REVISTA DIREITO PÚBLICO

Behind the veil of justice: due process on trial in the middle east

Por trás do véu da justiça: o devido processo em julgamento no oriente médio

Detrás del velo de la justicia: el debido proceso a juicio en medio oriente

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ABSTRACT: This article explores the systemic violations of due process rights across various countries in the Middle East, highlighting patterns of legal abuse, arbitrary detention, lack of fair trial guarantees, and the politicization of judicial systems. Drawing on case studies, legal analyses, and human rights reports, the article examines how authoritarian governance structures, emergency laws, and national security narratives are often used to justify infringements on fundamental legal protections. Particular focus is given to the denial of legal representation, coerced confessions, closed-door trials, and the suppression of dissent. The study argues that these violations not only undermine the rule of law but also contribute to broader instability and public mistrust in state institutions. The article concludes by offering policy recommendations aimed at strengthening judicial independence and ensuring compliance with international human rights standards across the region.
KEYSWORD: Due process; Middle East; Human Rights; Fair Trial; Judicial Independence.

RESUMO: Este artigo explora as violações sistêmicas dos direitos ao devido processo em diversos países do Oriente Médio, destacando padrões de abuso legal, detenções arbitrárias, ausência de garantias de julgamento justo e a politização dos sistemas judiciais. Com base em estudos de caso, análises jurídicas e relatórios de direitos humanos, o artigo examina como estruturas de governança autoritária, leis de emergência e narrativas de segurança nacional são frequentemente utilizadas para justificar violações a proteções legais fundamentais. Dá-se atenção especial à negação de representação legal, confissões coagidas, julgamentos a portas fechadas e à repressão da dissidência. O estudo argumenta que essas violações não apenas enfraquecem o Estado de Direito, mas também contribuem para uma instabilidade mais ampla e para a desconfiança pública nas instituições estatais. O artigo conclui oferecendo recomendações de políticas voltadas ao fortalecimento da independência judicial e à garantia de conformidade com os padrões internacionais de direitos humanos na região
PALAVRAS-CHAVE: Devido Processo; Oriente Médio; Direitos Humanos; Julgamento Justo; Independência Judicial.

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RESUMEN: Este artículo explora las violaciones sistémicas de los derechos al debido proceso en varios países de Medio Oriente, destacando patrones de abuso legal, detención arbitraria, falta de garantías de juicio justo y la politización de los sistemas judiciales. A partir de estudios de caso, análisis jurídicos e informes de derechos humanos, el artículo examina cómo las estructuras de gobernanza autoritaria, las leyes de emergencia y las narrativas de seguridad nacional son frecuentemente utilizadas para justificar infracciones a las protecciones legales fundamentales. Se presta especial atención a la negación de representación legal, confesiones bajo coacción, juicios a puerta cerrada y la represión de la disidencia. El estudio sostiene que estas violaciones no solo socavan el Estado de derecho, sino que también contribuyen a una mayor inestabilidad y a la desconfianza pública en las instituciones estatales. El artículo concluye ofreciendo recomendaciones de política orientadas a fortalecer la independencia judicial y asegurar el cumplimiento de los estándares internacionales de derechos humanos en la región.
PALABRAS CLAVE: Debido Proceso; Medio Oriente; Derechos Humanos; Juicio Justo; independencia Judicial

1. Introdução

The spread of COVID-19 led governments across the Middle East and North Africa (MENA) region to take remarkable and largely unique preventative and receptive measures. Invoking the exceptional nature of this moment, numerous countries have declared health-related states of emergency that have affected citizen rights in the process. One aspect that is common across the Arab and Muslim nations is a major deficit of the rule of law. Tackling this discrepancy might not avert further conflict, but not doing so will undoubtedly make hostilities more likely (Esmaeili, 2014). In many Middle Eastern countries, weak institutions, vague/broad legislation, privileges, and discrimination mean that social, political, and ethno-religious fault lines are only strengthening (Esmaeili, 2014).

In some places, the Arab Spring has come and gone. In others, it never arrived. Either way, there is limited justice for citizens. Court systems are not clean, impartial, or transparent. Little due process is anticipated or bestowed. What rights exist are suddenly granted. Corruption, including bribery and influence peddling, are rampant (Esmaeili, 2011, p. 332-333). Establishing the rule of law in the Middle East will be the sum of several projects rather than one big-bang job. The international community of multilateral organizations, NGOs, donor governments, and in-country allies must seek to inspire those Arab

populations and target those aspects of life, which may act as rule-of-law multipliers (Elgar, 2013).

Courts must be strengthened, and judges need to be trained. Conflict-of-interest legislation and resource management systems are crucial mechanisms to clarify legal rights and facilitate a responsible way of governance. In short, Arab leaders must prioritize governance over government (Klich, 1996). Some scholars blame Islamic political culture for the absence of democratic institutions and the rule of law. For instance, Samuel Huntington argued that "the Islamic concept of politics differs from, and contradicts, the premise of democratic politics."(Huntington, 1991). Sexism and the role of women in Muslim societies have also been mentioned as justifications for the underdevelopment and failure of civil society institutions in the Middle Eastern nations (Fish, 2002). It should be noted that calls for the rule of law to be created in the Middle East and the rest of the Arab world are becoming more forceful. Nevertheless, attitudes differ regarding the nature of a rule of law system and which model will best serve the transition from totalitarian structures to rule of law systems[2] ('Arafa, 2020).The views vary as to how to administer the transition from tyranny to the rule of law (Esmaeili, 2009)[3].

[2] "Based on this notion of political theology, we can see three categories of regimes. First, the "religiously free" Muslim-majority states (approximately 11 out of 47, concentered in West Africa) with "low" restrictions on freedom of religion, meaning that they advocate, endorse, and protect the freedom of individuals and communities to practice their creed. Despite the strong Muslim majority population, they are striking for their robust levels of respect for Christian and other minorities, and remarkably, religiosity levels are high in these countries. [...] On the other hand, the 36 Muslim-majority states that are not religiously free can be described as having "moderate," "high," or "very high" levels of restriction on religious freedom. Further, they can be divided into "secular repressive" and "religiously oppressive" nations. The former (around 15 countries) exemplify a political theology of Western secularism, holding that the public inspiration of Islam ought to be muted so as to make way for nationalism, economic liberalization, and modernization. The standard bearer of this model is Turkey, created in 1923 by M. K. Atatürk on secular values. Egypt followed suit under Gamal Abd al-Nasser in the early 1950's and after the 1971 adoption of the constitutional (religious) clause "*the principles of Islamic law*" by President Sadat, as did other Arab nations. This only goes to show that "Islam" (however interpreted) is not the cause of religious repression. Those other states – 21 nations – that restrain freedom of religion display a political theology of "radical Islamism" that imagines law and government rule as a vehicle for applying a rigidly traditional form of Islam in all aspects of life – personal status and family law, economy, culture, human rights, religious exercise, education, dress, among many others.".

[3] Several practical models exist: For example, countries such as Saudi Arabia, the United Arab Emirates, and Qatar have traditional systems; those in Turkey, and to some extent, Tunisia are secular; Iran is based on

According to the United Nations (UN) Code of Conduct, public officials, including leaders and Heads of State, shall guarantee that they accomplish their obligations and functions competently, creditably, with integrity, and in accordance with legal values and reasonable administrative policies (Durrant, 2008). They shall at all times pursue to confirm that public resources and government funds, for which they are accountable, are managed in the most operative and well-organized way (Clark, 1996; Leys, 1965; Hess; Dunfee, 2000). Additionally, they shall be attentive, fair, and impartial in functioning their tasks, particularly in their relations with the general public, as they shall afford any extreme favored behavior to any group, entity, or individual or improperly discriminate against anybody, or otherwise abuse the power and authority conferred to them, and committing the peddling influence's crime (Buscaglia, 1999; Cassell; Johnson; Smith, 1997). Therefore, an inclusive attitude to transparency, accountability, and executing a range of responsibilities, activists, democratic, judicial, media, and civil society are invited (Harms,2000; Kennedy, 1999).

