

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

**تطورات
سيادة
القانون**

في منطقة الشرق الأوسط
وشمال إفريقيا

— Foreword

Whenever I am asked about the state of the rule of law in the Middle East and North Africa (MENA) during lunch – say, it is a lunch – I know that the time will be rich in content, well spent, and still, it will not be close to enough. The rule of law developments in the MENA, covering over 18 countries, are manifold. Before seeing the wider picture, before being able to make comparisons and analyse regional threads and developments, they must always be studied independently. Truly, as the so-called Arab Spring showed us just over ten years ago, the region occasionally seems to beat as one. But in its complexity, every country in the region is distinct and very different from the other.

As Konrad-Adenauer-Stiftung (KAS) Rule of Law Programme Middle East and North Africa, we found that there are smaller newsletters of organisations working in the region that touch upon rule of law developments, and other big annual or timely reports such as those published by the World Justice Project. But we have not come across a regional quarterly newsletter highlighting key regional rule of law developments. We wanted to change this; to show the broad variety of aspects and intricacies that the rule of law comprises and how it touches upon our everyday lives across the region.

The rule of law is fundamental to peace and prosperity; a central element of democracy, the independence of the judiciary as well as the adherence to international principles of human rights, criminal accountability, and gender justice. Constitutionalism and lawmaking have greatly progressed in nearly all countries of the region; often however, these countries also share a discrepancy between theory and practice, the law in the books and their implementation. Changing this needs political will and specific hands-on action plans. It also needs raising further awareness, informing and showing why the rule of law is so essential. May this newsletter support this goal – and highlight key happenings noteworthy in the region, for the readers to dwell and read further into them elsewhere. I hope you enjoy our first edition.

On behalf of the KAS, I would like to first and foremost thank TIMEP, Mai El-Sadany and her team, for making this possible, for the many hours of brainstorming, writing, collecting, and editing, this time around, and hopefully many more editions to come. I would like to thank Valeska Heldt, who is leading this project at our office and invested many hours working 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!

Whenever you will get asked about the state of the rule of law in the MENA, I know that once you have read this newsletter, the time during dinner – say, it is a dinner – will be filled: with good discussions and informed debates on the developments of the rule of law in the region.

Philipp Bremer

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

— Table of contents

Executive Summary	4
Efforts Towards Restoring Constitutional Order and Democratic Transition in Sudan	5
Algeria and the State of Freedom of Expression	8
Oueidat vs. Bitar: Obstruction of Justice in the Beirut Port Blast Investigation	11
Tunisia's Increasing Restrictions on Freedom of Expression	14
Developments You May Have Missed	17

— Executive summary

Across the **Middle East and North Africa (MENA)** region, the first quarter of 2023 has brought a number of critical issues implicating the **rule of law** into the forefront.

This inaugural issue of the newsletter features analysis by experts covering developments in four key countries and engages with a number of critical themes, from constitution-building to freedom of expression and judicial accountability.

In **Sudan**, a transitional process that follows two coups and that occurs alongside various mediation initiatives and an ongoing protest movement has received mixed reactions inside the country, writes *Hamid Khalafallah*. Though promising in the conversations, debates, and even draft constitutional frameworks it has surfaced, questions remain on its fate in light of its failure to bring in popular, grassroots stakeholders like the resistance committees.

Despite having its human rights record come under scrutiny in recent months through the Universal Periodic Review, **Algeria** has increasingly restricted civil society organisations and the press; *Samia Errazzouki's* contribution maps how authorities have done so through violative practice and via the implementation of vague legal text.

Political interference in the investigation into the Beirut Port explosion in **Lebanon** continues to derail the process, explains *Nadine Kheshen*. A recent series of steps taken by the Public Prosecutor of the Court of Cassation have forced the probe's investigative judge to once again suspend the investigation, leaving victims and family members without proper recourse inside the country.

As Kais Saied continues to consolidate control since he dismissed the prime minister and dissolved parliament on July 25, 2021, **Tunisia** has been targeting the opposition and those exercising their rights to freedom of expression. In addition to a series of decree-laws and a new constitution which centralise power in the hands of the president, the country's newly-issued Cybercrime Law has empowered authorities to leverage vaguely-worded false news provisions to target those expressing themselves freely on social media and in independent outlets; *Mondher Tounsi* unpacks this new decree-law further.

Beyond these four contexts, rule of law developments continue to unfold. This issue of the newsletter concludes with a Developments You May Have Missed section, highlighting some headlines that take you the reader from long-awaited amendments to Morocco's family law to judicial reforms in Israel which have come under critique by Israeli citizens and the international community alike.



SUDAN

Efforts Towards Restoring Constitutional Order and Democratic Transition in Sudan

Hamid Khalafallah

On August 8, 2022, the Sudanese Bar Association (SBA) brought together a wide range of stakeholders to break the political deadlock the country is facing, and to discuss a constitutional framework of Sudan's prospective democratic transition. The initiative kicked off a prolonged process expected to lead to adopting a constitution for the transitional phase of the country, as well as the launch a two-phase process entailing a Political Framework Agreement, and an ongoing¹ final political process that should lead to a final agreement on Sudan's prospective democratic transition. Despite strong international support, the process has received mixed domestic reactions, ranging from traditional pro-democracy actors strongly supporting it, to grassroots movements that oppose any direct negotiations with the military leaders.

