

**Rule of Law
Developments**
in the Middle East
and North Africa

**تطورات
سيادة
القانون**

في منطقة الشرق الأوسط
وشمال إفريقيا

— Foreword

The rule of law developments in the Middle East and North Africa (MENA) region, covering over 18 countries, are manifold. With our quarterly newsletter, as Konrad-Adenauer-Stiftung (KAS) Rule of Law Programme for the MENA, together with the Tahrir Institute for Middle East Policy (TIMEP), we wish to highlight key regional legal developments, to show both the theory and the practice of the rule of law, and why it is so essential to everyday lives across the region. In each issue, we will cover four major developments that have dominated the MENA region in the past quarter.

Recent months have seen two major developments regarding Syria. After Syria's membership had been suspended since November 2011, the country was welcomed back to the Arab League during the League's recent Summit in Jeddah, Saudi Arabia, on 19 May, 2023. Though few Arab states – Qatar at the lead – continue to oppose the normalisation of relations, most Arab states have opted to follow Saudi Arabia in what they consider to be a pragmatic approach, and a way forward in their own regional and economic interest. Notwithstanding Syria's return to the Arab League, other news has once again reminded the world of the atrocities committed by the Syrian regime in recent years. On the 8 June, the Netherlands and Canada jointly submitted an application instituting proceedings against Syria before the International Court of Justice (ICJ) of the United Nations (UN), for alleged violations of the UN Convention against Torture, to which Syria is a member state. Several other past attempts to hold Syria accountable have failed, including a referral to the International Criminal Court, that had been blocked by China and the Russian Federation at the UN Security Council. The joint application at the ICJ filed a request for the indication of provisional measures, as a matter of urgency. Per the Rules of the Court, such requests are to have priority over all other cases, which suggests that the ICJ – if its jurisdiction is established – is to schedule a hearing at its earliest possible opportunity. While the proceedings may remain of symbolic value, they are critical: the rule of law, albeit always aiming for final results and consequences of accountability, is also about the process itself. It matters, not only because it is laid down in the law. It is important to show that nothing will be left untried. A key aspect of the rule of law is impartial justice, every step of the way, from investigation to possible judgement – and maintaining it as best we can.

Beyond the world stage, individual countries are holding proceedings with regards to the Syrian regime, too. This sometimes goes unnoticed. This second newsletter thus features a piece on the recent unsealing of a civil lawsuit filed in the U.S. against Syria, highlighting also the ineffective domestic remedies for victims of torture in Syria itself. Until now, there has only been one (criminal) conviction in Germany of two former Syrian state officials for the use of torture, amounting to crimes against humanity.

Further pieces dive into the several – international and national – legal proceedings against Riad Salameh, Governor of the Lebanese Central Bank, the current stance in Libya’s political process and lastly, the ongoing debate about the reform of the family code in Morocco. We have once again included other developments you might have missed. We hope you enjoy what is a very interesting read!

On behalf of KAS, I would like to, once again, first and foremost thank TIMEP, Mai El-Sadany, Micha Tobia, and their team, for making this edition possible, for the many hours of brainstorming, writing, collecting, and editing. I would like to thank Valeska Heldt, who is leading this project at our office, and who worked on all of the above together with TIMEP. Last but not least, I would also like to thank the many authors for their contributions to this newsletter, filling it with life. Thank you!

Philipp Bremer

*Director of the Konrad-Adenauer-Stiftung Rule of Law Programme
Middle East & North Africa*

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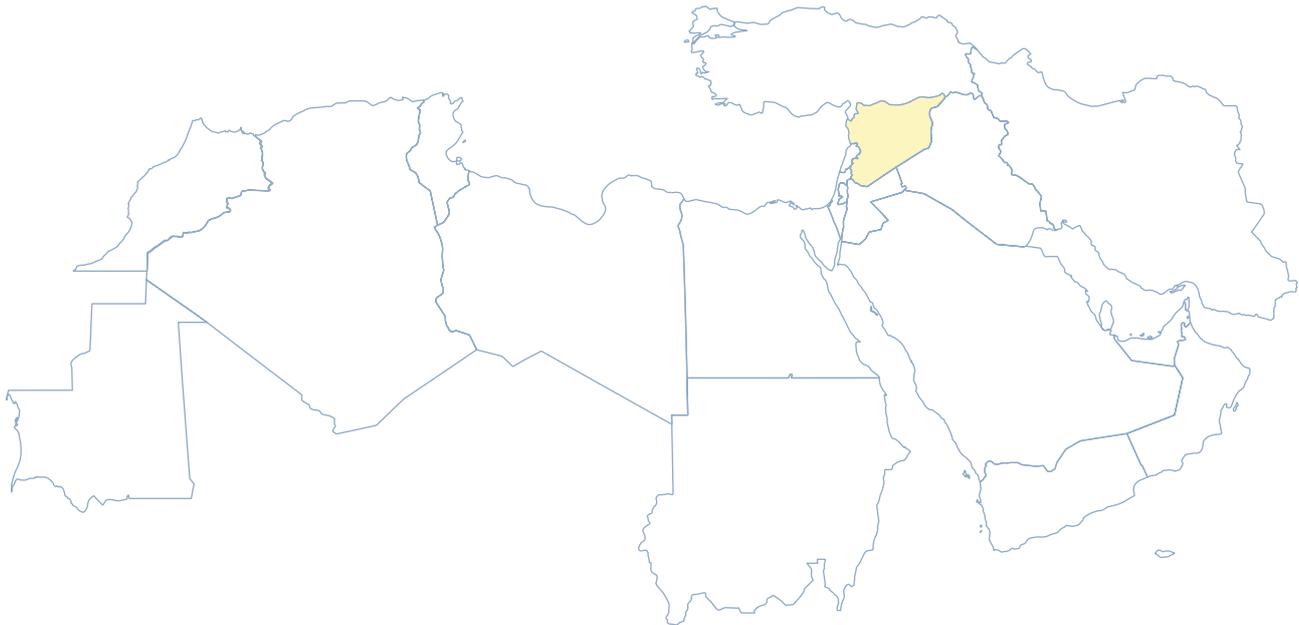
— Executive summary