In addition, the Organization for Economic Co-operation and Development (OECD) has a long history in front of endorsing good governance and due process. The OECD approved a proposal to advance ethical conduct in the public service that encompasses "Principles for Managing Ethics in the Public Service," as these norms are intended to be a reference point for state members when merging the fundamentals of an active ethics management system in line with their personal political, managerial, due process, and cultural settings (OECD, 1998)[4]. Ethical laws and codes of conduct are comprehensively used apparatuses in the common moral values supervisor's toolbox (Brazil,1999; New Zealand, 1998; United Kingdom, 1998)[5]. In this regard, ethical codes and rulings are not, of

Islamic theocratic principles in combination with some contemporary institutions as parliamentary elections and law making; and a mixed model is evolving in Egypt.

[4] It includes, the decision-making process should be transparent and open to scrutiny, as public citizens have a right to know how government institutions apply the authority and public funds entrusted to them (freedom of information).

[5] For example, in Brazil, the Public Ethics Committee was established in 1999 to endorse ethical behavior in the federal executive branch. It is responsible for the implementation of Ethics Management Internationally. The Federal Code of Conduct of High Administration coordinates decentralized ethics measures to guarantee the

course, adequate implements to verify moral and proper governance, especially to the rule of law and due process guarantees. In 1999, Mike Nelson recites:

> [. . .] the problem with Codes of Conduct is that it is easy to stick them on the wall, but hard to make them stick in practice . . . without an effective development and implementation strategy which is integrated and engages with the heart and bowels issues of concern to the organization, the net result seems consistently the same: that the Code of Conduct remains a mere piece of paper, displayed or appealed to when convenient, but ignored the rest of the time [. . .] (Nelson, 2006, p. 35-48)

By the same token, regarding the evaluating role of the moral and ethical codes in the European Union (EU) countries, Bossaert and Demmke stated:

> Despite their popularity, codes of ethics make little sense unless they are accepted by the personnel, and maintained, cultivated, and implemented with vigor . . . codes are useless if staff are not reminded of them on a regular basis and given continuous training on ethics. Codes are only effective if they are impressed upon the hearts and minds of employees. (Bossaert; Demmke, 2004; Hmso, 2005; Moilanen; Salminen, 2006)

Whistleblowing laws and performs vary immensely around the World. The United States has normal legal norms that boost and protect people and entities who blow the whistle on those who involve in white-collar crimes, particularly corruption, embezzlement, misappropriation of public funds, fraud, and peddling in influence (power's abuse) and make sure they have access to the due process (Duncan, 200; Milbank; Brauchli, 1995). Unlike the U.S., India's anti-corruption laws, for example, do not offer the all-encompassing defense (due process guarantees) for whistleblowers (Johnson; Kraft 1990). Due to some foremost corruption situations and public servants' misconduct and politicians, citizens are increasingly aware of the prominence of integrity and ethical management (Windsor; Kathleen 2000). Ethical codes of conduct, deterrence (preventative) procedures, whistleblower protection, and other practices of firming the virtuous dimension of politics

adequacy of the Brazilian administration's moral values. Also, New Zealand enacted a nationwide code of conduct in 1998 that emphasizes duties expected of public officials in their professional tasks. In 1998, the UK Committee on Standards in Public Life (Nolan Committee) issued the 'Seven Principles of Public' as well.

and management have stretched an unexpected status on the agenda in several countries, especially the MENA region (Banfield, 1975).

Launching and promoting the rule of law, especially due process in the Middle East, has become an essential and complicated issue in the region and internationally. It is an exceptionally complex dilemma given the region's diversity, history, religion, tribal structures, and the development of modern institutions, mainly since the Arab Spring. Generally, the region is gradually moving towards the rule of law, but most Middle Eastern nations still do not have efficient autonomous and self-governing judicial systems with control over the State and powerful institutions. Notwithstanding the slow and gradual movement towards creating rule of law systems, an active rule of law system is inaccessible in most Arab nations.

Against this succinct backdrop, this article examines theoretical discussions on the concept of the rule of law and due process in the Muslim nations, discusses the causes behind the absence of it in the region by gaming laws, and underscores various perspectives towards the establishment of a practical rule of law and its institutions in the Middle East. It concludes by arguing that due process should be a priority among practitioners/specialists in fighting unethical, unfair behavior and promote a clean litigation manner globally, and mainly in the MENA region, towards a democratic transition.

2. Justice Under Siege: Navigating Rule of Law in the Middle East

These actions bear a crucial impact on due process, especially the rights to counsel, habeas corpus, and a fair, impartial trial. Across the region, attorneys and defense lawyers have been forbidden from meeting with their clients, and persons have been kept in confinement (custody) even as pretrial detention hearings have been canceled or cruelly delayed. Courts have also significantly reduced their operations. While some countries have taken measures to reduce these issues, serious, long-term questions surrounding due

process remain. As countries continue to respond to the pandemic's spread, it is vital that governments recognize the domestic and international legal commitments that remain incumbent upon them at this moment (23.

2.1. Access to Counsel, Habeas Corpus, and Judicial Bodies (the Courts)

When countries in the MENA region deferred prison visits at the start of the COVID-19 breakout, numerous of these suspensions also affected the capacity of attorneys to meet with their clients in person, denying detainees the capability to consult on legal strategy, to prepare legal arguments (defense), and to seek recourse for any detention-related abuses (Dan E, 2006; Harrington; Resnik; VanCleave, 2019) . In Egypt, for example, the suspension of prison visits applies to family members and lawyers. In the same vein, the Israeli rules and policies issued on March 15, 2020, likewise prohibited Palestinian prisoners from meeting with their lawyers in person, permitting only phone calls between attorneys and clients to take place ahead of scheduled court hearings (Bossaert; Demmke, 2004; Hmso, 2005; Moilanen; Salminen, 2006; Brown, 1997).

In an urgent response to the epidemic, most states substantially slowed, and in some rarer cases, totally halted court operations and hearings (Bossaert; Demmke, 2004; Hmso, 2005; Moilanen; Salminen, 2006; Brown, 1997). In Iran, for instance, pending criminal and civil cases continued to be heard, but new trials (hearings) were adjourned; cases concerning violent (aggression/hate) crimes, corruption, crimes against public security, and crimes related to COVID-19 were prioritized (Human Rights Watch, 2011)[6]. Egypt halted court operations, involving pretrial detention renewals, for several months, resulting in illicit detention under domestic law and bringing about pervasive habeas corpus abuses. When courts resumed operations, they evaluated and reviewed thousands of detentions on paper

[6] In the same vein, Libya ordered the closure of courts at the beginning of the outbreak and extended the recess for several months; However, the decision did permit "urgent cases"— a concept that was left undefined — to continue to be heard on a limited basis.

in the absence of trial lawyers and failed to bring defendants to the courthouse physically. All the while, the recent arbitrary arrests and practices that brutally disrupt due process, involving enforced disappearance, have continued region-wide, placing strain on court systems – that are either reserved or completely stalled – and incriminating access to justice for all detainees. These practices have further overcrowded prisons, jeopardizing a severe public health crisis not only for detainees and prison officials but the population.

After the preliminary suspensions and delays, some countries in the region announced that they would transition to remote, virtual court hearings and the videoconferencing technique to comply with social distancing (hygiene) measures and health protocols. For example, Bahrain's criminal courts began hearing pretrial detention renewals remotely. Further, the Tunisian government passed a decree permitting virtual trials using audiovisual communications in times of infectious diseases (Egypt Today, 2020)[7]. Moreover, in the United Arab Emirates, circuits within Abu Dhabi's criminal court(s) and commercial court(s) systems began to hold remote trials; in Dubai, hearings into pressing urgent matters, criminal cases, and appeals are being held virtually as well (Ring, 2020) [8]However, legal scholars said it is too early to assess how this new administration of virtual trials is proceeding from a due process perspective. Little reporting is accessible on how extensively remote trials are being directed – precisely, in which types of cases, in which

[7] ("An Alexandria court held the first online hearing session, in a bid by the Ministry to upgrade the courts with digital transformation and reduce face-to-face interaction amid the coronavirus pandemic (COVID-19). This move aims at facilitating the judiciary services for the citizens, and reducing the congestion in the corridors of courts, in light of the preventive and precautionary measures to curb the virus spread. The [...] court has equipped 30 halls allocated for misdemeanor cases with digital devices, and 6 other halls for the pretrial detention.").

