conditions in villages where poverty ratio equals or exceeds 14 per cent. It includes:

- Enhancing access to basic social services;
- Strengthening gender equality;
- Promoting social, cultural, and sports activities;
- Promoting income-generating activities;
- Strengthening local sustainable development;
- Consolidating local governance.

#### (b) Programme on combating social exclusion in urban areas

This programme aims to reduce social exclusion manifestations in cities and improve living conditions of the population. It includes the same interventions planned for rural areas.

In the first phase, this programme targeted cities with a population size of 100,000 or more. It expanded in the second phase and covered cities with a population size of 20,000 or more. Several criteria are considered when selecting

targeted neighbourhoods, namely unemployment ratio, poverty ratio, targeted population size, youth rehabilitation, exclusion of women and youth, and opportunities of vocational inclusion and training.

#### (c) Programme on combating vulnerability

This programme aims to upgrade the living conditions of vulnerable persons by improving social and medical care, facilitating family and social re-integration, upgrading the quality of services provided by associations and public institutions, supporting the capacity and staff of competent institutions, and devising risk prevention activities and programmes. This programme particularly targets homeless women and youth, street children, abandoned children, the needy former prisoners, the elderly, the disabled, beggars, patients with Human Immunodeficiency Virus (HIV), and drug addicts.

#### (d) Horizontal programme

It contains two components. The first pertains to the NHD implementation in non-targeted areas by supporting activities with strong impact on human development and enabling all areas to engage in the NHD process.

The second component involves supporting income-generating activities by strengthening the inclusion of the poor and needy into economic and social development and promoting local products, irrespective of NHD geographical scope. Support is reflected in promoting the creation of small enterprises generating income and labour opportunities, upgrading self-qualifications, encouraging entrepreneurship and collective innovation, and specializing in income-generating projects. This programme targets disadvantaged persons,

including women and the marginalized, and persons having rare or endangered professions and handicrafts. Priority is given to enterprise owners and those regulated within associations, cooperatives, or profit-based groups.

#### (e) Territorial upgrading programme

It targets residents of rural or hardly accessed areas and aims to fulfil their needs in terms health services, power supply, drinking water, and road construction in some of these areas. It also aims to reduce disparities in the access to basic infrastructure, utilities, and services.

According to the NHD website,<sup>221</sup> the outcomes achieved from 2005 to 2012 were as follows:

- Intervention in 702 rural areas;
- Intervention in 532 urban areas;
- Intervention benefiting 10 vulnerable groups covered by the Risk Prevention Programme, particularly homeless youth, street children, and the disadvantaged elderly as well as infrastructure, health, education, drinking water supply, and power supply projects in 22 provinces.

Beneficiaries of various programmes reached 7,900,000 persons, about one quarter of **Morocco's population, in the framework of** 29,000 projects, of which 5,550 projects were income-generating and involved the participation of 9,500 associations or cooperatives.

Funds of 10 billion Moroccan dirhams (or approximately one billion US dollars) were earmarked for the first phase (2006-2010), and 17 billion Moroccan dirhams (or approximately 1.7 billion US dollars) for the second phase (2011-2015). It is worth noting that the National Observatory for Human Development conducted a preliminary assessment of the first phase of NHD (2005-2010). In 2013, it issued a

report<sup>222</sup> showing that the NHD technical and financial outcomes were generally satisfactory as 23,000 projects were completed, of which 84 per cent were exploited, completed, or nearing completion. They were allocated 14.6 billion dirhams or the equivalent of 0.1 per cent of GDP per annum.

Hence, the National Human Development Initiative represents a solid foundation to achieve a multi-faceted social justice. It stands as a model to follow for other countries that have put human advancement at the forefront of their agenda. The significant and unique value of this experience is illustrated by several factors.

- It is inclusive of broad segments of poor and vulnerable population in rural and urban areas;
- Its interventions are diversified and, therefore, fulfil the needs of targeted groups by providing aid or assisting in securing livelihoods, developing the infrastructure of education, health, drinking water and power supply, or rehabilitating remote areas in addition to other interventions setting the stage for social welfare and justice;
- It promotes decentralized decision-making and implementation in various projects;
- It engages civil society, such as cooperatives and associations, in programme development and implementation to fulfil the real needs of targeted groups, away from decisions adopted by senior officials, which are often irrelevant and ineffective.

Yet, the positive outcomes of this experience fall short of assessing it as a whole in the absence of accurate and timely statistics on the improvement of social indicators among the targeted groups and regions, such as poverty, unemployment or school dropout ratios.