Following a months-long popular uprising, the authoritarian regime of President Omar al-Bashir was [toppled down](#) in April 2019 when the Sudanese military decided to side with the demands of the Sudanese people and seized power through a coup d'état, [suspending](#) the constitution and dissolving all governance structures. In August 2019, the military leaders [signed](#) a power-sharing agreement, the [Constitutional Declaration](#) replacing Sudan's 2005 Interim Constitution, with the Forces of Freedom and Change (FFC), an umbrella group representing civilian, political, and armed opposition groups. The agreement established a three-year transitional period that entailed various transitional processes. Two years into the transitional period, the Sudanese military breached the [Constitutional Declaration](#) and orchestrated a [coup](#) in October 2021, which in effect abruptly halted the fragile transition that was supposed to pave the way for elections in 2023. Ever since, Sudan has been [without](#) a functioning government and a constitutional framework. The country [entered](#) a complicated political impasse. Despite brutal security crackdowns, the massive protest movement has continued to take to the streets on a near-weekly basis.

¹Ongoing as of the writing of this analysis on March 24, 2023.

The Sudanese Bar Association's Draft Transitional Constitution

Following the coup in 2021, multiple international and regional [mediation initiatives](#), mainly led by the trilateral mechanism of the United Nations Integrated Transition Assistance Mission in Sudan (UNITAMS), the African Union (AU), and the Intergovernmental Authority on Development (IGAD), have been working on ending the country's political deadlock, with little success. Furthermore, in July 2022, the Sudanese military [announced](#) it would refrain from participating in the dialogue regarding the political process, to allow civilians to reach an agreement among themselves. On the back of that, the SBA organised a three-day "[Transitional Constitutional Workshop](#)" in August 2022, in order to establish a Sudanese-led initiative aimed at resolving the political crisis. The main [issues](#) discussed in the workshop were the tasks entrusted to the transitional government, the duration of the transitional period, transitional governance structures, and the role of the military and security institutions during the transitional period. The workshop was described as an [inclusive](#) initiative and was [attended](#) by representatives from political parties within the FFC alliance and beyond. It was also attended by representatives from the Sudanese civil society, native administration leaders, religious leaders, and members of the international community, including senior representatives from the UN, the AU, the IGAD, and the European Union.

The workshop [concluded](#) with a set of recommendations and was followed by the [formation](#) of a committee to draft the transitional constitution. The draft transitional constitution was [shared](#) by the SBA in September 2022, and is [intended](#) to govern the transitional period, during which the government should embark on a proper comprehensive, inclusive, transparent, and participatory constitution-making process to create a constitution. The draft constitution has a [comprehensive framework](#) that tackles all issues concerning Sudan's democratic transition, including government structures, bill of rights, governance system, and roles of the security sector, among other issues. The draft was welcomed by Sudanese political actors who were part of the bar association's workshop and [by the international community](#), who also [suggested](#) that more work was needed to ensure inclusivity and participation of all stakeholders. However, various resistance committees, the main actors mobilising the streets, [denounced](#) the initiative fearing that it would not serve the revolution's demands.

Political Framework Agreement

Despite the enthusiasm around the SBA's draft constitution, there were debates about the sequence of the process. Various actors suggested that it was essential to come up with a political agreement first in order to provide a framework to appoint the transitional government and adopt the transitional constitution. Thus, [40 parties](#), including political parties, armed movements, professional associations, civil society, and Sudan's military, [signed](#) a Framework Agreement in Khartoum on December 5, 2022.

The agreement [aims](#) at guiding Sudan's civilian-led transition towards elections and criminalises military coups. It [pledges](#) a two-year transitional period and the appointment of a civilian prime minister by the political parties that signed the Framework Agreement. It also [stipulates](#) full civilian authority at all levels. [On paper](#), the agreement consists of four sections: general principles, transition issues and tasks, transitional authority structures, and security institutions. The general principles section suggests that "Sudan is a civilian, democratic, federal, parliamentary state in which sovereignty is for the people who are the source of powers, and in which the rule of law and the peaceful transfer of power through free and fair elections and the equitable division of wealth and resources, prevail." It also emphasises on instating "one national professional army, committed to

the unified military doctrine and carrying out its duties in the framework of protecting the nation's borders and defending democratic civilian rule.”

Even though it was [welcomed](#) by numerous international stakeholders, it was [condemned](#) by the resistance committees who staged a [protest](#) while the signing ceremony was taking place. A few other political actors expressed [reservations](#) on the agreement. Furthermore, some of the families of protesters who were killed during the revolution declared their [rejection](#) of the agreement, worrying that the agreement will compromise justice.