[8] "The move came as a precautionary measure to contain the spread of the COVID-19, pursuant to Dubai Resolution No. 30 of 2020, whereby it was decided that all judicial hearings of the Dubai Courts (including the Court of First Instance, Court of Appeal and Court of Cassation) will be suspended . . . The Resolution specifically excludes urgent matters, criminal cases and appeals that include detainees and inmates. Similarly, the smart services (online requests) of the Courts remain fully operational. [...], pursuant to an order issued by the President of the Dubai Courts, all court hearings are set to resume via remote proceedings...The Dubai Courts have already adjourned those hearings initially...However, for those cases that are reserved for judgment, the Courts seem to be issuing the judgments without the parties' attendance with the judgments available online through the Dubai Courts' system.".

geographical sites, and for what sorts of defendants – and whether the decision to offer virtual trials is being made according to non-discriminatory and transparent guidelines (Hovell, 2016, p. 5-45). Furthermore, it is not yet obvious if trials are set up in a way conducive to private communication and consultation between attorneys and clients before, during, and after hearings, as the key to the right to counsel (Fennessy, 2020).[9] For instance, during an in-person trial, attorneys can request that proceedings stop to consult with their clients; thus, it is doubtful whether technology will be leveraged to protect the process in this way and others.

2.2. Right to Due Process in the MENA Region: Rule of Law, International Law Standards, and Best Practices

Concerns and Anxieties? On paper, most domestic laws and constitutions in the region highly protect the right to due process, involving access to counsel, habeas corpus, and impartial trial. Many countries have invoked the epidemic to justify due process constraints in a manner that infringes upon unquestionably established domestic and international law. In this respect, the 2014 Egyptian Constitution reads:

All those who are apprehended, detained, or have their freedom restricted shall be treated in a way that preserves their dignity. They may not be tortured, terrorized, or coerced. They may not be physically or mentally harmed or arrested and confined in designated locations that are appropriate according to humanitarian and health standards. The state shall provide means of access for those with disabilities. Any violation of the above is a crime and the perpetrator shall be punished under the law. The accused possesses the right to

[9] "New York City's Criminal Court announced, 'All parties will participate in court proceedings by videoconferencing.' Due to the COVID-19 pandemic, the court news release explained that all 'arraignments will be virtual, with the Judge, prosecution and defense attorney and defendant all from remote locations.' But what does virtual justice look like in practice? Does it provide our Constitutional rights to due process and effective assistance of counsel? Are privileged consultations possible when the defendant is incarcerated and visits by counsel are prohibited? Is it worth considering the practical implications of virtual court proceedings, for privacy and other rights, across society?".

remain silent. Any statement that is proven to have been given by the detainee under pressure of any of that which is stated above, or the threat of such, shall be considered null and void (Hovell, 2016, p. 5-45).

While the International Covenant on Civil and Political Rights (ICCPR) permits nations to adopt exceptional and temporary limitations on certain rights—"in times of public emergency which threatens the life of the nation,"—these boundaries must be provided by law. They must be necessary, proportional, and non-discriminatory (UN General Assembly,, 1966, arts. 9 e 15)[10]. The Human Rights Committee, which interprets the ICCPR, has said: "The principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency."(UN General Assembly,, 1966, arts. 9 e 15). Some related rights, comprising the right to life, proscription from torture, and the principle of legality in criminal law, cannot be constrained, even in the emergency status (UN General Assembly,, 1966, arts. 9 e 15). By contrast, derogations are exceptional means permitted inter alia under Article 4(1) of the ICCPR, by which a human right can be temporarily halted or impeded in response to a public emergencies (UN General Assembly, 1966).[11] In the ame vein, under Article 4(2) ICCPR, some human rights enjoy absolute legal protection. These are the right to life, the prohibition of torture and other cruel, inhuman, or

[10] 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law; 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him; 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement; 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful, [and] 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

[11] It should be noted that though various universal international human rights commitments may be relevant, this vision will focus on derogations under the ICCPR and some restrictions under the International Covenant on Economic, Social and Cultural Rights (ICESCR). It is not anticipated to present a thorough indication of all rights that emergency derogations may influence.

degrading treatment or punishment (death penalty and other corporal punishments), the ban of slavery and servitude, the proscription of imprisonment for incapability of fulfilling a contractual duty, the prevention against the retrospective operation of criminal statutes, and the right to recognition before the law (the rule of law).

Considering the logistical difficulty of balancing between public safety and respecting citizen rights during a pandemic, there are various global legal commitments and best practices that MENA governments and Muslim administrations can adhere to and apply to guarantee the right to due process. Firstly, countries must guarantee that detained individuals continue to enjoy timely and confidential access to legal counsel, even with the postponement or cancellation of in-person visits. The WHO-OHCHR Interim Guidance on COVID-19 states that the "ability [of detainees] to meet with legal counsel must be maintained, and prison or detention authorities should ensure that lawyers can speak with their client confidentially."(Ministry of health, 2020)[12] The World Organization Against Torture (OMCT) adds: "Prison authorities should permit secure video conferencing and other tools to enable lawyers to communicate with their clients as a key alternative to in-person visits...The communication should be free and frequent."(ORGANIZATION AGAINST TORTURE, 2020). When attorneys and their clients correspond and communicate, these alternative systems must afford them the right to speak confidentially.

Secondly, countries cannot terminate the right to habeas corpus and the right to a fair trial. As the OMCT states, "there can be...limited, timebound and proportionate modifications in the operation of courts, the scheduling of hearings," it iterates that judicial services are "absolutely, necessary, even during a pandemic."(ORGANIZATION AGAINST TORTURE, 2020). States cannot keep a detained person in custody if their detention is not

[12] ("...on how to deal with the coronavirus disease (COVID-19) in prisons and other places of detention, entitled 'Preparedness, prevention and control of COVID-19 in prisons and other places of detention,' [...] To effectively tackle a COVID-19 disease outbreak in prisons, state authorities need to establish an up-to-date coordination system that brings together health and justice sectors, keeps prison staff well-informed, and guarantees that all human rights in the facilities are respected. A public health emergency of international concern requires a global response that includes measures taken inside prisons and other closed settings.").

properly and regularly reviewed. Although the introduction of remote court hearings for detained and non-detained persons is a positive application of technology, states must guarantee that the fundamental requirements for reasonable and impartial trial guarantees remain to be respected, even at this critical moment and in these new circumstances. Whether it is through virtual hearings, the scheduling of spaced-out appointments, or the provision of protective gear for limited face-to-face procedures, countries should guarantee that justice bodies, a vital pillar of an operative system of governance, can continue to function even in the midst of pandemic.

2.3. Vague Laws, Sparse Justice: The Middle East's Legal Challenges

Mass trials and politicized debated death punishments, civilian trials in military courts, protracted pretrial detention, and forced disappearances are all mutual abuses of due process that ensue in the Middle East. After the Arab Spring, the governments have been conspicuously inspired in their transgression on due process, with the willingness of the people to change their future democracy, discriminatory detention, and trials of high-profile activists, politicians, researchers, and journalists along with individuals were forcibly disappeared. Such strategies destabilize the rule of law, judicial independence and its integrity, and the transition to real democracy.

2.4. Egypt Not Versus Saudi Arabia: Whither the Due Process? Overall Situation, Background, and Areas of Concerns

The most frequent breaches of the right to due process in the MENA region are civilian trials in military courts, mass trials, massive application of death penalties, the extensive use of extended pretrial detention, and forced disappearances. Often, though not always, these abuses occur in combination, and at times they seem to be politicized, raising

significant queries about the political and legal independence of the MENA's judiciary.(United Nations, 2020)[13]

2.5. Emergency Status and the Exceptional Courts

Some abuses of due process committed after the Arab Spring are similar in nature (if not in intensity) to what occurred under the former autocrats, as the late Hosni Mubarak, Mu'mmar Gaddafi, Bin 'Ali, among many others with the use of the emergency law(s) and security exceptional courts which were in place for decades (AUF, 2018).[14] The emergency status allowed security services to arrest and detain individuals indefinitely without charges. Although in Egypt, the duration of the emergency status is constitutionally limited to three (3) months, this provision has been avoided by allowing the state of emergency to "expire" for a brief period and for a new state of emergency to be declared immediately after, effectively allowing it to remain continually in place (AUF, 2018). The Egyptian Constitution reads:

The President of the Republic declares, after consultation with the Cabinet, a state of emergency in the manner regulated by law. Such proclamation must be submitted to the House of Representatives within the following seven days to consider it. [...] In all cases, the declaration of a state of emergency must be approved by a majority of members of the House of Representatives. The declaration is for a specified period not exceeding three months, which can only be extended by another similar period upon the approval of two-thirds of House members . . .(Egypt Constitution, art. 154)

[13] It should be noted that the international community, including the United States and the European Union governments, have expressed deep concern and disappointment over the MENA's politicized judiciary, opinions which the United Nations Office of the High Commissioner for Human Rights and the U.N. Secretary-general have echoed

[14] ("Egypt has always witnessed large-scale implementations of the emergency law. It is worth mentioning that the existence of the emergency law itself is not problematic. This law can be enforced by declaring state of emergency when needed, for example when a country confronts a public disaster or large security disturbance.").