## 2. Healthcare coverage

Morocco achieved remarkable progress in healthcare with positive improvement in all health indicators. The compulsory health insurance system contributed to enhancing the medical treatment coverage or a part thereof through mutual funds (for those benefiting from social security systems pursuant to the law of 3 October 2002 on the promulgation of the basic health coverage code that entered into force in 2006 and the medical assistance scheme, which was established by the said law and was expanded as of 2008 to cover around 8.5 million disadvantaged persons). Yet, outcomes remain insufficient compared to the situation of neighbouring countries (table 9).

Recognizing the importance of securing health services to all citizens as a humanitarian and constitutional right, the Economic, Social and Environmental Council of Morocco prepared, in 2013 at the Government's request, a report on mainstreaming basic health services. This issue is highlighted as services are perceived to be the first line of treatment for all citizens, particularly the vulnerable.

The report submitted by the Council provides a comprehensive assessment of basic health services. It revealed that the achieved results achieved and improved health indicators, notably the increased life expectancy at birth and reduced birth and child mortality rates, remained inadequate. It stressed that the sector suffered from several shortcomings, such as the lack of coordination and communication between the basic health network and hospitals. Moreover, the health map should be activated so as to align health structures with the available material and human needs and resources.

**Table 9. Some health indicators in Morocco compared to other countries**

	Morocco		Tunisia	Algeria	Libya	Egypt
	1990	2013	(2013)	(2013)	(2013)	(2013)
Life expectancy at birth (years)	64	71	76	72	75	71
Healthy life expectancy (years)	-	61	66	62	64	62
Under-five mortality rate (per thousand)	80,7	30,4	15,2	25,2	14,5	21,8

Source: World Health Organization (WHO), World Health Statistics 2015.

**Table 10. Health expenditure in Morocco compared to other countries**

	Morocco		Tunisia	Algeria	Libya	Egypt
	2000	2012	(2012)	(2012)	(2012)	(2012)
Health expenditure to GDP ratio (per cent)	4.2	6.1	7	6	4.3	4.9
Public health expenditure ratio (per cent)	25.4	35.5	41	73.5	70.3	39
Private health expenditure ratio (per cent)	70.6	64.5	59	26.5	29.7	61
Social security expenditure to public expenditure ratio (per cent)	0	24.5	56.3	29.1	0	20.8
Per capita health expenditure (in dollar versus purchase value)	149	430	748	781	824	208

Source: WHO, World Health Statistics 2015.

Based on this assessment, the Economic, Social and Environmental Council submitted a set of recommendations to enhance access to basic health services. This aimed to consolidate the values of equity, solidarity, and social justice, and to achieve the “health for all” objective.

This set includes generic recommendations focusing on developing a national health policy, as part of a national human development policy, which first targets the poor and remote areas, including the disadvantaged and vulnerable population; achieving administrative decentralization; and developing a strategy for public-private partnership and integration.

In parallel with the report of the Economic, Social and Environmental Council, the Moroccan Ministry of Health issued, in cooperation with WHO and the European Union, a white book on reforming the health system by

establishing an advance health scheme that both responds to citizens’ health needs and expectations and provides inclusive coverage. This paper was developed following extended consultations called “expectations” to explore the expectations of citizens and health stakeholders. This process involved the participation of all citizens, civil society, health professionals, academics, and experts, and made use of various means of communication, such as radio spots, public meetings, Facebook page, and press articles.

The suggested reform strategy focused on two themes, namely:

- Advancing basic health requirements to protect citizens from any threat to their health;
- Ensuring inclusive coverage taking into account proximity, quality, and financial protection.

### 3. Advancement of employment

Advancing employment, particularly among youth and holders of higher education degrees, represents the greatest challenge for the Arab region as it contributes to social stability. Unemployment, particularly among youth and degree holders, has always been a catalyst of protests and a threat to social peace and political stability. In this respect, Morocco achieved relatively good results compared to North African countries as unemployment remained between 8 and 10 per cent, the lowest in the region (table 11). These results were driven by political and social stability in Morocco and by economic growth rates achieved in spite of global economic hurdles, particularly economic recession in European countries, which are the most important partners of the Arab Maghreb countries.