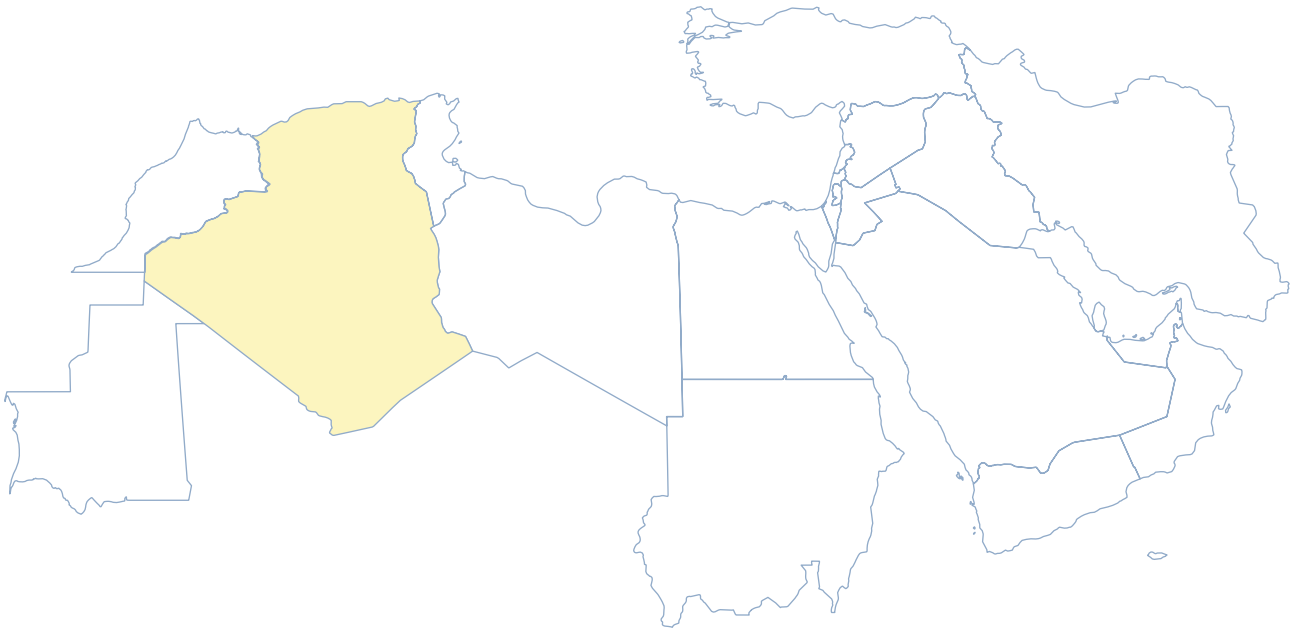
Final Political Process

Building on the Framework Agreement, Sudanese actors entered a new decisive phase when the UNITAMS-AU-IGAD Trilateral Mechanism [launched](#) the final political process in January 2023. This phase of the process is dedicated to conducting workshops to discuss contentious issues that have caused fractions during previous negotiations. The workshops address the [issues](#) of dismantling the former regime of Omar al-Bashir, reviewing the [Juba Peace Agreement \(JPA\)](#), the crisis in Eastern Sudan, security sector reform, and transitional justice. The process is expected to result in reaching consensus on these issues, [paving the way](#) for a final and fair political agreement that leads to a civilian-led government that will manage the transitional period. The process should also aim to [build broader support](#) around the final agreement and the new constitutional arrangements, restoring Sudan's democratic transition.

Participants of the final political process have concluded the discussions on the [dismantling of the former regime](#), the [review of the JPA](#), the crisis in [Eastern Sudan](#), and [transitional justice](#), and [published](#) the outcomes and recommendations of the concluded workshops, while preparing for the final workshop on security sector reform. Furthermore, [discussions are underway](#) to win the support of actors who are currently opposing the final political process, including some armed movements, political parties, and resistance committees. As soon as these issues are finalised, the Sudanese actors should be ready to sign the final political agreement that will [restore](#) Sudan's democratic transition. The final political agreement is currently [being drafted](#) on the basis of the SBA's draft transitional constitution, the Framework Agreement, and the recommendations that came out of the convened workshops. The final political process spokesperson [announced](#) that they plan to sign the final political agreement on April 1, and adopt the transitional constitution on April 6, while the new transitional government is expected to be formed on April 11.

Despite the ongoing political and constitutional processes, the security situation is still volatile and the country suffers from serious governance and constitutional vacuums. It remains unclear how and if the political agreement will succeed in restoring constitutional order and putting the country back on the democratic transition track, with various groups continuing to contest the process still.

Hamid Khalafallah is a Nonresident Fellow at TIMEP focusing on inclusive governance and mobilisation in Sudan.



ALGERIA

Algeria and the State of Freedom of Expression

Samia Errazzouki

In late 2022, the international community assessed Algeria's human rights record as part of [the United Nations' Universal Periodic Review \(UPR\) before the Human Rights Council](#). Despite recommendations to amend practices restricting expression, press freedom, and assembly, just a month after their UPR in December 2022, Algerian authorities closed down the country's last remaining independent news outlet, Radio M, and arrested its editor [Ihsane El Kadi](#). The arrest of El Kadi solicited widespread condemnation and was formally [referred](#) to the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression.

