



المركز العربي للأبحاث ودراسة السياسات
Arab Center for Research & Policy Studies



المنظمة العربية
للقانون الدستوري
The Arab Association of Constitutional Law

9th Annual Democratic Transition Conference

Constitutions and Democratic Transition in the Arab Region

Tunis, 25-27 September 2020

Background Paper

The issue of a constitution is of great importance in countries undergoing democratic transition, given the importance of constitutions within the framework of democratic states, as they form the essence of the political and social contract between the rulers and the public. This contract defines the nature of the state and the basic elements upon which its political system is based, the powers of the public authorities, the relationship between different authorities, the rights and freedoms of citizens, and the rules for the distribution of power and wealth among state regions.

The Arab countries have witnessed many kinds of unrest, during which many demands concerning the adoption of political and constitutional reforms have been raised and are necessary to the success of the democratic transition and building the rule of law. These demands were part of the “Arab Reform Projects” that flourished before the Arab revolutions in 2011. However, the widespread involvement in the issue of the constitution, involving intellectuals, civil activists, and academic and political elites, only occurred with the Arab revolutions. The demands expressed in the context of these revolutions in 2011, as well as during the popular movements in Sudan and Algeria, were very similar, and summed up by the slogans of political freedom, social justice, and the overthrow of corruption and tyranny.

Based on the above, and with the aim of clearly highlighting the status of constitution in democratic transition in the Arab region, this conference is organized by the Arab Center for Research and Policy Studies in cooperation with the Arab Association of Constitutional Law. It comes within the series of annual conferences on the issues of democracy and democratic transition, which is supervised by The Arab Center Project of Democratic Transformation and Transition Phases in The Arab Countries. The conference will track how the issue of a constitution has been managed in Arab countries that have embarked on transitions, drafted new constitutions (or constitutional documents), or made amendments to previous ones. The conference poses a central question that has occupied Arab intellectuals since the beginning of the twentieth century: **How can a political authority that is effectively constrained by the constitution be established; that is, how can the modern constitutional state be achieved?**

Conference Themes

Concepts and Terminology

This part explores the main concepts and terminology related to constitutional issues, during the transitional stages and beyond:

- What is a “democratic constitution” or a “constitution of democratic systems of government”? Are there minimum standards for a constitution to be considered “democratic”? Where do the current Arab constitutions fall within the framework of these criteria?
- Given the contemporary constitutions that have drafted after successful transitions to democracy over the past few decades, what is “local” and “universal” in these constitutions?

Is there a “universal model” for constitutions, or do they express purely national perceptions? What constitutional foundations are essential for establishing democratic systems of government in Arab countries?

- How can other concepts related to the concept of “democratic constitution”, about which Arab political actors disagree in more than one case, be understood? These concepts include terms such as “transitional or provisional constitution”; “constitutional declaration”; “supra-constitutional principles”; “separation of powers”; “independent judiciary”; “the rule of law”; “popular sovereignty”; “sovereignty of elected political institutions over non-political and unelected institutions”; “vertical and horizontal political accountability”, and so on.

The Process of Drafting Constitutions

Drafting constitutions during democratic transitions

- This section focuses specifically on the constitutions of the transitional stages, in terms of concepts, actors, context, and the guarantees and process of constitution-drafting. The most important questions that can be addressed here are:
- How does the political, cultural and social environment affect the constitutional process in transitional stages? Do political divisions affect this? What considerations are specific to the constitutions of religiously and/or ethnically divided societies?
- What is intended by “transitional” or “temporary” constitutions? What is their function during periods of transition? When are they drafted? And how? When should they expire? Who drafts them? How are the members of the bodies responsible for this task selected? How are these conditions applied in Arab cases?
- Who are the main actors in the constitution-drafting process of democratic systems? What is the role of both the official and unofficial forces in this process? How can citizens be involved in building perceptions about the constitution during the transitional stages? What is the role of civil society, media and experts in this? Is there a role for international actors, such as the United Nations, and international experts?
- To what degree do the drafters of the Constitution represent and protect the will of the masses?
- What are the mechanisms of the relationship between political actors and constitutional jurists during the process of writing the constitution?
- What is the impact of regional role on the process of drafting the constitution? Can different countries learn from each other?
- What are the limits of the role played by the judiciary in drafting the constitution of democratic systems and in influencing political actors during the transitional stages? How can the challenges related to the judiciary be addressed in Arab cases?

- How does the constitution-drafting process differ in the form of the transition to democracy or the process of change itself (gradual reform from above, revolutionary change from below, consensus of political actors from the regime and opposition, imposition of change from outside)? How is the constitution-making process undertaken in the wake of civil wars and armed conflicts? What is the role of local, regional and international mediators in such cases? How can constitutional democracy be integrated into reconciliation agreements in the aftermath of war and conflict? How is this applied in Arab cases?
- What are the constitutional guarantees for the success of the democratic transition in the Arab region? What are the measures and initiatives accompanying constitutional reform to support the process of democratization in Arab countries?