Yet, this gross rate conceals disparities on the basis of geographical location, gender, and educational attainment. Contrary to common perception, unemployment prevails in cities where it reaches 14.4 per cent compared to 4 per cent in rural areas.<sup>223</sup> Two key factors lie behind this reality, namely the agriculture-dominated economy in rural areas, which employs half of the labour force, and rural migration. Despite the decline of rural unemployment, poverty rate remained high in rural areas where three quarters of the poor lived, according to a study conducted **in 2006 and titled "50 Years of Human Development and Perspectives to 2025"**. This paradox can only be explained by the fact that rural employment does not respond to decent work standards and does not provide sufficient income to draw people out of poverty.<sup>224</sup> In the context of protecting the unemployed, a system was put in place to compensate for employment losses as per the social security legislation.

This compensation can only be provided if unemployment is involuntary and if the unemployed has been benefiting from social security for no less than 780 days over the last three years prior to employment loss, including 260 days during the last year. Furthermore, the beneficiary should be capable of working and registered as a job seeker with the National Agency for the Promotion of Employment and Skills in order to participate in training and rehabilitation programmes and be re-integrated into the labour market. Compensation amounts to 70 per cent of the average monthly wage that the employee was entitled to over the last thirty-six months prior to employment loss. This amount should not exceed the legal minimum wage and should be paid for six months. 0.57 per cent of this compensation is funded by wages, including 0.38 per cent by the employer and 0.19 per cent by the employee. This system does not include the unemployed seeking employment for the first time, owing to their considerable number and to the high cost of providing them unemployment grants. This restriction does not only apply to Morocco but also prevails in all countries granting compensation for loss of employment, such as Algeria, Egypt, and Tunisia.

Multiple initiatives were taken at the social level to care for the poor and those vulnerable to poverty, and programmes targeting their needs were intensified.

The Social Cohesion Fund was established pursuant to the 2012 Finance Law and was completed pursuant to the 2014 Finance Law as a mechanism to support persons with disabilities. The Fund's interventions cover four areas, namely:

1. Improving school enrolment conditions for children with disabilities, including three programmes targeting disadvantaged children with disabilities:
  - A programme of educational, rehabilitation, training, and occupational therapy services within specialized institutions;
  - A programme of educational, rehabilitation, training, and occupational therapy services in support of integration into public education institutions;
  - A programme of complementary occupational therapy services within specialized institutions including special education, paramedical treatments, orthophony, and vocational and psychological rehabilitation.
2. Acquiring special equipment and other forms of technical assistance that contribute to the prevention or mitigation of disability and provide autonomy for the disabled in economic and social life. This programmes benefits all persons covered by the health coverage scheme and the disadvantaged.
3. Promoting vocational inclusion and income-generating activities, both through individual or collective initiatives (such as entrepreneurship, cooperative, or association) to integrate persons with disabilities into economic life and upgrade their skills and living standards.
4. Contributing to the creation and good functioning of reception centres by renovating, repairing, maintaining, expanding, or equipping them with the necessary tools and furniture for offices and waiting rooms.

**Table 11. Unemployment rate in Morocco compared to other countries**

Country	Unemployment rate
Algeria (2014)	10.6
Egypt (2014)	13.3
Libya	30
Mauritania (2012)	10.1 <sup>*</sup>
Morocco (2014)	9.9
Sudan	13.6
Tunisia (2014)	15.2
Total regional rate	12.2

**Source:** Economic Commission for Africa, Office for North Africa, Economic and Social Conditions in North Africa, 2014 and estimates of 2015.

<sup>\*</sup> This figure is issued by the official authorities of Mauritania (National Bureau of Statistics) but accounts for 31 per cent according to the ILO estimates.

The Rural Development Fund was established in 1994 to monitor the accounts of integrated rural development programmes and was amended in 2012 to handle all these programmes. The Fund's areas of intervention include:

- Developing infrastructure, such as building and maintaining roads, implementing irrigation projects, upgrading agricultural products, planting fruit-bearing trees, reforming lands, and reclaiming soil;
- Addressing the drought effects;
- Improving livelihoods through income-generating activities by supporting local women's associations and cooperatives, rehabilitating rural tourist residences, and developing local production systems;
- Narrowing rural-urban disparities, particularly in education, health, and social services, and supporting projects that help to revive rural communities.

It is worth noting the outstanding participation of civil society in devising and implementing policies aimed at achieving social justice.