Despite the mounting outcry from rights groups, authorities have continued targeting journalists and civil society. In January 2023, the Algerian League for the Defence of Human Rights (LADDH) [learned](#) that it had been dissolved by an administrative court, following a complaint by the Interior Ministry; LADDH had been entirely unaware of the judicial proceedings and only learned of the judgement via the internet and months after it was issued. In late February, authorities formally [dissolved](#) the Youth Action Group (RAJ) and the Movement for Democracy and Socialism party – two groups who played critical roles in the Hirak protest movement in 2019. In the same week, authorities arrested [Raouf Farrah](#), a senior analyst at the Global Initiative against Transnational Organised Crime, along with his father over charges of “receiving funds” to “disturb public peace.” According to [media reports](#), Farrah's arrests were part of a wider investigation into the circumstances that led to an activist's departure from Algeria despite facing a travel ban. The activist, Amira Bouraoui, fled to France via Tunisia – a Tunisian court subsequently [sentenced](#) Bouraoui to three months in prison in absentia on February 24, 2023.

These developments fit into a broader timeline stemming from attempts at curbing the Hirak (Arabic for “movement”) protest movement and deterring media coverage of the protests beginning in 2019. The Hirak movement came years after protests swept the Middle East and North Africa in 2011, during which [headlines](#) seemed to suggest that Algeria was an anomaly. As its neighbours appeared to be making progress towards democracy, by 2019, the tables turned. Tunisia and Morocco, which observers previously lauded for their reforms, were now the subject of international ire and scrutiny due to their authoritarian regression. Meanwhile in Algeria and in the diaspora, hundreds of thousands descended onto the streets of cities to reject the renewal of what would have been President Abd al-Aziz Bouteflika’s fifth term. Dubbed the Hirak movement, it was now Algeria’s turn to capture the spotlight. In less than 10 months, Bouteflika announced his resignation.

Even after this, Algerians continued to organise against corruption, restrictive laws, and unemployment, among other issues – common grievances shared by millions of other citizens across the region. Since 2019, however, developments in Algeria have pointed to an ongoing deterioration in human rights and press freedom. In August 2019, the Committee to Protect Journalists (CPJ) [reported](#) that access to at least five independent news websites had been blocked without any official notification. In addition to the arrest of a number of Algerian journalists, foreign reporters also faced detention and deportation, including the expulsion of [AFP’s bureau chief](#) and journalists working with [Reuters and TRT](#). This prompted CPJ to issue a [safety advisory](#) in April 2019, in which they urged journalists to exercise caution while on assignment.

By the end of 2019, journalists were increasingly targeted: [Sofiane Merakchi](#) was arrested and charged with working for foreign news outlets “without a licence and evading customs authorities;” [Said Boudour, Abdelmoundji Kheladi, and Adel Azeb Chikh](#) were held in pre-trial detention pending trials over an array of charges including “defamation and the spread of false news, insulting authorities, and obstructing traffic;” authorities confiscated editor-in-chief of *Le Provincial* [Bendjama Mustapha](#)’s computer and arrested him without any explanation; cartoonist Benabdelhamid Amine was sentenced to one year in prison for insulting the president, “violating territorial integrity,” and “disseminating publications harmful to national security;” and RSF correspondent [Khaled Drareni](#) was arrested for “assembly without a permit.”

But the year 2019 would only mark the beginning of a long string of attacks on the press. On May 17, 2021, authorities arrested a total of [16 journalists](#) for covering a demonstration in Algiers. Meanwhile, over the course of the summer in 2021, authorities revoked the accreditation of international news broadcasters, including [France 24](#) and [Al-Arabiya](#). Even Algerians in the diaspora could not evade the long reach of the crackdown. In March 2022, Spain complied with Algeria’s international arrest warrant for outspoken critic and former army corporal [Mohamed Benhalima](#), who was swiftly jailed upon arrival. In May 2022, at least [three Hirak activists](#), who also hold Canadian citizenship, faced an arbitrary travel ban and were prevented from leaving Algeria. In a report on these cases, [Human Rights Watch](#) stated, “The message is clear: Algerians who speak out need to look out, no matter where they live.”

These developments and the arrest of a number of other journalists and activists coincided with Algeria’s aforementioned [Universal Periodic Review](#) (UPR) in late 2022 – a moment during which the country’s human rights record was scrutinised by the international community. Some States and rights groups [pointed](#) to the use of vaguely worded laws to prosecute journalists and activists under the guise of “national security,” such as the Law on Information (Law No. 12-05), the Law on Associations (Law No. 12-06), and the Law

on Audiovisual Activity (Law No. 14-04). Algerian journalist Ihsane El Kadi, for example, currently remains in pre-trial detention over [charges](#) that include “receiving funds and benefits from foreign sources for the purpose of engaging in political propaganda” and “undermining state security and public order.”

With the exception of the UPR, however, international powers have not paid the necessary attention to these developments. However, the attention on Algeria’s human rights violations has not entirely dissipated. The case of Amira Bouraoui, for example, has revived diplomatic tensions between Algeria and France in which Algeria [recalled](#) its ambassador to France and accused the country of helping orchestrate her escape. In a [recent statement](#), Mary Lawlor, UN Special Rapporteur on the Situation of Human Rights Defenders, condemned the escalating crackdown, stating: “Acts of intimidation, silencing and repression against the human rights movement must end [...]. We have been sharing strong concerns over numerous provisions of the Algerian law on associations (12/06), which contradict international human rights law.”