The prominent legal powers of this status grant extensive privileges to law enforcement officers (security apparatuses whether military or police), regarding detaining suspects, arresting them, or imprisoning them for extended periods(Egypt, 2014). Also, emergency state-security courts can be established in every first instance court and appellate court across Egypt. These courts are composed of judges, the presiding judge can add military officers to them, and the verdicts of these courts cannot be appealed (Egypt, 2014). The presiding judge has the right to appoint all the judges of the emergency state-security courts, whether civil or military judges(Egypt, 1958)). Regarding the sweeping executive powers, the president (or whomever he authorizes) can refer any of the public law crimes to the state security courts, comprising criminalized criminal acts in national laws such as the criminal law and other statutes that include criminal punishments (the Protest Law and Terrorism Law are examples)[15](‘ARAFA, 2019). Also, the president can censor any messages, including various correspondences, publications, newspapers, images, and all forms of expression and announcements before they are published and the maintains the right to restrain the press, confiscate its materials, and close its outlets.(Egypt Constitution, 2014, ART. 204)[16]

2.6. Civilians Before Military Trials

The Egyptian Constitution allows for civilians to be tried before military tribunals under exceptional circumstances of “direct assault” against military facilities; when facing military tribunals, civilians have limited access to lawyers, are unable to call upon witnesses, and have no opportunity to be tried before their natural, civil judge or for appeal (Egypt

[15] . Also, the president ratifies the verdicts of the emergency state-security courts, and this authority gives him the power to approve or terminate a verdict, reduce a penalty (pardon it) or transfer a trial to another court.

[16] (“[...]government is using the pandemic to expand, not reform, Egypt’s abusive Emergency Law, [...] Egyptian authorities should address real public health concerns without putting in place additional tools of repression. The government said that the Covid-19 outbreak revealed a ‘vacuum’ in national laws that needed to be addressed.”)

Constitution, art. 204)[17]. The government justified these trials based on a decree enacted on October 27, 2014, that considered criminal acts committed against the state's public and "vital" facilities as offenses that may be tried before a military judiciary(Human Rights Watch, 2020; Egypt Constitution, 2014, arts. 70-71). [18]

2.7. Pretrial Detention and Mass Sentencing

Protracted pretrial detentions breach legal norms of the international legal order set up by the ICCPR, to which Egypt is a party(UN General Assembly, 1966, art. 9). It has been reported that pretrial detention has been used against several individuals that were being held in custody beyond the legally mandated two-year limit as a "tool for political punishment (silence)"(Human Rights Watch, 2020). In 2014, the practice of mass sentences within Egypt's judiciary came under scrutiny. Legal scholars argued that mass sentences "expose how arbitrary and selective Egypt's criminal justice system has become."(Egyptian Foreign Ministry)[19] The executions were performed so regularly that human rights and NGO activists began referring to the day of some decided cases as the "Execution Day."(Brown, 1997).

[17] The Military Judiciary is an independent judiciary that adjudicates exclusively in all crimes related to the armed forces, its officers, personnel, and their equals, and in the crimes committed by general intelligence personnel during and because of the service. Civilians cannot stand trial before military courts except for crimes that represent a direct assault against military facilities, military barracks, or whatever falls under their authority; stipulated military or border zones; its equipment, vehicles, weapons, ammunition, documents, military secrets, public funds, or military factories; crimes related to conscription; or crimes that represent a direct assault against its officers or personnel because of the performance of their duties. The law defines such crimes and determines the other competencies of the Military Judiciary. Members of the Military Judiciary are autonomous and cannot be dismissed. They share the securities, rights and duties stipulated for members of other judiciaries.

[18] "Freedom of press and printing, along with paper, visual, audio and digital distribution is guaranteed..." "It is prohibited to censor, confiscate, suspend or shut down Egyptian newspapers and media outlets in any way. Exception may be made for limited censorship in time of war or general mobilization..."

[19] The Egyptian Foreign Ministry hit back against criticism from the United States and European Union on the massive life sentences issued recently, calling such condemnation "unacceptable" and consider that as a non-reasonable intervention in the internal and domestic affairs of a foreign nation.

2.8. Forced Disappearance(s)

A spate of high-profile arrests and disappearances has drawn attention to the practice of forced disappearance, which has been on the rise in the Middle East since the Arab Spring revolutions. Amnesty International (AI) called the movement "unprecedented" for its use of violence, the extensive number of cases, and the crackdown by security forces(Amnesty International, 2016)[20]. It has been reported by international organizations that documented cases reveal how Egyptian citizens are being abducted, tortured, and held for months without access to an attorney or the ability to contact their families. This pressure is often used to coerce the victims into confessing to crimes they did not commit.(Amnesty International, 2016)[21]

Since 2011, the politicized Egyptian judiciary has worked together with the government to curb and stifle political dissent and exert control over the population and public space, implementing justice arbitrarily and submitting to the influence rather than protecting citizens' rights and freedoms despite it (Aziz, 2016). The punishing of civilians before military tribunals, mass sentences, mass death penalties, and lengthy pretrial detention have operated as devices to this end. The recent increase in forced disappearances along with other tools is mainly worrying and indicates that the practice is used as a routine issue by Egyptian Homeland Security and the military (Aziz, 2016). With a series of these tactics, including harsh sentences, the government has indicated the poor progress on enhancing the rule of law and the lack of respect to the due process guarantees and that no amount of global renown can safeguard an individual from the state(Aziz, 2014).

[20] ("Egypt's National Security Agency (NSA) is abducting, torturing and forcibly disappearing people in an effort to intimidate opponents and wipe out peaceful dissent. This report reveals the shocking and ruthless tactics that the Egyptian authorities are prepared to employ in their efforts to terrify protesters and dissidents into silence, [...] Enforced disappearance has become a key instrument of state policy in Egypt. Anyone who dares to speak out is at risk, with counterterrorism being used as an excuse to abduct, interrogate and torture people who challenge the authorities.").

[21] Notwithstanding these reports, the government has shown no significant steps to control the practice and argued that claims of forced disappearances are false and spread by the opposition.

Such abuses of due process are deepened with the escalating number of executions, which several rights groups have called for halting until improvement is seen in the respect of due process rights and the rule of law. The use of these strategies weakens the transition to a democratic rule of law in the region as well as trust in the impartiality and truthfulness of the judicial process, and the progressively escalating web of counterterrorism acts and other provisions supporting such activities are used in worrying mixture with blanket state denial of the existence of such problems.

Recently, Saudi Arabia's mass arrest of princes, current and former public (government) officials, and prominent businessmen over corruption allegations raises human rights and due process concerns. Saudi authorities should instantly reveal the legal and evidentiary basis for everyone's detention and ensure that each person detained can exercise their due process rights(Henderson, 2020). The governmental Saudi Press Agency (SPA) declared a royal decree establishing a high-level anti-corruption committee headed by Crown Prince Mohammad bin Salman reporting on the detentions and arrests for three years. Those detained included Prince Al-Waleed bin Talal, a prominent businessman who is chairman of Kingdom Holding Corporation (Henderson, 2020). The arrests come in the wake of a wave of other latest arrests, including clerics, human rights activists, and academics/intellect (Whitson, 2017).