The national initiative for social development was marked by the pivotal participation of civil society organizations in programme design and implementation. Over the past years, the Economic, Social and Environmental Council also issued reports and opinions on miscellaneous social policy issues. The Council's opinions and reports matter as it includes representatives of trade unions, labour organizations, and associations active in social areas and in social economy. The council also includes heads of the National Human Rights Council, the Council of the Moroccan Community Abroad, the Advisory Council for Family and Childhood Affairs, and the Advisory Council for Youth and Associative Action. The Economic, Social and Environmental Council debated the following themes:

- The controls and objectives of a new social contract (2011);
- Youth employment (2011);
- Youth cultural inclusion (2012);
- Inclusion of persons with disabilities and respect of their rights (2012);
- Prevention and amicable settlement of collective labour disputes (2012);
- Advancement of gender equality in the economic, social, cultural, and political life (2012 and 2014);
- The fiscal system, economic development, and social cohesion (2012);
- The National Human Development Initiative (2013);
- Compensation for occupational incidents (2013);
- Basic health services (2013);
- Draft law on labour and recruitment conditions of domestic workers (2013);
- Draft law on mutual solidarity funds (2013);
- Two draft laws on civil pensions including procedures to raise the retirement age, increase the contribution ratio, extend the calculation period of the average pension,

and reduce the returns of contribution years (2014);

- Draft framework law on protecting and advancing the rights of persons with disabilities (2015).

The report sets out below the law on expanded regionalization that was endorsed by the Moroccan constitution and that represents a key milestone towards implementing the constitution.

#### D. Expanded regionalization: is it the real reform?

Morocco stretches on vast geographical swathes, spanning rugged mountains and deserts. Its population is scattered and settled in far-flung areas. This situation does not help to provide the necessary social services for whoever needs them in those areas.

Some believe that the most important feature of the new Moroccan constitution is the expanded regionalization law. Similarly to the legal system in general, former constitutions have always reflected the will of political elites based in the capital Rabat, while the role of rural areas was limited to implementation. Nevertheless, the new constitution has broadened the margin of participation for rural areas as it provided for "expanded regionalization".<sup>225</sup> Article I of the constitution provides that the nation shall rely, in its public life, on universal principles, namely moderate Islam, national unity among its various components, constitutional monarchy, and democratic choice. It also provides that the territorial organization of the Kingdom is decentralized and founded on advanced regionalization. Articles 136 to 139 set out the mandate of regions. If territorial collectivities, pursuant to the constitution, are the regions,

prefectures, provinces, and communes, the councils of the regions and of the communes are elected by direct universal voting.

In view of implementing the constitution in Morocco and, particularly, achieving expanded regionalization, the parliament endorsed in 2015 draft laws on expanded regionalization, including regulatory law No. 14.111.


This law introduces several advantages that help to implement expanded regionalization. Contrary to former laws, the council of the region, according to article 4 of the law, is now directly elected by the people after it used to be elected by members of municipal councils or the so-called “senior voters”. Yet, the head of the council of the region is elected by the members and not directly by the people.

The law provided extended powers for the region. For instance, article 4 thereof provides that the region shall freely manage its affairs and shall be granted an executive power in deliberations and decisions.

There is no doubt that Morocco was one of the countries that responded to popular uprisings without overthrowing the regime. This case is unique compared to the other cases, subject of this study, as the regime itself supervised the constitutional transition. The fast adoption of the new constitution raised many eyebrows as to the objective behind it: Was it to contain popular uprisings or to induce an effective gradual reform? Irrespective of the reasons, it is worth stating that reforms gradually began to see the light despite the slow implementation of the constitution, particularly in the light of expanded regionalization. Civil society must, therefore, play a role in pushing for reforms either by effectively overseeing them or by effectively contributing to the development and implementation of reform projects. This requires a greater margin of autonomy for civil society organizations. Moreover, political parties should strive to expand their political and electoral platforms so as to develop a holistic reform vision in the Moroccan society.

## 6. Conclusion and Recommendations



A blue-tinted photograph showing the backs of four children reaching their arms up towards a flagpole. A flag is visible at the top of the pole. The children are wearing casual clothing, including dresses and a t-shirt. The background is a clear, bright sky.

When leaders fail to lead, I have seen time and time again  
how public opinion can make them follow

*Kofi Annan, former Secretary-General of the United Nations*

## 6. Conclusion and Recommendations

The first chapter of the present report tackled the four pillars of social justice, namely equality, equity, rights and participation. It provided an in-depth analysis of the meaning and impact of these concepts on social justice in the Arab region and highlighted several examples that the region has witnessed over the past few years. While reviewing the key components of the four pillars, the first chapter introduced several facets of inequality, including inequality in the distribution of assets, income, public services, social programmes, and others. It underlined the importance of combating inequality and bringing it to the fore of political and social reform. It also shed light on inter-country disparities in terms of inequality rates.