While the days of the Hirak movement seemed to suggest that Algeria was heading towards the path of progress, the developments of the past few years with regards to freedom of the press and freedom of expression are suggesting otherwise. Despite this, Algerians remain hopeful and steadfast. On March 12, 2023, Algerian journalist Ihsane El Kadi faced a hearing during which he [addressed](#) the court with both humour and resolve: “I wore a brand new shirt and shoes to come before [you]. I’m not going to wait for a judgement from afar and I have not consulted my defence team, but I request to be dismissed and I inform you, with all respect, that I am on strike and will boycott this trial.” So long as authorities respond to Algerians’ peaceful demands for justice and rights with repression, the sparks for change will continue to flicker in Algeria – a country whose recent history has been defined by its people making costly sacrifices for dignity.

Samia Errazzouki is a Nonresident Fellow at TIMEP focusing on press freedom in North Africa, with a special emphasis on the situation of women journalists.



LEBANON

— Oueidat vs. Bitar: Obstruction of Justice in the Beirut Port Blast Investigation

Nadine Kheshen

On August 4, 2020, one of the world’s largest non-nuclear explosions took place at the port of Beirut, the result of 2,750 tonnes of negligently stored ammonium nitrate catching fire in the hangar where the chemicals were stored. The explosion killed over 200 people, injured thousands, and displaced roughly 300,000 people from their shattered homes. For more than two years, the investigation into the explosion has stalled due to political interference, including attempts by political figures involved in the probe to file dozens of legal challenges to have the probe’s investigative judge Tarek Bitar removed. The most recent interference has come from the country’s head Public Prosecutor, Ghassan Oueidat, whose legal actions have in effect halted the investigation, after Bitar named him a person of interest and summoned him for questioning. In turn, Oueidat retaliated against Bitar, charging him with “usurping of power” and “rebellion against justice” and placed him under a travel ban. Meanwhile, victims of the explosion are fighting an uphill battle to access justice in a system that was built to facilitate impunity.

The Court of Justice

From the outset of the investigations into the Beirut port explosion, the bodies and procedures charged with the handling of the port explosion case have been [heavily criticised](#) for lacking a proper separation of powers and adequate due process guarantees. The case was referred to the Court of Justice, which is an [exceptional criminal court](#) that only hears “serious offences” referred to it by the Council of Ministers, such as those pertaining to state security, sectarian strife, or involving firearms and explosives. The court is made up of five judges; the first is an automatic appointment of the president at the Court of Cassation, while the remaining four members are appointed by the Council of Ministers at the recommendation of the Minister of Justice, allowing for heavy political influence.

The judicial investigator to the Court of Justice (as Bitar is) is appointed by the Minister of Justice with the approval of the members of the [High Judicial Council](#), the judicial body responsible for overseeing and maintaining order across the entire civil court system, including the appointment and transfer of judges within the civil judiciary. The High Judicial Council has also been criticised for [lacking a separation of powers](#); five of its 10 members are selected by the Council of Ministers, and three are automatic appointments from the Court of Cassation, including the public prosecutor, leaving only two members to be elected by their peers. The selection processes of the Court of Justice and Higher Judicial Council both run afoul of [Article 20](#) of the Lebanese Constitution guaranteeing a separation of powers, specifically stating that “judges shall be independent in the exercise of their functions.”

The inability of Lebanese judicial bodies to ensure a fair trial has been demonstrated by the repetitive political interference in the current investigation. Over [25 complaints](#) have been filed against Judge Bitar since his appointment, and meetings of the plenary assembly of the Court of Cassation were repeatedly delayed due to lack of quorum after several judges retired and political interference prevented their replacement. For example, Minister of Finance Youssef Khalil [refused to authorise](#) the appointment decree of six judges for months based on the pretence that the selected judges did not meet sectarian criteria. In addition, caretaker Minister of Justice Henri Khoury caused controversy by attempting to have the High Judicial Council appoint yet another [judicial investigator](#) to rule on matters while Bitar’s investigation was stalled, despite there being no precedent or legislation authorising such an appointment. This appointment might have been successful were it not for the [opposition](#) of the President of the High Judicial Council, Souhail Abboud.

Power Struggle: Prosecutor vs. Investigator

The complaints levied against Bitar and the delay in the appointment of judges described above caused the investigation to stall for 13 months. However, in January 2023, Bitar conducted a legal analysis concluding that a removal from his role would be a breach of the principle of separation of powers, and he attempted to [resume his investigation](#). He also ordered the release of several persons that had been held in prison since the explosion and summoned high-profile political and administrative figures for questioning, including Ghassan Oueidat.

Oueidat, public prosecutor at the Court of Cassation of Beirut, holds the highest prosecutorial position in the country, and is [responsible](#) for overseeing and instructing all judges within the Public Prosecution Service. He is also the Vice President of the High Judicial Council. The public prosecutor is appointed by the Council of Ministers, based on a recommendation by the Minister of Justice. This allows for significant influence by members of government over the prosecutor’s work.