Problems associated with Constitution-drafting in the Arab region

This section explores the urgent challenges posed by the constitutional issue in the transitional stages in the Arab countries, and how to deal with them, with a view to comparing them with other cases outside the Arab region. The most important of these challenges include:

- Issues regarding identity issues, frame of reference and regional and international covenants (the relationship of religion to the state, freedoms and rights, human rights, etc.).
- Questions of minority rights and multiculturalism (citizenship, pluralism, freedoms, rights, the management of political differences and conflicting interests, etc.).
- The legacy of Arab authoritarianism (in particular the concentration of power; the President's absolute powers, past human rights violations; the weakness of political culture; the weakness of the party system and party organization; and the issue of stability, security and social control); and related issues such as the nature of the state (simple, federal); the shape of the political system and the relationship between legislative and executive institutions (parliamentary, presidential, mixed, consociational democracy); vertical and horizontal methods of accountability; the electoral system; the relationship between elected political institutions and non-elected state institutions such as the security, military and judicial institutions; the role of the judiciary and supervisory bodies, independent bodies and commissions; advancing political participation through information technology and communication tools; forms of direct or participatory democracy; local democracy, and transitional justice.
- Questions about wealth and income distribution and social justice (the foundations of social and economic policies, the role of the public sector, the role of the private sector, the role of the Central Bank, the integration of poor and marginalized groups, social control, the role of civil society and civil and charitable organizations).
- Questions related to Arab unity, integration and the legacy of dependency on foreign powers. Many Arab constitutions declare that the state is "part of the Arab nation and works on its unity".

Are there objective factors that necessitate cooperation or integration? What can be said about border issues between Arab countries? Does the supremacy of international conventions over the Constitution represent a kind of acquiescence to foreign values or values that could conflict with prevailing local values? Is there a constitutional mechanism to address these problems?

Constitutions in Democratic Systems in Practice

This section looks at questions about the outcomes of the constitution-drafting process of democratic systems, including:

- What guarantees the enforcement and continuity of the constitution of a democratic system? What circumstances are necessary for this to happen? From where does this constitution derive its legitimacy? How can comparative experiences be useful in this regard?
- What guarantees/standards/circumstances/institutions have prevented the collapse of constitutions in newly established democracies? What are the guarantees of success for the democratization process and the promotion of constitutional democracy in Arab countries?
- Which bodies have oversight powers for compliance with and interpretation of the constitution? What is the role of judicial institutions in this regard?
- How is the constitution of a democratic system amended? When are amendments raised? Who addresses these amendments? What lessons do the experiences of other countries offer?
- How can constitutional democracy itself be developed to cope with societal changes, address the flaws of representative or procedural democracy, broaden political participation, and enhance the ability of citizens to contribute to self-determination in Arab countries? What is it about constitutional culture that ensures the sustainability and effective functioning of democratic constitutions in Arab countries?

To Participate in the Conference:

- Researchers interested in taking part in the meeting should submit a brief abstract/proposal with the main outline of their proposed paper, of between 700 and 1,000 words in length. This proposal should include:
 1. The main research problematic and the question to be addressed.
 2. The research aims and its significance.
 3. The proposed research methodology and the theoretical background of the proposed paper.
 4. The proposed structure of the paper.
 5. An initial list of references.

- In addition, authors are expected to submit an up-to-date curriculum vitae with an appropriate list of previously published work relevant to the conference theme where possible.

Deadlines and Milestones

- Only original research intended specifically for this conference will be accepted. Authors must ensure that their submissions have not previously been published elsewhere or that they were used at an earlier conference.
- Research proposals are due by **December 31, 2019**. Submitted proposals are subject to a refereeing process.
- Complete drafts of accepted proposals of between **7,000 and 8,000 words** will be accepted up to **April 30, 2020**. These completed drafts must follow the general guidelines for submitted research papers and conference papers, set out separately online at:
- <https://www.dohainstitute.org/en/ResearchParticipation/Pages/SubmissionGuidelines.aspx>
- Authors are reminded that not all completed drafts will be accepted for participation in the conference, even in cases where the proposal has been accepted.
- The conference Academic Committee will accept papers submitted in Arabic and English.
- The Conference shall cover the travel and accommodation expenses of those whose papers have been selected following the peer-review process, with no reward for any research submitted.
- The research presented is the intellectual property of the Conference, most of which will later be published in a conference book.
- All correspondence, and the submission of papers, should be addressed to the Academic Committee at:
democracyproject@dohainstitute.org