

# Middle East: Against the law

By Borzou Daragahi, *Financial Times*, October 31, 2013

## The trial of Mohamed Morsi will be a test of accountability for the region's judicial systems

About once a month for the past year, Moroccan lawyer Reda Oulamine has set aside the tax and corporate cases at his Casablanca office and embarked with other colleagues on what he calls “caravans of justice”.

These free legal clinics for the poor across his country of 32m people have revealed a judicial system far more broken than he had expected.

There was the destitute woman in the city of Safi nearly beaten to death by a neighbour, only to be turned away by legal authorities. There was the doorman in Casablanca arrested after he fell foul of a well-connected man in the building. And the divorced woman awarded by a judge less than 5 per cent of the alimony and childcare to which she was entitled, perhaps because her former husband was a senior police officer.

“I discovered there's another layer of people extremely mistreated by the system,” says Mr Oulamine, a dapper, fast-talking litigator who spends his spare time working on pro bono cases. “They are the unemployed, maids and street-sweepers, and they are worth nothing to the system. They are treated as subhumans.”

Arabs across north Africa and the Middle East rose up nearly three years ago in large part to demand the justice denied them by governments dominated by corrupt and politicised legal systems. There is now palpable disappointment.

Although some leaders were toppled and reforms promised, judiciaries have been mostly impervious to change. They remain highly dysfunctional, more instruments for whoever happens to be in power than forums for mediating personal and commercial disputes and meting out justice.

These concerns about the structure of the judiciary in the Arab world are set to loom large over the trial of [Mohamed Morsi](#), Egypt's deposed president, which begins on Monday.

His case lays bare the political tensions within the legal system. Under President Hosni Mubarak, the prosecutor-general hunted down the regime's political enemies. When Mr Morsi succeeded him, the newly appointed prosecutor-general pursued critics of his Muslim Brotherhood. Now Mr Morsi and his allies in the Muslim Brotherhood [find themselves in the defendants' dock](#), facing trial by the same judiciary that he failed to reform during his year in power.

Ultimately, these judiciaries and codes of law across the Middle East have failed to win public respect. "If you belong to the grassroots and you have a problem or somebody has mistreated you, it's very difficult in those countries that we're talking about, to have your rights observed," says Christian Ahlund, executive director of the Stockholm-based International Legal Assistance Consortium, which has provided training for judges in the Middle East and north Africa.

This lack of faith in the rule of law affects business. In many states, businessmen fear that they will be laughed at for trying to sue over any transgressions. In the more authoritarian (and better funded) Gulf, investors do feel that they have a greater recourse to the courts in corporate cases but few people in north Africa think that any dispute would get a hearing for years.

Popular frustration means that more people simply take justice into their own hands. Cases of vigilantism appear to be on the rise. Several times in recent months, Egyptian villagers have lynched suspected criminals while members of former Libyan leader Muammer Gaddafi's security forces are being targeted by an assassination campaign.

“Promoting rule of law is where the courts really fall down throughout the region,” says Nathan J Brown, an expert on Arab legal reform at George Washington University and the Carnegie Endowment for International Peace. “There’s a consensus that Arab judiciaries don’t hold the powerful accountable to clear legal doctrines.”

### **An ossified bureaucracy**

A visit to any courthouse in the Arab world offers a picture of a broken system. Piles of paperwork gather dust in a massive office inside the Cairo court of appeals, described by jurists as one of the better equipped courthouses in the country. A clerk plays solitaire on the sole computer visible. Inside, filthy trial chambers with broken benches, sweet wrappers and crumpled soda cans litter the hall. Along dusty hallways, lawyers, petitioners, suspects in handcuffs and their sometimes weeping relatives mingle, chain-smoking cigarettes, waiting for judges to arrive.

One lawyer waiting in the hallway complained bitterly that paperwork often gets lost, leading to further delays. Another said overworked judges often rule arbitrarily without reading briefs in order to reduce their caseload.

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“People often complain about the system and strongly think it is very slow and highly corrupt,” says Moaz Khalil, a senior Cairo judge. “In fact, we judges are also having a hard time. Every judge spends around 12 hours on work on a daily basis, which is never sufficient, nor efficient to go thoroughly through every case. Fortunately, there is always a possibility for appeals in cases of judgment mistakes.”

Civil cases often limp on for years. Efforts by plaintiffs to recoup unpaid loans or get defendants to fulfil terms of contracts drag on, and there are few provisions for recouping legal costs. “Legal systems have been on a downward spiral since the 1950s,” says Khaled Shakalany, an attorney in Cairo. “Every Arab country will suffer from similar symptoms, but perhaps on a different scale.”

Jurists complain that corruption is rife. Litigants whisper about lawyers and judges who take fees to adjudicate. “If you want to have your child to get off for murder you find the right lawyer who finds the corrupt judges,” says Mr Oulamine. “The corrupt judges are a lobby.”

In Egypt, litigants sometimes bribe court stenographers to alter transcripts in their favour, lawyers say. “One of the problems is that I can’t talk to the person I’m defending,” says Saeed Mohamed Ahmed, a lawyer working on a drug-possession case at the Cairo appellate court. “I have to bribe the guard to give me access.”

He said that he had been standing outside the court for five hours, since 10am, waiting for the judge to show up. “There should be some kind of schedule to tell us when to appear,” he says. “I’m afraid even to go to the bathroom in case the judge shows up.”

### **Political pace**

As slow and inefficient as the courts are in cases involving the powerless, their pace picks up when official enemies of the state are accused of crimes.