The November 4 royal decree says that King Salman formed the anti-corruption committee due to the exploitation of some weaklings who followed their own private interests rather than the public interest or the community's common good, who attacked public funds. The decree reported that the committee had extensive powers to investigate cases, order arrests, search places, impose travel bans, and seize assets, ostensibly without judicial review.(Kirkpatrick, 2017)

In this regard, the Saudi Attorney General said that the committee had "initiated a number of investigations" without illuminating the legal basis for detaining the suspects

before the investigations were completed. As generally well-known, international human rights law protects basic rights, including the right not to be arbitrarily detained(Kirkpatrick, 2017). Any criminal charges authorities bring must resemble recognizable crimes. At a minimum, those detained should be informed of the precise "reasonable" grounds for their arrest, be able to contest their detention before an autonomous and impartial judge, have access to an attorney and family members, and have their case periodically reviewed (Kirkpatrick, 2017). Holding prisoners at unofficial jail centers violates international standards. The United Nations Human Rights Committee, in its general comment, stated, "...provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends"(Kirkpatrick, 2017, art. 7).

Notably, Saudi authorities have not revealed the exact reasons for the detention – without judicial review – of the dozens of other individuals. However, the detentions fit a pattern of human rights ruins against peaceful advocates and dissidents, comprising harassment, intimidation, smear campaigns, travel bans, confinement, and prosecution (Kirkpatrick, 2017). Several individuals faced sentences as long as ten to fifteen years in jail, and most faced broad, catch-all charges intended to criminalize peaceful dissent, including "breaking allegiance with the ruler," "sowing discord," "inciting public opinion," "setting up an unlicensed organization," and vague provisions from the 2007 cybercrime law [and others]."(Kirkpatrick, 2017). While it is noble that the Saudi authorities proclaim that they want to take on the menace of corruption, the right way to do that is through thorough and diligent judicial investigations against genuine and real offender(s) (beyond reasonable doubt), not scandalmongering mass arrests to a luxury hotel.

3. Anxieties of Justice: Due Process in a Corrupt System: "Gaming" the Laws, and Institutional Corruption

"Gaming" in its numerous forms includes the use of technically legal instruments to undermine the intent of the law to gain advantages over competitors, maximize reported earnings, preserve high credit scores, reap superior personal rewards, preserve access to capital on favorable terms, to name a few(Yingling, 2013). It is one of the most vicious forms of institutional corruption in politics today(Podgor; Borman; Hennning; Israel, 2003). "Institutional corruption" refers to institutionally-sanctioned behavior and relationships that may be legitimate but either harms (Harms, 2000) the public interest or undermines the capacity of an institution to achieve its professed objectives by destabilizing its legitimate procedures and core values (Miller, 2013). The most visible consequence of institutional corruption is diminished public trust in the governance of the institution in question (Miller, 2013). While institutional changes promoting integrity, transparency, and accountability in the state institutions are necessary parts of any litigation affairs strategy, a long-term social foundation is vital, mainly where judicial corruption is systemic (Johnston, 1998).

Social empowerment, which means expanding and protecting the variety of political and judicial resources and options open to ordinary citizens, is one path to address this task (Yingling; 'Arafa, 2014). Social empowerment entails reinforcing civil society to enhance its political vitality, providing more orderly methods of access and rules of cooperation between state and society, and escalating legal, political opportunities (Yingling; 'Arafa, 2014). Development legal policies intended particularly for disempowered people and regions within a country are of unique significance(Cavanagh, 1981; Noone, 2007). It does not involve wholly new remedies, but rather the practical coordination of a range of familiar development and litigation programs (Shihata, 1997). Social empowerment will not entirely eliminate judicial corruption; However, it can provide crucial sustenance for institutional reforms, weaken the combination of bias, discretion, and lack of accountability that creates

systemic judicial corruption, and help institutionalize reform for the long term (Shihata, 1997). On the other hand, corruption does not necessarily involve violation of legal rules or principles. Rather, the relevant standards for defining institutional corruption include public interest and procedural standards (Yingling; 'Arafa, 2014). In this regard, Jack Knight said: "These twin standards show how corrosive institutional corruption can be: it involves both social injury ('corruption by the institution'), whether illegal or not, and institutional injury ('corruption of the institution')."(Knight, 1992; MCmillan; Zoido, 2004).

Persistent institutional corruption – including corruption stemming from gaming the law –certainly shapes democracy, including how Congress, courts, and regulatory agencies monitor and control the administration and government operations(Cavanagh, 1981; Daehler, 1995). This is because few institutions in a democratic society – especially in the public sector – can survive in the long run in the absence of public trust (Wallis, 2005; Lambsdorff, 1998). Thus, gaming and institutional corruption looks like a massive phenomenon. The legislative bodies have various ways to structure and design the law (many of society's rules) that may foster institutional corruption given the strong temptation for the executive to manipulate the law that impacts due process (Yingling; 'Arafa, 2014).

These ways may comprise the extensive congressional lobbying by political interest groups seeking to minimize regulatory constraints and preserve opportunities to game or legally subvert the intent of those rules for private personal interest (Miller, 2013). Additionally, the purposeful gaming of society's rules by politicians and lobbyists is fueled by the short-term decision-making of the executive, whose behavior is often acclimatized and reinforced by perverse incentives embedded in their policies (Banaji, 2012). Furthermore, this theme acknowledges the influence of professional advisors, such as lawyers and legal consultants, as these advisors often support their clients' gaming of community rules (Banaji, 2012). In this respect, scholars and experts interested in law, public policy, and political philosophy have long been working to develop a set of notions

that amply define corruption in public life and its relation to (or impact on) due process(Banaji, 2012).

Professor Dennis Thompson (Thompson, 1036) argued that institutional corruption is "a form of corruption in which an institution or its agents receives a benefit that is directly useful to the institution, and systematically provides a service to the benefactor under conditions that tend to undermine legitimate procedures of the institution."(Thompson, 2005; Ethics In Congress, 1995). In Thompson (Thompson, 1036)'s paradigm, corruption is defined by institutional behavior that damages an institution's central, "legitimate" procedures (Thompson, 2005; Ethics In Congress, 1995). Legitimate procedures refer to processes "necessary to protect the institution against interests that undermine its effectiveness in pursuing its primary purposes, and the confidence of the relevant publics that it is doing so." (Yingling, 2016).Additionally, Professor Lawrence Lessig has also initiated a study of institutional corruption, primarily focused on the public sector. Lessig said,

[t]he seeds of institutional corruption are planted when an entity's behavior becomes rooted in dependent relationships with outside parties that conflict with the institution's intended purpose. Institutional corruption also occurs when an organization's internal "economy of 0 influence"— such as performance measurement and reward systems, and leaders' directives — leads people to act in ways that compromise that organization's essential processes, espoused values, and intended purpose (Lessig, 2009).

Lessig's study of Congress is a prime example of institutional corruption in the public sector. He shows how persistent fundraising, for instance, members of Congress have debased the legislative process, as powerful interests have become increasingly active in "purchasing public policy."('Arafa, 2011) "The corruption of a hard disk on a computer may serve as an illustrative metaphor. If the disk becomes corrupted, the computer will no longer serve its purpose — to reliably store and permit the retrieval of data." (Lessig, 2021) The analogy's language of corruption does not point to the blameworthiness of any individual;

rather, it emphasizes the implication of loss (or damage to) the data. If the data happens to be the only copy of a first novel or a patient's medical records, the corruption of the disk will be of great consequence(Farrales, 2005). Institutional corruption in context is clearly intended to do some work in the world by signifying the importance of a particular institution (e.g., judiciary) and the way that institution is operating. It is a call for attention and action (although it does not prescribe the kind of attention or action that should follow). The term is also useful in that it includes issues and concerns that other terms, such as "conflict of interest," might not (Banfield, 1958; Banfield, 1975; Bayley, 1966).

In contrast to work addressing illegal conduct, it is vital to focus on the socially destructive corruption's aspects, as it should be noted that the three of four most common forms of trust-destroying public sector behavior; as documented by scholars and practitioners, are: (a) violating norms of fairness; (b) tolerating conflicts of interest, and (c) exploiting cronyism in government/citizen partnerships (social contract) (Turner; Hulme, 1997). Further, another key form of institutional corruption in the public sector is the gaming of the law by politicians, often supported by their external legal and political advisors(Leff, 1964; Leys, 1965). This increasingly ubiquitous behavior is perhaps the least visible variant of institutional corruption and has, therefore, received much less systematic analysis than the first two(Rose-Ackerman, 1999). Hence, the fundamental strategies suggested for curbing gaming and institutional corruption as much more work remains to mitigate such behavior.