From the first-ever case involving torture committed in Syria to appear before a U.S. court to murmurs of potential amendments to the nearly 20-year old Moroccan family code, contestations around the **rule of law** have been at the forefront of developments across the **MENA region** in this second quarter of 2023.

The second issue of **Rule of Law Developments in the Middle East and North Africa** includes four feature pieces that engage with topics of accountability, anti-corruption, elections, and personal status issues.

As the United States unveils a civil lawsuit involving torture committed in **Syria** against an American citizen, *Meroua Zouai* asks critical questions on the prospects for accountability and revisits the legal and judicial environment inside Syria. The conversation is particularly poignant as Arab League member states welcome Syria back into their fold and as the question of normalisation is front and centre. In **Lebanon**, Central Bank governor Riad Salameh's term comes to an end as judicial proceedings against him intensify and red notices are issued. *Valeska Heldt* engages with this news and presents an accounting of what the ramifications may be for Salameh's potential dismissal and the likelihood of such action in the first place. Can presidential and parliamentary elections be the silver bullet that bring some semblance of stability to **Libya**? In a piece by *Vito Todeschini*, the author revisits the political process, reflects on lessons learned from prior attempts, and presents an outlook of what we may expect in the upcoming months. In a final feature piece, *Mai El-Sadany* and *Bassel Jamali* react to headlines from **Morocco** that the country's family code, also known as the Moudawana, may be amended; the co-authors lay out some of the key provisions in the text on critical issues including marriage, divorce, inheritance, and child custody, and highlight issues with implementation.

The newsletter concludes with a Developments You May Have Missed section that takes readers through some of the top rule of law stories from the quarter, from the targeting of politicians in Tunisia as part of a broader crackdown on political opposition to the drafting of a first-ever Refugee Law in Egypt amid the arrival of Sudanese citizens displaced by the conflict.



SYRIA

Domestic Avenues for Accountability in Syria

Meroua Zouai

While governments across the MENA region welcome the Assad regime back to the international stage, extraterritorial accountability efforts shed some light on the decades-long fight for justice that Syrian survivors have been seeking.

The [recent](#) unsealing of a civil lawsuit filed in the United States against the Syrian Arab Republic for widespread and systematic torture in its detention centres has provided some Syrian survivors a sliver of hope to combat the protracted era of impunity for alleged atrocity crimes committed by the Assad regime in Syria since 2011. Thus far, accountability for war crimes including the [deliberate targeting of hospitals](#) and civilian areas, use of [chemical weapons](#), widespread and systematic practice of [enforced disappearances](#), [extrajudicial killings](#), [sexual and gender-based violence](#), torture and other forms of ill-treatment amounting to crimes against humanity, have taken place in piecemeal and extraterritorially.

The U.S. civil case was filed under the [Foreign Sovereign Immunities Act](#), a federal law that permits a U.S. citizen to sue, in a U.S. court, a foreign government designated as a state-sponsor of terrorism for personal injury or death caused by torture or other unlawful conduct. The named plaintiff in the [complaint](#), Syrian-American Obada Mzaik was allegedly detained and tortured by officers from the Air Force Intelligence Directorate at the [Mezzeh Military Airport](#) in January 2012. He is seeking compensatory and punitive damages for harms arising from the regime's acts of torture.

Amid the current growing tide to normalise relations with Assad across the region without holding alleged rights violators to account, the [extraterritorial efforts](#) for accountability are now, more than ever, crucial to amplifying [survivor-led justice](#) in the international and regional fora.

Ineffective Domestic Remedies for Victims of Torture

On a domestic level, impunity for human rights violations including torture, summary executions, and other forms of state-sanctioned violence has been the defining feature of the [Assad-family](#)'s rule. Under the leadership of Bashar al-Assad, the Syrian regime has [expanded](#) its system of repression particularly following the 2011 public demonstrations. Relying on the state's intelligence apparatus the regime targeted perceived political opponents with [arbitrary arrests](#) and [detention](#), [torture](#), and a [brutal military campaign](#) with [rampant bombardment](#) on civilian areas including the use of [barrel bombs](#) and [chemical weapons](#). Pathways for Syrian victims seeking accountability for violations committed by the regime are confined to a domestic legal framework that does not criminalise atrocity crimes and a government system that lacks checks and balances – whereby excessive interference from the executive branch usurps traditional functions of the judicial and legislative arms of government.