Moreover, the first chapter explored the conceptual dimensions of equity and the difficulty of fulfilling them if they are not fully integrated with the principle of equality into policy formulation and implementation. Achieving equity requires conveying utmost attention to the disadvantaged, marginalized, and the poor in the distribution of resources, services, and opportunities without discrimination on any ground, such as religion, race or others. It also addressed the need to translate the concept of equity into effective policies and practices using a set of tools and mechanisms aimed at achieving equity, such as ensuring access to public services, undertaking targeted actions in favour of the disadvantaged and marginalized groups, providing inclusive social protection, and redistributing resources and opportunities.

Furthermore, the first chapter focused on the need to fully respect civil, political, economic, social, and cultural rights as an integrated and indivisible system to achieve social justice. It also reviewed an array of rights, such as the right to life, the right to be spared from torture, equality before the law, violence against women, freedom of expression, and the rights of migrant workers, which altogether represent a key foundation for the implementation of social justice principles.

The first chapter stressed the importance of participation as an essential leverage to access social justice, noting its linkage with the political and democratic process. It explored participation conditions, such as ensuring a conducive environment; preserving public freedoms to strengthen citizens' effective participation in policy formulation, implementation, and evaluation; and institutionalizing participation as a prerequisite for the development of policies aimed at achieving social justice.

The first chapter presented a set of achievements witnessed by the Arab region, albeit timid, in terms of securing the four pillars of social justice. It underscored the importance of moving forward in developing and approving policies, programmes, and plans aimed at achieving social justice.

In spite of a myriad of challenges facing Arab countries in achieving equality, equity, rights, and participation, the achievements made so far in facilitating access to education, health, water,



sanitation, and other social services are expected to empower populations in the region, upgrade their living standards, and boost sustainable human development rates. This will eventually give impetus to the implementation of social justice. Furthermore, the region has achieved success in empowering women and strengthening gender equality in several countries. Some countries have made remarkable strides in reforming the social protection system. However, the Arab region remains plagued by considerable challenges in reducing unemployment, particularly youth unemployment; combating poverty, marginalization, and discrimination; and inducing a cultural change in the approach to sustainable human development so as to adopt integrated and interlinked economic and social policies in lieu of partial and provisional policies. This requires economic, social, and political decisions that involve devising social insurance programmes for all working-age citizens; preserving public freedoms, particularly the freedom of expression and assembly; and developing social protection policies and other decisions that yield tangible improvement in citizens' life.

The case studies on Egypt, Morocco, and Tunisia covered by this report revealed inter-country discrepancies in the form of the transitional period. In Egypt, the constitution was adopted after overthrowing the Muslim Brotherhood and electing Abdel Fattah Al-Sisi as president. In Tunisia, the national dialogue yielded public consensus on developing a new constitution in the aftermath of the 2011 uprisings... Morocco witnessed a new constitutional phase without any radical change in the monarchy. Yet, the common denominator of the transitional constitution period in the three countries was launching a set of reforms pertaining to social justice.

Each of the abovementioned three countries have achieved remarkable progress in social and economic justice following the adoption of the new constitution. Some fear that social justice principles, enshrined by the new constitutions, will remain mere ink on paper if they do not receive the necessary attention in the upcoming period and if the foundations of participation are not laid to bridge the gap between civil society, the State, or the Government.

In October 2015, Tunisia was awarded the 2015 Nobel Peace Prize. This award was precisely granted to the "Tunisian Quartet" including the Tunisian General Labour Union, the Tunisian Confederation of Industry, Trade and Handicrafts, the Tunisian Order of Lawyers, and the Tunisian Human Rights League, in appreciation of their contribution to building a plural democracy in the aftermath of 2011 Jasmine Revolution by strengthening dialogue and forging consensus among various stakeholders on the constitution. This award bears several dimensions. It represents victory for the constitutional process and the peaceful transfer of power in Tunisia and, at the same time, it highlights the leading role of civil society in consolidating partnership with the government and preventing armed conflicts, which could have impeded the peaceful and constitutional transfer of power in Tunisia. The award may also be viewed as a catalyst for all forces of change in the Arab region seeking to implement the State of law.