This work includes, and should focus on, confronting rulemaking issues, as lobbying and bias in due process is at the center of most rulemaking activities (Arafa, M. 2016). However, in thinking about lobbying remedies that lead to diminished public trust, it is critical to distinguish between lobbying aimed at securing new rules and regulations that place adverse restraints on productive invention and lobbying intended to conserve gaming opportunities (Johnson; Kwak, 2010). Moreover, addressing rule-following ("gaming")

problems in due process should be considered. Potential remedies for the time horizon problem are less scary than those for the rulemaking problem but will also require extreme patience and steady commitment (Koehler, 2012). It is a deep commitment to "quality" objectives, meaning compliance not only with the law and the principles underlying it, but also with ethical ideals that promote public trust(Méon; Sekkat, 2005). When governments and their delegated agents fail to build sustained obligations to such values or neglect to provide clear guidelines for responsible action, they put the institution's reputation and its very future at risk.(Williamson, 1979.) The key to achieving quality objectives and preserving public trust lies in three organizational commitments: qualitative attention, balanced incentives, and active monitoring.

Qualitative Attention(Andrews, 1989). Through political and legal stories, it is obvious that without persistent attention to the qualitative aspects of individual and group performance, the chances of developing an organizational environment conducive to thoughtful social and ethical deliberation are minimal (Andrews, 1989). For this reason, negotiation and review of personal and legal plans must include attention to the ethical standards, such as the protection of personal integrity and reputation, truth-telling, formal performance management (Andrews, 1989), compliance with the intent of society's rules and regulations, and a host of other possible goals in addition to whatever standard, quantitative measures the plans may require (Andrews, 1989).

Well-adjusted Incentives and Monitoring (Efficient Auditing). A commitment to the qualitative aspects of organizational performance requires a disciplined approach to incentives. Audits of critical decisions by public officials are as important as internal audits by judicial administration in building a strong organizational commitment to quality objectives and high-performance standards(Salbu, 1999.). Control of litigant affairs and board oversight is essential. Additionally, extensive and expensive documentation of

internal controls by management, and an annual review of these controls by outside attorneys or consultants, is required for a practical, robust due process(Iliev, 2010).

Conclusion: Leadership and the Future of Due Process in the MENA

As is generally well-known, corruption is a significant and thoughtful deficiency to reducing poverty, accomplishing development regarding due process objectives, and growth evolution. Given that corruption is remarkably ubiquitous in less developed (Third World) countries without a robust tradition of democracy, transparency, and human rights' respectability, it was not surprising that the former Head of the United Nations Anti-Crime Agency (UNACA) said: "this ...uprisings in the Arab world highlighted the anger within societies at this scourge." Furthermore, the former Executive Director of the United Nations Office on Drugs and Crime (UNODC), Yury Fedotov, declared that: [T]he Arab Spring was "an emphatic rejection of corruption and a cry for integrity," . . . "At the movement's center was a deep-seated anger at the poverty and injustice suffered by [e]ntire societies due to systemic corruption."

One of the most fundamental and important rights that all of us have, "due process," has been in the news a lot recently. If you are charged with a criminal offense, all the rights that protect you—the right to counsel, the right to remain silent, the right to a jury—all fall under the umbrella of "due process." It is "due process" that is intended to defend and protect defendants from passion and prejudice (discrimination) and ensure that every person who faces prosecution by the state has the ability to mount a full and complete defense. Due process is enshrined all over the globe within countries' domestic laws and constitution(s), which provides that no person shall "be deprived of life, liberty, or property, without due process of law." That includes the right to a speedy and public trial; right to an unbiased tribunal (impartial jury); right to full notice and description of the charges being brought (the grounds for bringing such charges); right to counsel; right to confront and cross-examine adverse witnesses; and the right to have the court compel favorable witnesses to

appear. Furthermore, it comprises a right to receive exculpatory (opposing) evidence from prosecutors; right to call witnesses and present evidence; right to make a record that can be reviewed on appeal and have a decision based merely on the evidence presented, and right to review (appeal) of a judge or jury's decision.

If You Lose Your Rights, You Could Gain Your Freedom: Due process in legal matters has several aspects and nuances, and the practices in which defendants can be deprived of due process are various. When any element of due process is missing during a litigation process, the impartiality, fairness, and constitutionality of the state's attempt to deprive an individual of their freedom has been negotiated. A defendant whose due process rights have been breached can challenge the prosecution on those grounds and possibly have the charges thrown out. Having an experienced defense lawyer who understands the complexities of litigation and the technicalities of due process and who will forcefully protect your constitutional rights can be of vital importance when you have been charged with a crime.

The key difference between a country of laws and a police state is just this. It is the imposition of an independent individual, a judge, to decide if the police officer got it right. Indeed, because the judge exists, the police officer is more likely to try harder to get it right. However, when persuaded to cheat, people are afraid of getting caught. If the policeman becomes the judge, his power increases massively. Authoritarian regimes follow different processes that ignore the notion that an equally fair process will render a fair and just result. Autocratic systems start with an end result in mind. Then, with that result always in view, a process is used to ensure that the desired outcome is achieved. Any proceeding where the outcome is predetermined is basically a "show trial." In fact, the proceeding is not genuine or real. It is a dramatic production to accomplish results irrespective of the truth. The easy test is to ask, "Is the matter process-driven or result-driven?" If the matter pursues a set process with no preference for how it will end, then due process is the focus.

If the matter has a set result in mind and prefers processes to guarantee that outcome, it lacks the ideal of fundamental due process.

Courts in democratic regimes strive to uphold due process, as they have written rules that apply in every case no matter who files or brings the lawsuit. The rules are instantly available so that everyone can know them in advance. Rules regulate which evidence is admissible, when cases will be heard, when a judge or jury decides a case, how court hearings will be conducted (including when and where to stand), and a myriad of other policies to ensure fairness to both sides. It is anticipated that ample executive, legal, and judicial communities will monitor and follow these strategies along with the political will, hence, contributing to sousing the firestorms of political corruption, especially the judicial one. The struggle should be stopped at this point. This ambition would be fulfilled through abandoning neoliberal prescriptions and putting realistic, reasonable, and robust legal policies into play. As the proverb said, “Bees that have honey in their mouths have stings in their tails ,and honey is sweet, but bees sting . . .!”

References

AMNESTY INTERNATIONAL. ***Egypt:*** *Hundreds Disappeared and Tortured Amid Wave of Brutal Repression*. 13 jul. 2016. Available at: https://www.amnesty.org/en/latest/news/2016/07/egypt-hundreds-disappeared-and-tortured-amid-wave-of-brutal-repression/ . Acesso em: 08 out. 2025.

ANDREWS, K. R. ***Ethics in practice***. 263 p., 1989.

ARAB REPUBLIC OF EGYPT. ***Constitution of Arab Republic of Egypt***, 18 Jan. 2014. Art. 55. Available at: http://www.sis.gov.eg/Newvr/Dustor-en001.pdf Acesso em: 6 out. 2025.

‘ARAFA, Mohamed. Battling Corruption within a Corporate Social Responsibility Strategy. ***Indiana International & Comparative Law Review***, v. 21, n. 3, 2011.

‘ARAFA, Mohamed. **Legitimacy versus Illegitimacy** – Transparency, Integrity of Financial Markets and Corporate Governance: Whither Corruption? *Kuwait International Law Journal Sharie‘a Legal Studies & Research*, v. 32, n. 8, p. 4, 2016.

ARAFA, Mohamed. ***Legitimacy versus Illegitimacy*** – *Transparency, Integrity of Financial Markets and Corporate Governance: Whither Corruption?* Kuwait International Law Journal of Sharie‘a Studies & Research, v. 3, p. 12, 2016.

‘ARAFA, Mohamed. **Middle East Legislative Insight**: Egyptian Antiterrorism Laws, Egypt Law No.22/2018, Egypt Law No.8/2015, Egypt Law No.94/2015. *LexisNexis Middle East Commentary*, 2019.

‘ARAFA, Mohamed. **Middle East Legislative Insight**: Egyptian Cybercrime Laws, Egypt Law No.175/2018. *LexisNexis Middle East Commentary*, 2019.

‘ARAFA, Mohamed. The Archeology of the Freedom of Information Laws: **Egypt ‘Fake-News Laws’**. *Florida Coastal Law Review*, v. 20, n. 1, 2020.