Immunity from prosecution for members of the state security apparatus was initially guaranteed by [Decree No. 14 of 1969](#) and institutionalised by subsequent [decrees](#). While Law No. 1965 and Decree No. 109 of 1968 established military courts and authorised the prosecution of civilians in military tribunals, due process and fair trial rights were further limited by the [Counterterrorism Act of 2012](#) and Law No. 22 of 2012 ([Establishing the Counterterrorism Court](#)). The counterterrorism courts created under Bashar al-Assad operate in an [extrajudicial system](#) – where torture and inhumane treatment of detainees by state security officers are institutionalised practices and legally unfounded death sentences are frequently issued against civilians processed in [trials](#) marred by legal and institutional [ineptitudes](#).

Although the Parliament is vested with law-making powers according to Articles 55, 74, and 75 of the [Constitution](#), the [President's broad and unchecked](#) decision-making authority in effect overrides legislative priorities and extends with undue influence over the judiciary as well. The majority of legislation in Syria is issued by executive decree, which is not subject to review by the Supreme Constitutional Court (SCC). Furthermore, [Law No. 7 of 2014](#) restricts the ability for lawyers to challenge the constitutionality of certain legislation that adversely impacts the rights of citizens. Syrian individuals [cannot directly petition](#) the SCC nor can ordinary courts transfer cases challenging the constitutionality of some laws directly to the SCC.

The SCC is [effectively](#) an organ of the executive branch given the exclusive nomination powers vested in the President. Judges are often hand-picked by the executive based on political alliances and allegiances. The [lack of oversight](#) for judicial appointments precludes any prospect of an independent and impartial Syrian judiciary to administer justice – let alone one to hold government perpetrators accountable for gross rights violations.

The executive's arbitrary and unilateral infringement into other branches of government has tainted Syria's legislative framework by immunising state actors from accountability for rights violations whilst failing to create legal pathways for victims seeking redress for grievances inflicted at the hands of government officials. According to the findings of the [UN Commission of Inquiry on Syria](#), the Syrian regime has repeatedly failed to investigate alleged crimes committed in its detention facilities and continues to withhold information on those arbitrarily detained or forcibly disappeared. The ill-treatment of those detained across Syria – including the use of at least [72 torture techniques](#) – [amount to crimes against humanity](#) given the [widespread and systematised](#) state practice.

Although Article 53 of the Syrian Constitution prohibits the use of torture and Article 391 of Syria's Penal Code criminalises the use of excessive violence to obtain a coerced confession during interrogations, the domestic legal framework does not define specific acts that amount to torture nor provide safeguards for victims to hold government officials complicit in perpetrating torture, accountable. Rather, exceptions guaranteeing immunity for state security officials under national legislation including – Article 16 of Decree No. 14 of 1969, Article 47 of Decree No. 549 of 1969, [Law No. 69 of 2008](#) (expanding immunity for political and police officers) – [remain](#) in effect; torture has never been prosecuted as a standalone criminal offence. One might perceive the recent passing of the [Anti-Torture Act](#) on 30 March 2022 as a welcome step for the Assad government to domesticate its international legal obligations to prohibit and prosecute acts of torture without exception. However, [critics derided](#) the regime's orchestrated ruse of fictitious reform given the lack of procedural and substantive legal safeguards protecting victims' rights to redress past harms as [required](#) under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([UNCAT](#)) – to which Syria is a state party. For the same year in which Syria's anti-torture legislation went into effect, rights groups [documented](#) over 2,200 cases of arbitrary arrests and detention amid continued regime-led military assaults across civilian areas. Meanwhile, this past May, rights groups recorded the year's [highest](#) number of arbitrary arrests and detention in one month – with at least 226 documented cases.

Looking Ahead

After more than a decade of near global and regional isolation, Assad was [welcomed back into the Arab League](#) on 19 May 2023. Nevertheless, stakeholders including Syrian victims' groups that have successfully pushed the [UN General Assembly](#) to [establish](#) an international mechanism to investigate the fate of the forcibly disappeared and detained in Syria, recognise the lack of internal pathways for accountability, and continue to challenge ongoing impunity for regime-perpetrated crimes through extraterritorial means.

Despite the grim reality of the lack of domestic judicial remedies in Syria, the first-ever lawsuit filed in the U.S. for torture against Bashar al-Assad's government is currently underway; while U.S. federal agents have also been [investigating top Syrian officials](#) for complicity in potential war crimes. Other foreign national efforts to hold architects of the regime's torture and detention apparatus accountable for rights violations include the [recent judicial decision](#) from the Paris Criminal Court ordering Ali Mamlouk, Jamil Hassan, and Abdel Salam Mahmoud to trial; in addition to dozens of cases [filed](#) in foreign courts implicating the Assad regime of torture among other egregious rights violations. On the global front, the Netherlands and Canada [officially lodged a complaint](#) before the International Court of Justice against the Syrian government alleging countless violations to international law under UNCAT. It remains to be seen how accountability efforts in foreign and international courts will intersect with state policies shifting toward normalisation with Assad.