In July, 94 critics of the United Arab Emirates government were [hailed into a court](#) that promptly convicted 69 of them on charges of aiming to overthrow the government and sentenced them to up to 15 years in prison. Some of those accused were members of an Islamist group that has advocated peaceful change in the Gulf monarchy.

The Moroccan journalist Ali Anouzla was arrested, jailed and released on bail pending trial on terrorism charges in September for merely providing an online link to an article in the Spanish newspaper El País that featured a video clip from an Islamic militant threatening King Mohamed VI. And Algerian blogger Abdelghani Aloui has been arrested and held without bail since September. His alleged crime? Posting cartoons mocking [Abdelaziz Bouteflika](#), the country's president, and Abdelmalek Sellal, the prime minister, on his Facebook page.

Additionally, many Arab countries continue to refer political enemies to special or military tribunals, beyond the scope of the regular justice system. Egypt's military is at present attempting to lobby those drafting the country's constitution for the right to haul civilians before military tribunals. Recently, an Egyptian military court sentenced dozens of government opponents to prison terms of up to 25 years just weeks after they were arrested in the city of Suez.

In most countries, legal experts say the political class does not intervene directly in such cases but through a handful of senior judges. Sometimes judges attempt to guess what those in power want for fear of their livelihoods. Regardless, such cases poison the perceptions about the entire judiciary, and even worry judges themselves.

“If we take the example of Morsi and the Muslim Brotherhood trials, in the case of any sentence against them, it will worsen the image of the whole judiciary system in the eyes of normal Egyptian citizens,” Mr Khalil, the judge, laments. “They will obviously think that the country is back to the corrupt system of Mubarak.”

### **A question of education**

Critics say the problems with Arab legal systems begin in overcrowded law schools, which produce too many graduates with inadequate skills. Egypt, for example, pours

15,000 lawyers a year into the job market. Of those, says Mr Shakalany, who oversees one of Egypt's most prestigious law firms, only about 30 are qualified to work for him. Students are also trained in Arabic while much of the legal business, especially in commercial work, is in English or French.

Unlike in the US or Britain, there is little mid-career training and recertification for lawyers and judges. Senior judges become a caste unto themselves, largely resistant to new ideas or outside help, which they regard as an infringement on their sovereignty. Any supervision or mechanism for weeding out incompetent or corrupt judicial officials is often in the hands of the judges themselves.

Resources are often misappropriated. Arab legal systems tend to have too many judges with far too few support staff, including clerks, to handle dreary paperwork. Court sessions almost always amount to the judge receiving written petitions on behalf of litigants with perhaps only minutes for oral arguments to be heard.

“The [Egyptian] judiciary system has to be a subject of urgent reforms; the most recent reforms were done in 1979,” says Mr Khalil. “We need support by other parts of the government to be able to do our work properly. For instance, we are still not using computers for our records, which is really weird. Sometimes files are lost and there is no way to find them.”

Those judiciaries that embrace foreign help, as in Tunisia, Lebanon and Jordan, perform better than their peers but still struggle to win respect. “You can't change the mentality of the judge in six months in terms of teaching them compassion, care for the victims,” says Mr Oulamine, who has helped train judges as part of a US government programme. “These take years to instil.”

In the eastern Libyan city of Benghazi a small group of reform-minded judges and lawyers were among the first to dare to defy Gaddafi in February 2011, eventually sparking a nationwide uprising.

Jurists were also among those clamouring for change in uprisings in Egypt, Tunisia, Bahrain and Yemen.

“It’s too early to assess what are the repercussions of the recent political changes on the judiciary,” says Nizar Saghieh, founder of Legal Agenda, a reform-minded pan-Arab journal of law based in Lebanon. “There is change. There is a spirit of reform.”

Reformers, sometimes with the backing of international organisations, have long sought to revamp Arab legal systems. But efforts to effect change have been stymied. According to some critics, vested interests prevent any kind of substantive reform.

“If I’m in power and let the judiciary be independent what am I going to do if it starts to clean up in the higher circles?” says Mr Oulamane. “Do you want the judges and prosecutors to start talking about all the people they did and didn’t send to jail for you?”

### **Changes from within**

Quick, piecemeal reforms are seen as the easiest way to enhance the rule of law. Some activists are calling for Egypt to allow female judges to work outside of family courts and revitalise an ossified bureaucracy. Moroccan courts would benefit if the huge sums in legal fees they receive remained with them instead of going straight to national reserves. Tunisia’s justice minister simply fired judges known for corruption and political cronyism under the deposed autocrat Zine al Abdine Ben Ali. [Libya’s political isolation law](#) prevents any senior judge from the Gaddafi era from continuing to work.

But judges themselves can also be instruments of change. One of the most promising movements is Morocco’s Club of Judges, a new organisation founded by reform-minded jurists. It has attempted to impose a code of ethics; each judge in the club must declare his assets and publicly report any attempt to bribe or influence him.

“They are telling the government we want to be independent, clean, better paid,” says Mr Oulamine. “And they represent a big problem for the other judges.”

Libya, Tunisia, Egypt and Yemen are now all focused on writing new constitutions while Morocco has already implemented some reforms to its charter. But Mr Saghieh says people across the Arab world are increasingly concerned that a constitution means little without a functional judicial system, and that the lack of reform lies at the heart of the restlessness, discontent and instability in the region.

“If you don’t have an independent, effective judiciary you are always at the mercy of executive power,” he says. “The basis of any democratic movement is to effect an independent judiciary. Who would protect workers, unions, minorities and women if the judiciary is not effective at stopping the powerful from harming the less powerful?”