Prosecutor Oueidat had [recused himself](#) from the port explosion case in December 2020 after his brother-in-law, Ghazi Zaiter, was called in for questioning. Zaiter, who was the [Minister of Transportation](#) when the ammonium nitrate shipment was received at the Beirut port, is still under investigation by Bitar. According to the [Beirut Bar Association](#), Oueidat’s recusal was duly accepted by the Court of Cassation, barring him from taking any further actions or decisions on the case. However, after becoming a person of interest in Bitar’s investigation, Oueidat unilaterally revoked his recusal to stop the investigation, in a move described as a [judicial “coup”](#) by the Coalition for an Independent Judiciary. In addition, Oueidat directed law enforcement not to comply with Bitar’s orders, ordered the release of 17 detainees held in connection with Bitar’s investigation, charged Bitar with “usurping of power” and placed him under a travel ban. Several [legal institutions](#)

have since criticised Oueidat for violating the Court of Cassation's decision and called his actions an "abuse of power and violation of the law."

Indeed, Oueidat's charges against Bitar are not supported by the law: Articles 361 and 362 of Lebanon's [Rules of Criminal Procedure](#) state that the role of the public prosecutor at the Court of Cassation is to present possible charges for a case and refer the investigation file to the investigating judge. Beyond that, Bitar as investigating judge has broad powers to issue warrants without the approval of the public prosecutor and to question defendants even if they were not initially charged by the public prosecutor; the judicial investigator's "decisions in this regard are not open to any kind of review." As such, the public prosecutor does not have the authority to override charges levied by the investigative judge nor interfere with the investigative judge's discretion to call additional persons in for questioning. However, on February 6, [Bitar decided to postpone](#) his scheduled interrogations until the legal obstacles are resolved and he is able to properly resume the investigation.

Some advancements in the case have been made in courts abroad, such as the court ruling in February 2023 in the [United Kingdom](#) which found the UK chemical trading company that owned the ammonium nitrate liable to three families whose relatives were victims of the explosion. Other prosecutions are being initiated in courts abroad, but many of them rely on the [continuation of the investigation](#), whether domestic or international, to gather more evidence. The longer the case is delayed, the more likely that evidence will erode, disappear, or be tampered with, and the more opportunity for implicated political actors to flee the country.

In light of the political class's attempts to thwart the investigation and escape accountability, [activists and human rights organisations](#) have been calling on members of the UN Human Rights Council to put forward a resolution that would allow for an international, independent, and impartial investigation of the port explosion. So far, these calls have yet to be honoured as members of the council have [deferred to France](#) to lead on such a resolution, considering France's colonial history in the country and its close ties with the Lebanese authorities. But activists and families of the victims have not given up, maintaining pressure on the UN Human Rights Council to take up the investigation and ensure that those responsible face justice.

Nadine Kheshen is an international criminal and human rights lawyer who has been working on conflict and human rights in the Middle East since 2016.



TUNISIA

Tunisia's Escalating Crackdown on Freedom of Expression

Mondher Tounsi

In February 2023, around 20 high profile political and business personalities were [arrested](#) in Tunisia, in what has been described as the country's largest wave of arrests in recent years. Reminiscent of the wide-scale arrests during Zine El Abidine Ben Ali's era (Tunisia's president between 1987 and 2011), they involved several well-known individuals, such as Bashir Akremi and Tayeb Rached, two former judges sacked by [Kais Saied in May 2022](#); [Kamel Eltaief](#), a [power-broker](#) businessman who was involved with former president Ben Ali during his early days and remained prominent with ties across the political spectrum; [Noureddine Boutar](#), director of Mosaique FM, the country's biggest radio station; [Jaouhar Ben M'barek](#) and [Chaima Issa](#), politicians and senior officials of the National Salvation Front; and [Khayam al-Turki](#), a politician whose name was put forward as a potential prime minister candidate in 2020, among others. According to lawyers of some of the accused persons, those arrested were often not presented with formal charges upon arrest, yet reports indicate that some charges may include "[forming](#) a criminal gang to harm the Tunisian state," "[conspiracy](#) against internal and external state security," and [other provisions of the penal code and the counterterrorism law](#). These accusations are consistent with Saied's rhetoric which has attempted to justify the crackdown by framing those dissenting against him as corrupt persons and conspirators.

Since Saied's power grab on July 25, 2021, political and judicial developments in Tunisia have raised serious concerns over the state's future. These concerns have only been exacerbated alongside strong restrictions of the freedom of expression that has taken the form of intimidation tactics, detentions, and arrests. Student Ahmed Hamada was [arrested](#) on October 28, 2022 and his laptop and phone were seized. Hamada runs a Facebook page that covers police clashes with residents of working-class neighbourhood Hay Tadhamon and could face up to 12 years in prison. In similar fashion, Nizar Bahloul, editor of news outlet Business News, was arrested on November 14, 2022, under charges of "defamation" and spreading "fake news."