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LEBANON

The Legal Whirlwind Around Lebanon's Departing Central Bank Governor

Valeska Heldt

The European investigations of Lebanon's Central Bank Governor Riad Salameh for financial misconducts, such as embezzlement of public funds and money laundering, have led to the issuing of two Interpol red notices against him. These new developments have driven Salameh into a corner and increased public pressure. One question left to answer is whether these probes will end his 30-year reign at the head of the central bank.

As the term of the world's longest-serving central bank governor is set to be coming to an end after 30 years in July 2023, the headlines covering the judicial proceedings against Riad Salameh, governor of Lebanon's central bank (also known as Banque Du Liban, BDL) have multiplied dramatically over the past months. Internet users commented on the events comparing them to a "local mousalsal" (soap opera). With two Interpol red notices issued against Salameh, the man who was once seen as a ['financial wizard'](#) who kept the economy running (as if he had a ['crystal ball'](#), as said by an IMF official), is now officially a wanted man for the international community. At the time of writing, Salameh is still in office, denies every allegation, and [refuses to step down](#) unless a judicial decision is rendered against him. But international investigations might finally bring an end to his impunity. Though Salameh was long shielded by Lebanon's political elite, several political figures of various parties are [now calling for his resignation](#). Others, such as Lebanon's caretaker Prime Minister [Najib Mikati](#), seemingly fear that a dismissal of Salameh would further destabilise the country, that currently lacks both a president and a sitting government, the consequences of which the Lebanese people would have to carry once more.

The case of Salameh raised questions concerning the legal nature of red notices, as well as the consequences of the probes with regards to a potential dismissal of the BDL governor.

Overview of the Corruption Probes Against Salameh

In Lebanon, decades of financial mismanagement and corruption, with Salameh as one of the leading forces, led to the financial breakdown of the country in 2019, with the ongoing economic and financial crisis being ranked as [one of the worst globally](#) since the mid-19th century.

In the beginning of 2021, Switzerland became the first country that [started investigating](#) allegations that Riad Salameh and his brother Raja embezzled more than \$330 million to the detriment of BDL between 2002 and 2015. By now, at least four additional European countries (France, Germany, Luxemburg, and Liechtenstein) as well as two Lebanese prosecutors ([Raja Hamouche](#) and [Ghada Aoun](#)), have opened investigations into Salameh on various financial misconduct charges, including money laundering and massive embezzlement of public funds. The jurisdiction of the respective European courts is generally established because the real estate and movable assets are located in those countries. In March 2022, in the course of a joint action of German, French, and Luxembourg authorities, [€120 million](#) (\$130 million) worth of Lebanese assets were frozen in five European countries as Salameh was a suspect in the investigated case. Within the framework of the UN Convention Against Corruption (UNCAC), which Lebanon [ratified in 2009](#), Lebanese authorities received several requests for cooperation in accordance with Article 46 (1.) of UNCAC. Subsequently, European investigators visited Lebanon [on three occasions](#) between January and May 2023 to interrogate Salameh and others related to the corruption probes.

In May 2023, within just days, Salameh became the subject of two Interpol [red notices](#) following international arrest warrants issued by French and German courts. As per their usual practice, Lebanese authorities have [refused to extradite](#) a Lebanese national. The BDL governor was subjected to a [travel ban](#) and his Lebanese and French passports were confiscated, thus preventing him from travelling to France to appear before the French judges. This also at least removed his ability to travel to the United Arab Emirates, where he had [planned to retire](#).

On the Nature of Red Notices

Shortly after the first notice was issued by Interpol on the basis of the French arrest warrant on 16 May, Salameh announced that he would [“introduce an appeal](#) to cancel the notice.” This raised questions on the legal nature of red notices and their enforceability.

Interpol (the International Criminal Police Organisation), to which Lebanon has been a [member state since 1949](#), is an inter-governmental institution that facilitates worldwide police cooperation. Its staff [does not have powers of investigation](#) and arrest, but its strength lies in one of its communication and coordination tools – the red notices. Per [Article 82](#) of Interpol’s Rules on the Processing of Data, a red notice is a request to law enforcement worldwide to “seek the location of a wanted person and his/her detention, arrest or restriction of movement for the purpose of extradition, surrender, or similar lawful action.” It is based on an arrest warrant or court order issued by the judicial authorities in the requesting country. Member countries [apply their own laws](#) in deciding whether to pursue the request and arrest a person.