Case studies revealed differences among the constitution drafting committees in all three countries. In Morocco, the King himself set up the constitution drafting committee and identified the main themes of its work programme, thus raising questions about the committee's independence from the royal institution. However, the draft constitution was

unusually participatory as political parties and associations contributed their inputs and suggestions. In Egypt, a representative drafting committee was formed. It gathered representatives of various social and civil groups, such as women, farmers, and youth among others. It was open to different opinions but did not include the Muslim Brotherhood, which was denounced and qualified as terrorist group that is not entitled to exercise political action. While the constitution drafting committees in Egypt and Morocco were appointed by authorities, Tunisia took a different route as its constitution was drafted by a people's elected council. This had positive implications on constitution drafting in spite of multiple ideological and political disputes that required civil society's intervention through the Tunisian Quartet to settle disputes and agree, vote, and endorse the final constitutional draft.

Although the new constitutions in all three countries included articles on promoting social justice, it is hard to infer inter-country comparisons for two main reasons:

First, this report did not assess the constitution drafting processes by classifying them as negative or positive. It rather portrayed a historic context of constitution drafting in each country according to national particularities. Hence, evaluation was based on comparing the post-uprising constitutional process of each country with its historic constitutional milestones.

Second, stakeholders vary from country to the other. The historic role of civil society in Tunisia has largely contributed to shaping the transitional process. The traditional role of the Moroccan monarchy identified the main themes of political and constitutional reforms. In Egypt, the army played a crucial role in securing a multistage transfer of power.

Therefore, a key conclusion of this report is that popular uprisings gave momentum to new constitutions that yielded reforms and changes. Yet, those constitutions emerged as a by-product of specific historic contexts in each country.

Each of the three countries made a quantum leap forward either in terms of the positive and more participatory approaches to constitution drafting or in terms of constitutional content, which placed clear emphasis on social justice. Despite comparison caveats, constitutional drafting in all three countries remained generally governmental. In Morocco, the constitution was drafted under the direct supervision of the King and the royal court although political parties and civil society organizations expressed their opinions on constitutional reforms. In Egypt, the legislative reform committee gathered several ministers that outnumbered civil society representatives, who came only from the bar association. Thus, the committee was viewed as legal and non-participatory.

The constitutional process in the three countries faced many hurdles, such as ideological divergence among political parties and newly established movements, which prevailed for a long time during constitutional drafting; and the national and regional security instability, which slowed down the constitutional process and gave priority to adopting anti-terrorism laws as a means to achieve stability.

Civil society's role differed according to the historic evolution of each of the three countries. In Tunisia, the civil society's role was driven by its historic evolution and was, therefore, essential in the transitional period. In Morocco, civil society played a remarkable role, gradually gaining weight in policymaking. Egypt, however, is still plagued by a conflict between



civil society organizations and the authority and witnessed a narrowed public space owing to restrictions on public freedoms and on various civil society organizations, which were prevented from working on the pretext of countering terrorism.

With regard to the constitution adoption, the three constitutions were subject to voting either through popular referendum (as in Egypt and Morocco) or through the people's representatives in the Constituent Assembly (as in Tunisia). The overall political mood also increased the odds of endorsing the draft constitution. In Egypt, the constitution was approved by 98.1 per cent of voters and rejected by 1.9 per cent only. In Tunisia, the constitution gained the trust of 200 parliament members out of 216. This ratio directly reflected the existing consensus within the Constituent Assembly. In Morocco, the constitution was approved by 49.98 per cent of voters, with a turnout ratio of 72.65 per cent in the referendum.

With regard to social justice and its pillars, the three constitutions provide for the need to achieve social justice as a key component of the new social contract between the State and society. Although the constitution represents the backbone of reform and of restoring ties between society and the State, it cannot achieve the desired reform alone. Reform requires a legal system that implements the constitution by promulgating new laws or amending others in line with the constitutional spirit. The constitution implementation in the three countries was, therefore, directly linked to the political context of each country. In Egypt, the priority was to promulgate anti-terrorism laws and restrict the work of civil society organizations. Therefore, social justice was adversely affected due to restrictions on the freedom of expression and the right to protest pursuant to the new protest law that was

promulgated to regulate peaceful assemblies and that consecrated the right of official authorities to authorize or withhold demonstrations. This is a clear contradiction between the constitution, which recognizes the freedom of expression and demonstration, and the law which restricts this freedom. In Tunisia, the anti-terrorism law remained a tool used by the authority to restrict freedoms as it provided for a broad definition of terrorism.