ARAFA, Mohamed. ***The Imam and the Pope****: Remembering the Medina Constitution*. Human Trustees, 3 nov. 2020. Available at: https://www.humantrustees.org/blogs/muslim-christian-dialog/item/196-imam-pope-medina-charter Acesso em: 08 out. 2025.

AUF, Yussef. ***The State of Emergency in Egypt****: An Exception or Rule?* The Atlantic Council, 12 fev. 2018. Available at: https://www.atlanticcouncil.org/blogs/menasource/the-state-of-emergency-in-egypt-an-exception-or-rule/ Acesso em: 08 out. 2025.

AZIZ, Sahar. *Egypt’s Judiciary,* ***Coopted***. Carnegie Endowment for International Peace,20 ago. 2014. Available at: https://carnegieendowment.org/sada/?fa=56426

AZIZ, Sahar. Independence without Accountability: **The Judicial Paradox of Egypt’s Failed Transition to Democracy**. *Penn State Law Review*, v. 120, p. 101, 2016.

BANFIELD, Edward. **Corruption as a Feature of Governmental Organization**. *Journal of Law & Economics*, v. 18, 1975.

BANFIELD, Edward C. ***The Moral Basis of Backward Society***. New York: Free Press, 1958.

BANAJI, Mahzarin. ***The Psychology of Institutional Corruption: Ideas for Experiments***. Edemand J. Safra, Harvard Center for Ethics, 2012. Available at: http://ethics.harvard.edu/mahzarin-banaji-psychology-institutional-corruption-ideas-experiments

BLACK, Ann; ESMAEILI, Hossein; HOSEN, Nadirsyah. ***Modern Perspectives on Islamic Law***. 2013.

BOSSAERT, Danielle; DEMMKE, Christophe. ***Main Challenges in the Field of Ethics and Integrity in the EU Member States***. European Institute of Public Administration, Committee on Standards in Public Life, 10th Report: Getting the Balance Right—Implementing Standards of Conduct in Public Life, 2004. Available at: <http://www.eipa.nl/Publications/Summaries/05/2005_1.pdf> . Acesso em: 08 out. 2025.

BROWN, Nathan. *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*. Cambridge: **Cambridge University Press**, 1997.

BUSCAGLIA, Edgardo. Judicial Corruption in Developing Countries: **Its Causes and Economic Consequences.** 1999.

BAYLEY, David H. ***The Effects of Corruption in a Developing Nation***. Western Political Quarterly, v. 19, n. 4, p. 719–732, 1966.

CASSELL, Cathy; JOHNSON, Phil; SMITH, Ken. Opening the Black Box: **Corporate Codes of Ethics in their Organizational Context**. *Journal of Business Ethics*, v. 16, 1997..

CLARK, Kathleen. Do We Have Enough Ethics in Government? An Answer from Fiduciary Theory. ***University of Illinois Law Review***, v. 57, 1996.

COMMITTEE ON STANDARDS IN PUBLIC LIFE. *10th Report:* ***Getting the Balance Right—Implementing Standards of Conduct in Public Life***. London: HMSO, 2005.

Convention on Combating Bribery of Officials in International Business Transactions. [S.l.]: OECD Negotiating, 1998.

CAVANAGH, Gerald F. ***The Ethics of Organizational Politics***. Academy of Management Review, v. 6, 1981.

DAEHLER, Jennifer. Professional versus Moral Responsibility in the Developing World. ***Georgetown Journal of Legal Ethics***, v. 9, 1995.

DUNCAN, Christopher J. The 1998 Foreign Corrupt Practices Act Amendments: Moral Empiricism or Moral Imperialism? ***Asian–Pacific Law & Policy Journal*****,** v. 14, p. 14, 2000.

DURRANT, Charlotte. *What are the advantages and disadvantages of codes of conduct in regulating moral behavior in business?* 2008.

EGYPT. ***Anti-Protest Law No****. 107 of 2013*.

EGYPT. ***Constitution of the Arab Republic of Egypt***. 2014. Art. 204.

EGYPT. ***Constitution of the Arab Republic of Egypt***. 2014. Arts. 70–71

EGYPT. ***Emergency Law No****. 162 of 1958*. 1958.

EGYPT. ***Law No. 136 of 2014 on Securing and Protecting of Public and Vital Facilities*** *(Egypt Military)*. 2014.

EGYPT. ***Law No. 175 of 2018***, arts. 7, 14(2), 20(3), 9.

EGYPT TODAY. ***Egypt's Ministry Working on Digitizing Litigation System***. 29 nov. 2020. Available at: https://www.egypttoday.com/Article/1/94764/Egypt%E2%80%99s-Ministry-working-on-digitizing-litigation-system

ESMAEILI, Hossein. **On a Slow Boat Towards the Rule of Law**: The Nature of Law in the Saudi Arabian Legal System. *Arizona Journal of International and Comparative Law*, v. 26, p. 1, 2009.
ESMAEILI, Hossein. **The Nature and Development of Law in Islam and the Rule of Law Challenge in the Middle East and the Muslim World**. *Connecticut Journal of International Law Review*, v. 26, p. 2, 2011.

ESMAEILI, Hossein. **The Rule of Law in the Middle East**. In: SILKENAT, James R.; HICKEY Jr., James E.; BARENBOIM, Peter D. (ed.). ***The Legal Doctrines of the Rule of Law and the Legal State*** *(Rechtsstaat)*. Ius Gentium: Comparative Perspectives on Law and Justice, 2014.

ETHICS IN CONGRESS. ***From Individual to Institutional Corruption***. 1995.

FARRALES, Mark Jorgensen. *What is Corruption?* ***A History of Corruption Studies and the Great Definitions Debate***. 2005.

FENNESSY, Caitlin. *Virtual Justice and Privacy:* ***What Does COVID-19 Mean for Due Process?*** IAPP, 5 mai. 2020. Available at: https://iapp.org/news/a/virtual-justice-and-privacy-what-does-covid-19-mean-for-due-process/
FISH, Michael Steven. **Islam and Authoritarianism**. *World Politics*, v. 55, 2002.

GLOBALIZING TORTURE: ***CIA Secret Detention and Extraordinary Rendition***. Open Society Justice Initiative, fev. 2013. Available at: https://www.justiceinitiative.org/publication/globalizing-torture-cia-secret-detention-and-extraordinary-rendition

HARMS, Brian C. Holding Public Officials Accountable in the International Realm: **A New Multi-Layered Strategy to Combat Corruption**. *Cornell International Law Journal*, v. 33, 2000.

HARRINGTON, Alexandra; RESNIK, Judith; VANCLEAVE, Anna. ***Regulating Restrictive Housing****: State and Federal Legislation on Solitary Confinement as of July 1, 2019*. The Liman Center at Yale Law School, 2019.

HENDERSON, Simon. *Implications of the Saudi Corruption Arrests*. **The Washington Institute for Near East Policy**, 16 mar. 2020.

HESS, David; DUNFEE, Thomas W. Fighting Corruption: **A Principled Approach; The C^2 Principles (Combating Corruption)**. *Cornell International Law Journal*, v. 33, 2000.

HOVELL, Devika. **Due Process in the United Nations**. *American Journal of International Law*, v. 110, 2006.

HUMAN RIGHTS WATCH. *Egypt:* ***Covid-19 Cover for New Repressive Powers – Amendments Could Curb Rights in Name of "Public Order"***. 7 maio 2020. Available at: https://www.hrw.org/news/2020/05/07/egypt-covid-19-cover-new-repressive-powers

HUMAN RIGHTS WATCH. ***Libya****: Judicial Closures and Limited Court Operations During Outbreak*. 2011.

HUNTINGTON, Samuel. ***The Third Wave**: Democratization in the Late Twentieth Century*. 1991.

ILIEV, P. ***The effect of SOX Section 404**: Costs, earnings quality, and stock prices*. Journal of Finance, v. 3, p. 1163, 2010.

INSTITUTIONAL CORRUPTION. Lessig Wiki. Available at: http://www.wiki.lessig.org/Institutional_Corruption

JOHNSON, Roberta; KRAFT, Michael. **Bureaucratic Whistleblowing and Policy Change.** *Western Political Quarterly*, v. 43, n. 4, 1990.

JOHNSTON, Michael. Fighting Systemic Corruption: **Social Foundations for Institutional Reform.** ***European Journal of Development Research***, v. 10, p. 85, 1998.