In the case of France, Aude Buresi, the examining magistrate in charge of the investigation into the European assets of Salameh, [had summoned the central bank governor](#) to the

Paris Magistrates' Court for questioning. Salameh failed to attend the hearing, on the grounds that [the judge had not respected](#) the required time period for the summoning, as the documents had not reached him in time. Unsurprisingly, the competent Judge in Beirut reportedly [attempted to notify Salameh](#) of his summons to France three times in a row, but the document was always returned unsigned, as the governor could not be found at the BDL headquarters. Following this, the French magistrate had two options: reconvene Salameh or issue an international arrest warrant. She chose the latter option, and the requested red notice was issued.

The red notice, while being based on a judicial decision – the French arrest warrant – lacks judicial nature. It does not compel national law enforcement to arrest the subject of a notice, and Salameh cannot 'appeal' it. This would be different if a Lebanese investigating judge was to question Salameh. Under [Article 106](#) of the Lebanese Criminal Procedure, the judge could issue an arrest warrant, and Salameh could file an appeal under Article 107 of the Criminal Procedure.

Lastly, although [Articles 30 through 36](#) of the Lebanese Penal Code allow for exceptions to the general rule that “Nobody may be extradited to a foreign state” (per Article 30), Lebanese authorities are unlikely to extradite Salameh, as they have traditionally [ignored](#) Interpol red notices in the past.

“Removal” from the Office

It is similarly unlikely that the caretaker government will move to dismiss the BDL governor from his office. The cabinet already opted to [defer the case](#) to the judiciary. Irrespective of the conditions set forth in [Article 19](#) of Lebanon's Monetary and Credit Law that provides for the removal of the governor in exceptional cases, the current cabinet is governing the country only in a caretaker function, with limited functions and powers. As long as the office of the presidency is vacant, some argue that members of the cabinet [cannot convene](#) to decide on any matter; and if they do convene, the necessary majority of the votes for decisions are even more a [subject of discussion](#) between legal experts. Therefore, the easy way out of a “[tug-of-war](#)” between different factions within the cabinet is to leave the matter to the judiciary, which, in turn, sees its work regularly impeded and [meddled](#) with by the executive. The judge that led the preliminary investigation in one of the Lebanese probes against Salameh was reportedly [prevented from accessing data](#) from banks. Attempts to force Salameh into questioning, with the State Security raiding three different locations in Lebanon (after he had not responded to the summons three times), failed as Salameh was, once again, [nowhere to be found](#).

Outlook

Although the Lebanese authorities missed the opportunity to show a sign of commitment to international cooperation in the fight against corruption, the European investigations have undoubtedly unleashed public pressure on Salameh and are driving him into a corner. The initiators of the French investigation expect it to be completed by the end of 2023, with the trial possibly starting in 2024. The trial could proceed with the presence of Salameh's lawyers and the judgement could be [delivered in absentia](#). With a conviction of Salameh, according to a [2021 French law](#) based on the Merida Convention, the assets seized from Salameh could be returned to the Lebanese people under the decisive condition that the Lebanese authorities can prove that the assets will indeed be returned to the people. On a final note, beyond holding Riad Salameh

individually accountable, his conviction would set a signal of hope for a nation that is constantly witnessing a culture of impunity and where an independent judiciary seems to remain a theoretical concept rather than a reality.

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LIBYA

Libya: The International Community's Bet over Holding Elections in 2023

Vito Todeschini

Presidential and parliamentary elections have long been heralded as a solution for Libya's political instability. This process, however, has so far been characterised by a weak electoral infrastructure and power struggles between Libyan political actors.

The international community has long invested in holding presidential and parliamentary elections in Libya as a solution to the political, economic, and security crises that have characterised the country since the fall of Muammar Gadhafi in 2011. While a first attempt to hold elections on 24 December 2021 has failed, since the beginning of 2023 the UN Support Mission in Libya (UNSMIL) and the Special Representative of the Secretary-General (SRSG), Abdoulaye Bathily, have [doubled down](#) on their efforts to have the elections take place at the end of this year.

One of the factors that has hindered the electoral process is the absence of a constitutional framework that clearly defines the form of government and division of powers in Libya. The [Draft Constitution](#) elaborated by the Constitutional Drafting Assembly between 2014 and 2017, and adopted in July 2017, has never been put to referendum, and the [Constitutional Declaration](#), adopted by the National Transitional Council in August 2011, still functions as the interim constitutional text of the country.

With a view to adopting a constitutional basis for elections and electoral laws, since early 2022 UNSMIL has facilitated dialogues between the two main Libyan legislative bodies: the House of Representatives (HOR), elected in 2014 and whose mandate has now expired; and the High Council of State (HCS), an advisory body established under the 2015 [Libyan Political Agreement](#). However, the possibility of new elections unseating the heads of these bodies, Agilah Saleh (HOR) and the Khaled Al-Mishri (HCS), as well as the current Prime

Minister Abdulhamid Dabaiba, have led these political figures to repeatedly [frustrate the process](#), a risk that continues to persist.