The constitution implementation in the transitional period was marked by various positive breakthroughs that would guarantee social justice. In Tunisia, the national dialogue and social dialogue were launched and served as a road map for the transitional period. The constitutional court and national consultation centres were also established. The constitution included articles on promoting gender equality and achieving social justice. It provided for the right to healthcare for low-income earners and for those who do not benefit from any coverage, and the right to inclusive social coverage. As a result, the direct financial grants and free medical treatment benefiting poor households grew from 62.5 per cent in 2011 to 79.39 per cent in 2012. However, deficit still prevails in social funds, thus threatening social protection beneficiaries. Deficit also affects pensions and medical insurance and is expected to reach 395.783 million dinars in 2015.

In Egypt, the new constitution provided for strengthening the principle and pillars of social justice by consecrating a budget share to health, education, and research expenditure. Other articles emphasized Egypt's commitment to international instruments, such as consecrating women's right to pass their nationality to their children and providing social security for all, except for migrants and refugees. Egypt undertook serious actions to provide food and energy subsidies, set the minimum and

maximum wages, and launch public works and other social programmes, such as *Takaful and Karama* programmes. These actions remain insufficient and incomplete unless a more holistic approach is adopted and policies are assessed on an ongoing basis to ensure their success and sustainability. The key impediments to social justice in Egypt were the delayed parliamentary elections. Hence, the transitional period suffered from legislative vacuum and the President handled the promulgation of legislations including organic laws, such as the anti-terrorism law.

Similarly, radical amendments were introduced to Morocco's constitution, reflecting the King's will for reform, and particularly to articles that shyly alluded to social and economic rights. Yet, the new constitution stressed the right to property, the right to preserve national natural resources, and the right of future generations to enjoy them. It also emphasized social rights related to health and water under a single article. The constitution provided, for the first time, that the Amazigh language (Tamazight) was an official language. Besides, the law on expanded regionalization, which is central to the development process, was endorsed. With regard to health coverage, all indicators positively evolved, notably the reduced maternal and under-five mortality rates. With regard to employment and decent work, a new system for the protection of the unemployed was put in place. These policies should, however, be evaluated to determine the extent of their success.

Popular uprisings pushed for constitutional amendments, either upon the initiative of regimes or as a corollary of regime changes, especially that the constitution regulates public life, particularly the relation between the State, public institutions, and all social and religious segments of civil society. However,

constitutional amendments did not directly reflect the demands of people who took to the street. Some amendments can also be perceived as aimed at containing popular uprisings. Five years later, country's priorities shifted. While priority was given to elections in Tunisia, it was given to security and counter-terrorism in Egypt. Hence, legislative efforts focused on developing anti-terrorism laws to the detriment of laws relating to social and economic development.

With regard to economic policies in Egypt, successive Governments have undertaken various macroeconomic actions since 2011. The extended fiscal policy helped generate labour opportunities and the increased expenditure on social services, such as education and healthcare, will help empower all citizens. Poor segments of society were targeted through programmes of public works, targeted cash transfers, housing subsidies, and other measures. Strengthening social justice requires additional measures and ongoing progress at different levels. It also implies implementing a progressive tax system, which is a key characteristic of the macroeconomic approach based on sustainable development. With regard to social empowerment, future policies should address labour market challenges by encouraging the private sector to accommodate the high ratios of unemployed youth and promoting the participation of the highest number of women in the labour market. With regard to social safety nets, reliance on commodity subsidies was reduced compared to previous periods. Yet, reform of energy subsidies is still far-fetched and cash transfer programmes that were recently developed have not yet seen the light. The State should, therefore, seek to initiate, control the implementation of, and continuously evaluate such programmes to secure their sustainable success.

## Sustainable Development Goals

The present report bears a greater significance for ESCWA in the light of launching the 2030 Agenda for Sustainable Development, which includes 17 Sustainable Development Goals (SDGs). All SDGs emphasize the need to engage all social groups into the development process, place the principle of justice at their core, and build integrated institutions and societies as a prerequisite for their implementation. SDGs also underscore the eradication of poverty, marginalization, and all forms of exclusion, and promote access to better health, educational, social and other services. With a closer look at the 2030 Agenda for Sustainable Development, we note that the four pillars of social justice, namely equality, equity, rights, and participation are an integral part of the Agenda. When the new constitutions in the Arab region consecrate these principles by expressly providing for social justice and its pillars, a new social contract will emerge based on achieving sustainable development and social justice.