JOHNSON, Simon; KWAK, James. *13 Bankers:* ***The Wall Street Takeover and the Next Financial Meltdown***. 2010.

KENNEDY, David. **The International Anti-Corruption Campaign**. *Connecticut Journal of International Law Review*, v. 14, p. 455, 1999.

KIRKPATRICK, David D. *Saudi Arabia Arrests 11 Princes,* ***Including Billionaire Alwaleed bin Talal*.** The New York Times, 4 nov. 2017. Available at: https://www.nytimes.com/2017/11/04/world/middleeast/saudi-arabia-waleed-bin-talal.html. Acesso em: 6 out. 2025.

KLICH, Agnieszka. **Bribery in Economies in Transition**: The Foreign Corrupt Practices Act. *Stanford Journal of International Law*, v. 32, p. 121, 1996.
KNIGHT, Jack. ***Institutions and Social Conflict***. 1992.

KOEHLER, Mike. **The Story of the Foreign Corrupt Practices Act**. *Ohio State Law Journal*, v. 73, n. 5, 2012.

LAMBSDORFF, Johann Graf. ***Corruption in Comparative Perception***. In: JAIN, Arvind (ed.). *Economics of Corruption*. 1998.

LEFF, Nathaniel. ***Economic Development through Bureaucratic Corruption***. American Behavioral Scientist, v. 8, n. 2, p. 8–14, 1964.

LESSIG, Lawrence. *Lessig in the Nation:* ***How to Get Our Democracy Back***. Harvard Law Today, 12 fev. 2009.Available at: https://today.law.harvard.edu/lessig-in-the-nation-how-to-get-our-democracy-back/

LEYS, Colin. **What is the Problem about Corruption?** *Journal of Modern African Studies*, v. 3, 1965.

McMILLAN, John; ZOIDO, Pablo. ***How to Subvert Democracy****: Montesinos in Peru*. Journal of Economic Perspectives, v. 18, p. 69–92, 2004.

MÉON, P.-G.; SEKKAT, K. ***Does corruption grease or sand the wheels of growth?*** Public Choice, v. 122, 2005.

MILBANK, Dana; BRAUCHLI, Marcus. How U.S. **Concerns Compete in Countries Where Bribes Flourish.** *Wall Street Journal*, 1995.

MILLER, Carla. *The Tail Wagging the Dog:* ***Institutional Corruption and the Federal Sentencing Guidelines for Organizations (FSGO)***. Edemand J. Safra, Harvard Center for Ethics, 20 ago 2013. Available at: _http://ethics.harvard.edu/blog/tail-wagging-dog

MOILANEN, Timo; SALMINEN, Ari. ***Comparative Study on the Public-Service Ethics of the EU Member States*****.** Report from the Human Resources Working Group EUPAN, 2006. Available at: http://vm.fi/documents/10623/307711/Comparative_Study_on_the_Public_Service_Ethics_of_the_EU_Member_States_publication+131206.pdf/524e908b-5388-4d1c-9199-59b4f3e567a9.

NELSON, Mike. ***Codes of Ethics in Transitional Democracies****: A Comparative Perspective*. Palidauskaite Journal of Public Integrity, v. 8, p. 35–48, 2006.

NEW ZEALAND. ***Code of Conduct for the State Services***. Wellington: State Services Commission, 1998.

NOONE, Gregory P. **An Analysis of Transnational Corruption**. 2007.
ONU. ***International Covenant on Civil and Political Rights (ICCPR)***, art. 9, 1966. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

PODGOR, Ellen S.; BORMAN, Paul D.; HENNING, Peter; ISRAEL, Jerold H. *White* ***Collar Crime****: Law and Practice*. 2003.

RING, Andrés. *United Arab Emirates:* ***A Look at the Current State of Litigation in the UAE and Related Strategic Considerations*****.** Mondaq, 21 abr. 2020. Available at: https://www.mondaq.com/litigation-contracts-and-force-majeure/921116/a-look-at-the-current-state-of-litigation-in-the-uae-and-related-strategic-considerations

ROSE-ACKERMAN, Susan. ***Corruption and Government: Causes, Consequences, and Reform*****.** Cambridge: Cambridge University Press, 1999.

SALBU, Steven R. Are Extraterritorial Restrictions on Bribery a Viable and Desirable International Policy Goal Under the Global Conditions of the Late Twentieth Century? ***Yale Journal of International Law***, v. 24, 1999.

SHIHATA, Ibrahim. Corruption: **A General Review with an Emphasis on the Role of the World Bank**. *Dickinson Journal of International Law*, v. 15, 1997.

SIMON, Johnson; KWAK, James. *13 Bankers:* ***The Wall Street Takeover and the Next Financial Meltdown*****.** 2010.

STIGALL, Dan E. Iraqi Civil Law: **Its Sources, Substance, and Sundering**. *Journal of Transnational Law & Policy*, v. 16, p. 1, 2006.

THOMPSON, Dennis. Two Concepts of Corruption: **Making Campaigns Safe for Democracy**. *George Washington Law Review*, v. 73, p. 1036, 2005.

TURNER, Mark; HULME, David. ***Governance, Administration, and Development*****.** 1997.

UNITED KINGDOM. *Committee on Standards in Public Life:* ***The Seven Principles of Public Life***. London: Nolan Committee, 1998.

UNITED NATIONS GENERAL ASSEMBLY. ***International Covenant on Civil and Political Rights*****. Nova Iorque**: United Nations, 16 dez. 1966. United Nations, Treaty Series, v. 999, p. 171. Available at: https://www.refworld.org/docid/3ae6b3aa0.html. Acesso em: 6 out. 2025.

UNITED NATIONS GENERAL ASSEMBLY. *International Covenant on Economic,* ***Social and Cultural Rights*****. Nova Iorque**: United Nations, 16 dez. 1966. United Nations, Treaty Series, v. 993, p. 3. Available at: https://www.refworld.org/docid/3ae6b36c0.html. Acesso em: 6 out. 2025.

UNITED NATIONS GENERAL ASSEMBLY. ***Universal Declaration of Human Rights***, 10 Dec. 1948. 217 A(III), art. 15. Available at: https://www.refworld.org/docid/3ae6b3712c.html. Acesso em: 6 out. 2025.

UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS. *Statement on concerns regarding the politicization of the judiciary in the MENA region*. [s.l.], [s.d.].

UNITED STATES. Sarbanes-Oxley Act of 2002, Pub. L. 107-204, 116 Stat. 745, § 404.
WALLIS, Johan Joseph. ***The Concept of Systematic Corruption in American History***. 2005.

WHITSON, Sarah Leah. *Saudi Arabia:* ***Corruption Arrests Raise Due Process Concerns*****. Human Rights Watch**, November 8, 2017. Available at: https://www.hrw.org/news/2017/11/08/saudi-arabia-corruption-arrests-raise-due-process-concerns. [www.hrw.org]

WILLIAMSON, O. E. *Transaction-cost economics:* **the governance of contractual relations**. Law & Economics Journal, v. 22, n. 2, p. 233–261, 1979.
WINDSOR, Duane; GETZ, Kathleen A. Multilateral Co-operation to Combat Corruption: **Normative Regimes despite Mixed Motives and Diverse Values.** *Cornell International Law Journal*, v. 33, 2000.

WORLD HEALTH ORGANIZATION. *Preventing COVID-19 Outbreak in Prisons:* ***A Challenging but Essential Task for Authorities*****.** 23 mar. 2020. Available at: https://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/news/news/2020/3/preventing-covid-19-outbreak-in-prisons-a-challenging-but-essential-task-for-authorities

WORLD ORGANIZATION AGAINST TORTURE. ***COVID-19 Exacerbates the Risk of Ill-treatment and Torture Worldwide:*** *UN Experts*. 26 June 2020.Available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25995&LangID=E. Acesso em: 7 out. 2025.

YINGLING, M. Patrick. Civil Disobedience to Overcome Corruption: **The Case of Occupy Wall Street**. *Indiana Journal of Law & Social Equality*, v. 4, p. 21, 2016.

YINGLING, M. Patrick. **Conventional and Unconventional Corruption.** *Duquesne Law Review*, v. 51, n. 2, 2013.

YINGLING, M. Patrick; 'ARAFA, Mohamed A. After the Revolution: **Egypt's Changing Forms of Corruption.** ***University of Baltimore Journal of International*** *Law*, v. 2, p. 23, 2014.