Intra-Libyan Dialogues

Until the end of her mandate in July 2022, former Special Adviser to the Secretary-General, Stephanie Williams, [convened](#) a number of meetings between the HOR and HCS in order to achieve progress on the elections file, yet with no conclusive results. After his appointment in September 2022, the new SRSG Bathily [continued](#) the dialogue with the various political and institutional parties in Libya, in an attempt to overcome the ongoing impasse. By the end of 2022, the HOR and HCS sorted out most issues surrounding the adoption of a constitutional framework for elections. Yet, they [stalled](#) on two specific issues pertaining to the eligibility criteria for presidential candidates, namely, whether dual nationals and military personnel can run for elections. These points directly concern the ability of General Khalifa Haftar to participate in the presidential run.

On 7 February 2023, the HOR adopted [Amendment No. 13](#) to the Constitutional Declaration, which aims to serve as a constitutional basis for election by laying down the future form of government for Libya. In particular, Amendment No. 13 [provides](#) that the President would be the Head of Government and would be based in Tripoli, while the Parliament would be composed of two chambers: a House of Representatives based in Benghazi and a Senate based in Tripoli. The HCS approved Amendment No. 13 on 2 March 2023. However, 55 out of its 135 members [contested](#) the vote, alleging that the quorum necessary for a valid vote within the HOR had not been met. Furthermore, they expressed concern with regard to the content of the Amendment, particularly its failure to clarify the eligibility criteria for presidential candidates, the broad powers granted to the President, and the clause connecting the holding of parliamentary elections to presidential elections. In addition, the SRSG [criticised](#) the Amendment because “[it] does not stipulate a clear road map and timelines to realise inclusive elections in 2023, and adds additional contentious issues such as the regional representation in the Senate.”

Meanwhile, on 26 February 2023, the HOR and HCS agreed to nominate their representatives for the so-called “6+6 Committee,” tasked with drafting the necessary electoral laws and working out the contentious issues surrounding Amendment No. 13. This mechanism was supported by UNSMIL, with the SRSG [stating](#) that the “6+6 Committee” needs to complete its work by early July 2023 for the elections to be held by the end of the year. The “6+6 Committee” met between 22 May and 6 June 2023 in Bouznika, Morocco, where it eventually reached an [agreement](#) on draft laws for presidential and parliamentary elections. As [pointed out](#) by the SRSG and some [commentators](#), however, the draft texts remain problematic in several respects, including in relation to the eligibility criteria for presidential candidates and the provision that makes the holding of parliamentary elections dependent on the successful holding of the first round of presidential elections. Further delay in sorting out the outstanding issues, in a way that is acceptable by all Libyan stakeholders and that allows for the practical implementation of the electoral laws, will inevitably impede having national elections take place by the end of 2023.

The SRSG’s Renewed Approach

The volatility of the intra-Libyan dialogues and the relentless political struggle between Saleh and Al-Mishri have constantly risked derailing the electoral process, and eventually hampering the holding of elections by the end of 2023. For this reason, the SRSG has decided to launch a parallel initiative to the HOR-HCS talks.

During his remarks to the UN Security Council on 27 February 2023, the SRSG, while pointing to the limited progress achieved until then on a constitutional basis for elections, [announced](#) his plan to establish a High-level Steering Panel for Libya. This mechanism aims to bring together multiple Libyan stakeholders such as “representatives of political institutions, major political figures, tribal leaders, civil society organisations, security actors, women, and youth representatives.” The stated goal of the SRSG’s initiative is to enable “the organisation and holding of presidential and legislative elections in 2023,” including by facilitating the adoption of the legal framework for elections and a Code of Conduct for candidates, outlining a clear and time-bound roadmap, and devising security arrangements to hold the elections in safety. The SRSG’s approach was subsequently endorsed by the UN Security Council through a [presidential statement](#).

Beside attempting to pre-empt spoiler moves by Libyan political actors, the SRSG’s intention is to make the electoral process more inclusive. Whereas the HOR-HCS talks keep the process within a strictly institutional context, which allows the heads of the two bodies to maintain control over it, on paper the High-level Steering Panel for Libya would give other institutional and civil society actors a chance to have a say in the design of a framework and roadmap for elections. In his remarks to the UN Security Council on 18 April, 2023, the SRSG indeed [stated](#) that “[i]t is vital for the success of elections that all parts of Libyan society are involved and have their voices heard, and that the electoral campaign provides an opportunity for a peaceful competition of visions and programmes and not an occasion that triggers hate speech and violence.”

Outlook

While the international community has bet on elections as the chief way to bring political stability in Libya, some experts have expressed strong criticism towards this approach, [arguing](#) that the SRSG’s plan replicates the model that led to the failed attempt to hold elections in December 2021, and that the looming risk is for Libya to relapse into conflict.

Moreover, even if elections were successfully held, there is a real danger that the process fails to be “free, fair, transparent and inclusive” of women, the youth, minorities and [civil society](#) as [called](#) for by the UN Security Council. Among the many factors that could taint the process are the widespread online and offline [violence against women](#), including those running for office, as well as an ever-shrinking [civic space](#), which hampers the Libyan civil society’s ability to exercise the necessary democratic control and monitoring.