Both cases fall under the same framework: They were the first criminal investigations to take place under [Decree-Law No. 54 issued on September 13, 2022](#), and also known as the new “Cybercrime Law.” This decree-law is one of the newest legal tools that Saied’s regime now has as part of its toolbox to quieten opposition. The decree-law comes on the heels of a series of presidential decrees following Saied’s power grab that have altered the structure of existing institutions and oversight mechanisms, and undermined legislative and judicial authorities. On September 22, 2021, Saied issued [Decree 117](#), which effectively gave him [authority](#) to dictate government policies previously enacted by different institutions, and [expanded](#) his powers. These steps were further consolidated under the [new Constitution](#) that was voted on with a 30.5% turnout in a referendum on July 25, 2022. Having dissolved Parliament and the Higher Judicial Council, Saied was able to unilaterally rule by executive decree for more than a year in the absence of a sitting legislative body. He even rushed to issue two decrees dissolving [municipal](#) councils and [regulating](#) the second Parliamentary chamber for local governance days before the first [parliamentary](#) session after a new body was finally elected.

[Decree-Law No. 54](#) is made of 83 articles divided across five chapters. Its stated purpose is to [combat](#) “IT and Telecom crimes”; it imposes prison sentences up to six years and a fine up to \$20,000 for violating its provisions. [Article 3](#) states that legal codes constituting criminal laws in Tunisia, such as the Penal Code, Code of Criminal Procedure, and Code of Military Procedures and Penalties, continue to apply to stated crimes in this new law depending on the case “with the possibility of imposing harsher punishments.” [Article 9](#) allows for prosecutorial and judicial law enforcement to request, investigate, and collect any information system or device if deemed necessary in establishing “the truth,” without further defining the latter term. [Article 24](#) drew the most backlash from civil society and international organisations: It imposes a penalty up to five years imprisonment and a fine of approximately \$15,000 for the usage, production, publication, or spread of “false information and rumours,” with the possibility – and this is critical – to double the sentence if such content concerns state officials. Yet again, no definition is provided for nebulous terms, allowing any statements to be potentially identified as ‘rumours’ or ‘false information’. [Article 35](#) [enables](#) Tunisian authorities to share information with foreign governments in some cases to preemptively detect online crimes and follow the perpetrators so long as partner states respect the confidentiality of the information. In sum, this decree-law expands the discretionary powers of the ministries of the interior and defence, criminalises online content based on vague definitions, and gives the judicial police the authority to monitor and seize data in servers, IT systems, or others.

The decree-law has been criticised by different local and international actors, which considered it to be a clear violation of the constitutional freedoms of expression and press, as well as the right to privacy. Both the 2014 and the 2022 Constitutions contain a bill of rights, which guarantees, among others, the “freedoms of opinion, expression, media and publication” ([Article 37 of the 2022 Constitution](#)). In December 2022, the Tunisian General Labour Union (UGTT), the Tunisian Order of Lawyers, the Tunisian Federation of Newspaper Directors, the National Syndicate of Tunisian Journalists, and the Tunisian League for Human Rights issued a [statement](#) calling for the immediate repeal of Decree-Law No. 54, condemning it as a “systemic attack on freedom of expression and the press.” Similar criticism was also expressed by other entities such as the [International Commission of Jurists](#), [Amnesty](#), and [IFEX](#), that highlighted the violations this decree imposes, not only to rights enshrined in the constitution, but also to other legal instruments like [Decree No. 115](#) on the Freedom of the Press, Printing and Publishing, a prominent legislation governing media space that was passed after the 2011 Jasmine Revolution.

This escalation of events amplifies the atmosphere of repression in Tunisia and fears of the regime's tactics in targeting and quelling freedom of expression while empowering law enforcement, an institution that has historically been the agent for repression in the country. Even before Saied's power grab, the country had a history of discriminatory and violative laws, as well as abuses of freedom of expression stemming from the Ben Ali era. Nonetheless, the introduction of new legal instruments such as the Cybercrime Law, alongside the weakening of oversight bodies, the expansion of competences for implementing bodies, and the spike in prosecutions of opposition figures constitute serious grounds for worry over the future of the country's state of rule of law. This is additionally aggravated by the current economic crisis and the [stalled talks](#) with the [IMF](#) (despite a staff-level agreement) to secure a final loan, which is expected to come with unpopular austerity measures. In the meantime, the Saied regime continues to tighten its grip and instrumentalise state rhetoric to target expression. At the end of February 2023, the president's rhetoric [launched](#) a wave of racially-motivated attacks and arbitrary arrests against migrants and Black Tunisians. Hundreds [marched](#) to the street to denounce Saied's remarks, and to continue expressing opposition against the state policies.

Mondher Tounsi is an independent consultant and researcher who works on democratic governance and conflict studies in the MENA region.