Popular uprisings in Egypt, Morocco, and Tunisia can only be truly assessed following the implementation of new constitutions and their provisions on rights, freedoms, social justice, and positive discrimination, which promote equal opportunities and regulates constitutional, national, and local institutions. Further efforts should be deployed in the few upcoming years to bring economic and social affairs to the fore of legislative priorities in all three countries.

Below are final recommendations addressed to governments, civil society, political parties and international organizations.

## Recommendations to Governments

- Initiate a participatory constitutional process within a specified time frame with the participation of all stakeholders through an effective national dialogue that contributes to amending or drafting the constitution;
- Incorporate into the constitution social justice principles that represent the core of the social contract between the State and society so as to emphasize the need to:
  - ✓ Include all segments and groups of society and prevent marginalization, exclusion, or discrimination against any of them;
  - ✓ Undertake provisional actions aimed at preserving the rights of minorities and marginalized groups, such as the quota system;
  - ✓ Respect basic rights and prevent restrictions on social, economic, cultural, and political rights;
  - ✓ Uphold rights by all appropriate means including the adoption of clear legislations and allocation of adequate resources thereto;
  - ✓ Elaborate some key issues related to achieving social justice and dedicate separate articles to each of them, such as health, education, and other rights;
- Expedite reforms, particularly in economic and social areas;
- Expedite the enforcement of laws related to social and economic policies and not to give absolute priority to security policies and anti-terrorism laws to the detriment of livelihoods and development issues;

- Consider legislations that defuse popular tension, notably those addressing great economic challenges;
- Develop an integrated vision of economic and social reform and adopt a participatory vision to address scattered policies on social justice;
- Update, empower, and promote the democracy of institutions to enable them to induce the required changes;
- Increase funding for social justice programmes, similarly to health coverage programmes;
- Adopt a common position against terrorism, particularly cross-border terrorism, without restricting public freedoms since the development approach requires combating the growing terrorism;
- Enact appropriate laws to safeguard freedoms of expression, assembly and association since counter-terrorism is not limited to security aspects but also requires strengthening the capacity of society in economic and productive areas and viewing society as a key partner in the fight against extremism and violence.

### Recommendations to civil society

- Enable civil society to play its pivotal role in implementing the constitution and ensure that policymaking is not strictly handled by authorities only;
- Call for the representation and active participation of all social groups in policymaking;
- Call for the implementation of social justice laws and amendment of economic and social laws or suggest new laws;
- Oversee the work of legislative committees.

### Recommendations to political parties

- Develop platforms that include economic and social programmes as political parties usually lack such detailed programmes, which should be the basis of electoral competition among the different parties.

### Recommendations to international organizations

- Support governments in implementing the principles of development and social justice;
- Review support programmes and their objectives so as to re-prioritize expenditure and expand the financial scope of development.

In conclusion, what is left of the Arab spring? Popular uprisings imposed new political and social contexts in some countries of the region. Some countries embraced the Arab spring by drafting a new social contract (as in Morocco and Tunisia) while some others slowed it down or circumvented it (as in Egypt and Yemen) or resorted to violence to curb it (as in Libya and Syria).

Hence, this “spring” only yielded minor and reluctant changes and did not fulfil the expectations and hopes of Arab citizens who have long yearned for it. Achieving social justice in the Arab region will remain a long path, laden with risks and uncertain results. No further achievements will be witnessed if the successes set out in the present report are not consolidated and if lessons are not drawn from the setbacks endured by Arab countries in their political transition.



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Five years after the Arab region was rocked by the outbreak of popular uprisings, it is time to examine their impact on progress towards the achievement of social and economic justice, which lay at the heart of the demonstrators' demands. This is especially so given that in some countries the focus of policy priorities has shifted to security issues and combating terrorism, to the detriment of legislative efforts on social and economic development.

*What Remains of the Arab Spring? Challenges Impeding the Achievement of Social Justice in the Arab Region* is the first in a series of ESCWA social development reports. It aims to look at the state of social justice in countries that witnessed uprisings through the prism of their constitutional and political transition processes. The report focuses on the cases of Egypt, Tunisia and Morocco and traces the course of events, from the large-scale protests demanding social justice to its inclusion as a bedrock principle in rewritten constitutions. It also looks at the extent to which that principle has been applied through newly enacted or amended legislation. It describes the main challenges and stumbling blocks that have impeded progress towards social justice over the past four years and makes policy recommendations that could pave the way for social justice in its four pillars: equality, fair treatment, rights and participation.