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Morocco

The Moudawana: Morocco's Nearly 20-Year Old Family Code

Mai El-Sadany and Bassel Jamali

Morocco's House of Representatives began to discuss the possibility of reforming the country's 2004 family code, known as the Moudawana, which covers issues such as marriage, divorce, inheritance, and child custody. The new amendments would help reform some of the provisions, as well as solve a number of issues with the implementation and the interpretation of the text.

In March 2023, Morocco's House of Representatives [began](#) to discuss the possibility of amending the country's nearly-twenty year old family code, also known as the Moudawana, to "create a balance between Islamic teachings and the reality of modern Moroccan society." This parliamentary debate happened on the heels of a rally in Casablanca that [had been organised](#) by eight feminist associations on the occasion of International Women's Day to call for legislative reforms that would better protect women, including with regards to inheritance and abortion.

Though the Moudawana did introduce a number of progressive provisions when it was first adopted in January 2004 to replace the 1958 Personal Status Code, a number of issues remain in what it entrenches and how it is being interpreted and implemented. In May 2023, Morocco's Minister of Justice Abdellatif Ouahbi [confirmed](#) his commitment toward pursuing new reforms, which he described as "the final fight to end the exclusion and mistreatment of women, which has accumulated in our country for years."

The Moudawana governs a number of key areas, including marriage, divorce, inheritance, and child custody. Under the 1958 code, men could engage in polygamy without the consent of their existing wives; the right of women to divorce was tightly restricted; and women could not marry without the approval of a legal guardian, among other things.

Over a 30-month period prior to the adoption of the 2004 text, a King-appointed royal commission of religious scholars and legal experts worked to present amendments. When the 2004 Moudawana [was finally adopted](#), a number of key changes [came to pass](#), many of which [were celebrated](#) by activists. Some key provisions are highlighted below.

First, the minimum age for marriage was raised to 18 years old from 15 for women. While this was a welcome step, it is not an absolute minimum as Article 20 of the code still allows a family affairs judge to approve the marriage of a minor or minors in cases where there is a “well-substantiated decision explaining the reasons justifying the marriage.” In 2019, 32,000 underage marriage requests [were submitted](#) in Morocco and 81 percent of them were approved, a statistic which indicates that the practice of child marriage unfortunately remains prevalent. Looking prior to then, between 2011 and 2018, 85 percent of underage marriage requests [resulted](#) in authorisation. According to [reports from the ground](#), judges often issue these authorisations based on their assessment of a girl’s physical appearance and a determination that she is capable of assuming “marital responsibilities”; reasons provided by judges include saving family honour or preventing a woman from debauchery and at times, a judge does not provide a justification in writing.

The Moudawana removed the requirement that a legal guardian must provide approval for a woman’s marriage and instead gave the woman the authority to conclude her own marriage; Article 25 does, however, still allow a woman to delegate the power of concluding the marriage to her father or another relative. Although the Moudawana did not abolish polygamy in an outright manner, it did place restrictions on the practice. The code obligates the husband to establish the necessity of the second marriage and requires judicial approval for the marriage to proceed, the process for which is laid out in Articles 40 to 46. Specifically, in Article 44, the code stipulates that a court will not authorise polygamy when “an exceptional and objective justification is not proven” or when the man does not “have sufficient resources to support the two families and guarantee all maintenance rights, accommodation and equality in all aspects of life.” It states that polygamy is forbidden when there is a risk of inequity between the wives. Article 40 of the code also allows women to include provisions in their marriage contracts which would prohibit their husbands from taking on second wives; however, an analysis of 75,173 marriage contracts [found](#) that only 87 of them included a monogamy clause preventing polygamy. Overall, polygamy is rare; official statistics for polygamy in 2020 indicated that there were about 658 polygamous marriages, which amounted to roughly 0.3 percent of all marriages at the time.

In matters of divorce, the 2004 code expanded the rights of women to seek a divorce; for example, it granted both men and women the right to divorce on the basis of irreconcilable differences. However, some inequalities remain: men [can continue](#) to divorce by repudiation unilaterally, whereas women must either pay compensation to their husbands to seek a divorce or establish one of six specified justifications.

On child custody following divorce, the code [maintains](#) legal guardianship with the father unless in cases of death, absence, or incapacity; this results in men retaining decision-making in a number of consequential contexts. Custody is itself awarded first to the mother, then to the father, then to the maternal grandmother. And when a child reaches 15 years old, Article 166 of the Moudawana grants them the authority to select which parent to serve as their custodian. When a woman remarries however, there is a risk that she may lose custody of her child. Article 175 of the code states that a woman will not lose custody upon remarrying so long as one of four conditions apply: (1) the child is seven years old or younger, or if separation from the mother would inflict harm on the child;

(2) the child has an illness or handicap that makes caring for the child by anyone other than the mother impossible; (3) if the person she is marrying is the legal guardian of the child or is in a “degree of kinship relations” with the child; or (4) the mother is the legal guardian of the child.

The code establishes that children born out of wedlock are able to achieve legal recognition and that in cases of paternity disputes, scientific testing can be resorted to. With regards to inheritance, though the code established that a husband and wife could inherit from each other, very few other changes were made to the 1958 text, continuing to entrench provisions which have women inheriting much less than men in most cases.