— Developments You May Have Missed

- Discussions on the importance of amending **Morocco**'s family law, referred to as the Moudawana, are gaining momentum inside the country. A feminist collective [has called](#) for changes that would prohibit child marriage, update divorce provisions, establish equality in inheritance, and prohibit polygamy, among other amendments. In March, the National Human Rights Council (CNDH) [announced](#) that it would be setting up a working group to engage in discussion around the family law and identify legal proposals. The House of Representatives [also hosted](#) a debate to discuss potential amendments that would need to be made. The Moudawana was adopted by parliament nearly twenty years ago in February 2004; it had replaced the 1958 Personal Status Code.
- Introduced by the Iraqi Communications and Media Commission, a leaked draft of Regulation No. 1 of 2023 for Digital Content in **Iraq** [threatens](#) to ban a wide range of online content, including the promotion of homosexuality, and uses vague terminology which can be widely interpreted to restrict freedom of expression, including phrases like “indecent digital content,” and “insulting the state.” If approved, the draft would also place overly-burdensome licensing regulations on users, platforms, and entities posting online content. This leaked draft comes alongside a [crackdown](#) on “indecent content” online; between January 10 and February 13, it was reported that courts had charged 14 people for publishing “indecent” or “immoral” content on social media, and that six of these 14 people had been sentenced to prison terms between six months and two years.
- Also in **Iraq**, parliament is debating a draft law that would increase the size of the country's electoral districts. Under the version of the law that is currently in place, each of the country's 18 provinces are broken into several electoral districts. This law was a demand of the country's 2019 protest movement and is believed to have resulted in part in having given independent candidates a greater chance of success in contesting the elections. The new draft, if passed, would bring the country back to having one electoral district per governorate. In response, protesters [took to the streets](#) in late February to condemn the draft, which is backed by the [Coordination Framework](#).
- A new report by Human Rights Watch [documents](#) how LGBTQI+ persons are being targeted across the MENA region based on their online activity, particularly on social media. Among other things, the report tracks 45 cases of arbitrary arrest involving 40 persons in **Egypt, Tunisia, Lebanon, and Jordan** who were targeted online; 26 cases of online harassment, including incidents of doxxing on Facebook and Instagram; and 20 cases of online entrapment by security forces on Grindr and Facebook.
- In **Libya**, where national elections were set to take place in December 2021 but have not been re-organised since, Special Representative of the Secretary-General for

Libya and head of the UN Support Mission in Libya (UNSMIL) Abdoulaye Bathily [has put together](#) a new roadmap to break the country's stalemate; under this roadmap, if a legal framework is agreed upon by June, national elections could happen before the end of 2023. According to Bathily, the High State Council and the House of Representatives [have agreed](#) to establish a joint committee to draft the necessary electoral laws.

- In **Israel**, after three months of nationwide protests and a general labour strike, on March 27, Prime Minister Benjamin Netanyahu decided to suspend his plans of [judicial reforms](#) that had been announced by his new right-wing nationalist government in early January. Netanyahu announced that he would seek a compromise with his political opponents and [postpone the overhaul](#) until the next parliamentary session, which starts at the end of April. [According to legal scholars](#), the reforms threaten to severely challenge the independence of the judiciary. They would significantly [weaken Israel's Supreme Court](#), which in the past had, among others, overturned more aggressive government measures in settlement policy. The reforms stipulate for the Knesset to be able to overrule a court decision on the unconstitutionality of a law with a simple majority. Protests against the paused reforms continue, as many see Netanyahu's announcement as a tactical move, given that he also said he would pass the reform "either way".
- In February, the Higher Regional Court in Berlin [sentenced](#) Moafak D., formerly a member of the Syrian regime-aligned militia, the Free Palestine Movement, to life imprisonment for firing a grenade launcher into a crowd of civilians who had been gathered to receive UN aid packages in the Yarmouk camp in **Syria** in March 2014. He was convicted of war crimes in a trial that involved 32 trial dates, nine eyewitnesses, and a number of expert witnesses; the trial had made it to German court through the legal principle of [universal jurisdiction](#).
- German courts have repeatedly applied the [principle of universal jurisdiction](#) over the course of the past years, and convicted several former ISIS members – often German foreign fighters and/or respective wives – for war crimes, crimes against humanity, and, for the first time ever, also for [committing genocide](#) against the Yazidi community. In January, the Parliament of **Germany** officially recognised the atrocities committed against the Yazidis as ["Genocide"](#).

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

- TIMEP – [Guide: Corporate Accountability for Human Rights Violations in the MENA Region](#)
- KAS – [Legal Aspects of the Lebanon-Israel Maritime Boundary Agreement](#)
- KAS – [Quo Vadis, Art. 62?, The Challenge of a Double Executive Vacancy for the Lebanese Constitution](#)

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.”

Newsletter editors:

- Micha Tobia, Editorial Manager at TIMEP.
- Valeska Heldt, Research Fellow at the KAS MENA Rule of Law Programme.

Konrad-Adenauer-Stiftung e.V.

Philipp Bremer, Director

Rule of Law Programme Middle
East & North Africa

European and International
Cooperation

Konrad-Adenauer-Stiftung e.V.
23, Benoît-Barakat-Street
Jabre-Building, 5th floor
Badaro – Beirut
Lebanon

Tel: + 961(1)385094
or + 961(1)395094

Web: <http://www.kas.de/rspno>

**The Tahrir Institute for Middle
East Policy**

1717 K Street NW Ste 900,
Washington, DC 20006

Contact: info@timep.org

Web: <http://www.timep.org>



The text of this publication is published under a Creative Commons license: “Creative Commons Attribution- Share Alike 4.0 international” (CC BY-SA 4.0), <https://creativecommons.org/licenses/by-sa/4.0/legalcode>