Beyond the text itself, a number of issues with regards to implementation have [remained](#) in practice. Awareness among women about the rights laid out in the Moudawana continues to be limited; this has been particularly of note [in light of](#) the high illiteracy rate and the prevalence of religiously-justified and at-times inflammatory language on the issues at the heart of the Moudawana. Discrepancy in how the code has been applied by judges, depending on geographic location and socioeconomic background, still remains; some judges continue to rely on religiously conservative interpretations when applying the code. Furthermore, fears regarding the creation of a parallel and lesser system of justice abound, particularly in light of the fact that a new specialised circuit of family courts [was created](#) alongside the adoption of the Moudawana.

As a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and a number of other relevant human rights instruments, Morocco should take steps to amend its Moudawana to bring it in line with its international legal obligations. Some recommendations that the United Nations Committee on the Elimination of Discrimination against Women has made to Morocco [include](#) amendments that would establish an absolute minimum marriage age, fully prohibit polygamy, and ensure equal rights for women in “matters relating to property acquired during marriage, divorce, child custody, and inheritance.” Moroccan authorities should additionally ensure that they are investing in areas like awareness-raising and training of judges to guarantee that the law can be implemented in a manner that advances the rights of women, children, and men alike. As discussions on the Moudawana across Morocco continue among everyday citizens and government officials, the upcoming months present a unique opportunity for the country to once again embark on a discussion that may very well result in some additional prospects for reform.

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— Developments You May Have Missed...

- As the targeting of politicians, journalists, and activists for exercises of free expression, assembly, and association in **Tunisia** has intensified, in April, authorities [arrested](#) former Speaker of the Parliament and opposition Ennahda leader Rached Ghannouchi on charges of plotting against state security. Thereafter, authorities also banned meetings at all Ennahda offices and closed the headquarters of the opposition National Salvation Front; there are fears that Ennahda may be banned entirely.
- In June, Egypt's Cabinet [approved](#) a draft Refugee Law that, if passed by Parliament and later ratified by the President, would create a Permanent Committee for Refugee Affairs to serve as the primary entity to govern all refugee-related matters in the country. The committee would be responsible for gathering statistics and data related to refugees and asylum seekers and collaborating with various agencies to provide services to refugees. **Egypt** does not currently have a standalone law governing the status of refugees. It is, however, a signatory to the 1951 Convention Related to the Status of Refugees.
- The Netherlands and Canada [have together filed](#) a joint application to bring legal proceedings against the Syrian Arab Republic for torture before the International Court of Justice (ICJ). Under the Convention Against Torture, which **Syria**, Canada, and the Netherlands are all parties to, any dispute regarding application of the convention can first be referred to negotiation, then arbitration, and then to the ICJ. Since September 2020, the Netherlands, followed by Canada, and then both states together, have followed these procedures.
- After an Irish peacekeeper from the UN Interim Force in Lebanon (UNIFIL) was [killed](#) in South Lebanon in December 2022, the country's military court has now charged five men with "[voluntary homicide](#)." The men allegedly [are linked](#) with the militant group and political party in **Lebanon**, Hezbollah. The group has denied any role in the killing.
- A royal decree in **Jordan** [has annulled](#) the state of emergency that had been announced at the start of the pandemic in March 2020. In the years since, civil society organisations reported that exceptional powers advanced by the state of emergency had been used to improperly restrict rights.
- In **Oman**, citizens [will now be allowed](#) to marry foreigners without first seeking permission. Royal Decree No. 23/2023 is expected to usher in significant changes to the process, which previously required the approval of the state, could take months to be considered, and could at times end in denial.
- The United Nations Special Rapporteur on Counter-Terrorism and Human Rights [has launched](#) a much-awaited Global Study on the Impact of Counter-Terrorism on

Civil Society & Civic Space which tracks the misuse of counter-terrorism measures, including laws and decrees, by countries around the world to restrict the exercise of fundamental human rights. Examples from the Middle East and North Africa region include case studies from **Egypt**, **Syria**, **Bahrain**, and **Saudi Arabia**, among others.

- In **Greece**, another hearing was scheduled in a trial that was once [described](#) by the European Parliament as “currently the largest case of criminalization of solidarity in Europe.” In the case against two dozen refugee rescue volunteers that include Syrian refugee Sarah Mardini, the Supreme Court scheduled a hearing for the [appeal](#) of the prosecutor, after the court of first instance [had rejected the charges](#) (that include espionage). If found guilty, the aid workers could face up to eight years in prison.

Additional Rule of Law Reading from KAS Rule of Law Programme MENA and TIMEP:

- [The Beirut Blast Investigation: Deploying the Law to Evade Justice](#), Lama Karamé, TIMEP.
- [“The Syrian Judiciary’s Independence: Broader Constitutional Lenses”](#), KAS & the Syrian Legal Development Programme.

Disclaimer: “The information and views set out in this publication are those of the authors and do not necessarily reflect the views of the Konrad-Adenauer Stiftung or its Regional Rule of Law Programme Middle East & North Africa.”

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