KNOWLEDGE PROGRAMME CIVIL SOCIETY IN WEST ASIA

WORKING PAPER 17

REINOUD LEENDERS

AUTHORITARIANISM AND THE JUDICIARY IN SYRIA

Regime Resilience and Implications for Judicial Reform Assistance

UNIVERSITY OF AMSTERDAM

people unlimited
Hivos

Colophon

First published in December 2010 by the Knowledge Programme Civil Society in West Asia, a joint initiative by

Humanist Institute for Co-operation with Developing Countries
P.O. Box 85565 | 2508 CG The Hague | The Netherlands
www.hivos.net

Amsterdam Institute for Social Science Research (AISSR), University of Amsterdam
Department of Political Science
Oudezijds Achterburgwal 237 | 1012 DL Amsterdam | The Netherlands
www.assr.nl

UNIVERSITY OF AMSTERDAM

Design: Tangerine – Design & communicatie advies, Rotterdam, The Netherlands

ISSN 2210-3473

© University of Amsterdam and Hivos 2010
All rights reserved
The publishers encourage fair use of this material provided proper citation is made.

Authoritarianism and the Judiciary in Syria

Regime Resilience and Implications for Judicial Reform Assistance

Table of Contents

Summary and Recommendations 1

Introduction 3

Syria's Judicialization of Repression in Perspective 5

Syria's Judicialization of Repression: Main Trends 6

Judicial Strategies, Pathologies of Authoritarian Rule, and Regime Notions of Statehood 7

Courts and Judicialization within the ‘Struggle for Syria’ 9

Judicialization and Authoritarian Resilience 11

Implications for Foreign Assistance to Promote Judicial Reform and the Rule of Law 12

Bibliography 15

About the Author 16

Summary and Recommendations

This paper analyzes the role of the judiciary in Syria's strongly authoritarian setting wherein 'the rule by law' serves as a tool of repression; qualities that have far-reaching implications for foreign assistance programs on judicial reform, the rule of law and reform generally. Firstly, the paper argues that Syria showed since 1963 a zigzag pattern wherein modest and indeed inadequate levels of judicialization were interrupted by significant lapses into extra-judicial violence, but more recently gained in significance. Secondly, the main reason why courts matter to the Syrian regime is argued to be related to its discursive and normative notions of statehood and, related to this, its eagerness to display, claim and preserve state sovereignty embodied by courts. Furthermore, it is argued that the modest levels of judicialization of repression and occasional lapses into extra-judicial repression throughout the period under study originated in and are closely intertwined with the role of the legal profession and courts in the wider and historical context of the 'struggle for Syria', conceived of in both domestic (political and economic) terms and in terms of real or perceived foreign meddling in Syria's internal affairs. The judicialization of repression in Syria matters principally in two ways: First, because courts, even when evidently failing to fully respect human rights, on the whole moderate the intensity of regime repression and; second, because the use of courts seems to have helped strategies of 'upgrading authoritarianism' and authoritarian resilience.

The paper's analysis of Syria's judiciary within this country's authoritarian settings informs the following recommendations:

To Western (mainly: European) Governments:

- Strongly consider a focus on assisting the rule of law and judicial reform in Syria as a window of opportunity for Western engagement directed at promoting reforms generally.

- Avoid too high expectations that judicial reform will promote democratic change, and moderate the aims of providing assistance to Syria's judiciary by phrasing these from the start within the limiting parameters set by authoritarianism.

- Conduct foreign assistance to Syrian judicial reform in the context of bilateral, state-to-state relations.

- Adjust judicial reform assistance to areas where the Syrian authorities have already showed some level of awareness that judicial reform and relative respect for judicial independence will serve be its own wider policy goals.

- Closely follow developments involving Syria's administrative courts and invite the Syrian authorities to cooperate on programs of assistance to these courts solidly within these courts' institutional context.

To Western (mainly European) NGOs working on the Rule of Law and Judicial Reform:

- Prioritize lobbying and assisting their own governments to initiate and oversee judicial assistance and –reform programs in Syria.

- Offer assistance to Syrian human rights organizations in order to enhance their professionalism and capacities in effectively using multilateral forums, such as the UN Human Rights Committee, as platforms to stage and present calls and proposals for judicial reforms and –empowerment.

To Syrian Human Rights Organizations:

- Actively approach and encourage Western governments to become active in the field of judicial reform and related assistance in Syria.

- Intensively use multilateral forums, such as the UN Human Rights Committee, as platforms to stage and present calls and proposals for judicial reforms and –empowerment.

Introduction

This paper assesses to what extent, when and why the Syrian authoritarian regime judicialized its repression of political dissent, and why this matters for both a better understanding of authoritarian resilience in this country and for designing effective assistance programs to promote judicial reform and political change. In addressing these core themes the paper explicates relevant policy implications of a more detailed and annotated chapter in a forthcoming volume, *Comparing Authoritarianisms: Reconfiguring Power and Regime Resilience in Syria and Iran*, co-edited by Steven Heydemann and the current author. This volume resulted from a research project within the Knowledge Programme "Civil Society in West Asia" conducted at the University of Amsterdam in collaboration with the Dutch NGO Hivos. Before delving into matters of policy and advocacy toward political change, this paper presents the main framework for analyzing the use of technologies of power in Syria since 1963 with regards to its judicial system. For this purpose the main arguments critically engage with relevant observations and theories proposed in the study of authoritarianism generally, principally in two ways.

Firstly, many students of authoritarianism have rightly argued that the resilience of authoritarianism, whether in the Middle East region or beyond, cannot be solely explained in reference to coercive mechanisms. (Heydemann 1999: 3-4) Yet by equally paying heed to calls to nevertheless still acknowledge the significance of coercion within a more balanced assessment of authoritarian resilience (Beilin 2004), it will be argued that Syria's judiciary, viewed here as being part and parcel of the Syrian regime's repressive apparatus, played an important role in "upgrading authoritarianism" (Heydemann 2007) and authoritarian resilience.

Secondly, this paper engages with a debate on the role of the judiciary in authoritarian regimes generally. A small but growing amount of literature in this respect aims to correct analyses, still common both in academia and especially in liberal human rights discourses, which tend to conceptualize repressive authoritarian institutions and policies including the judiciary as an undifferentiated and almost residual category; the latter is often portrayed as merely standing at odds with consensual, liberal and democratic principles and human rights, and rarely understood on its own terms. An increasing number of critics resist the exclusively normative prism implied in these liberal approaches and concentrate instead on the role and use of courts under authoritarianism by trying to understand the rationales and motives of authoritarian rulers to extend some independence and powers to (parts of) the judiciary (Ginsburg & Moustafa 2008, Pereira 2005). Yet where such a trend toward judicial empowerment has failed to emerge, or only so in a very limited sense, --as in Syria--, the judiciary remains foremost a tool at the service of the regime's coercive strategies to repress dissent. Consequently, the 'rule of law' is replaced by the deeply authoritarian tendency to 'rule by law'. In this context, and from an analytical point of view, it still needs to be better understood why authoritarian regimes like Syria's at all bother to judicialize their repression of political dissent. Rooted as such in an analysis of the role of the judiciary in Syria's authoritarian context, our approach allows for some concrete if perhaps uncomfortable observations and suggestions regarding the question whether and under what conditions foreign assistance to Syria's judiciary --

designed to promote the rule of law or democratization generally-- can be expected to encourage change.

Syria's Judicialization of Repression in Perspective

Intuitively the meaning or definition of the 'judicialization' of the repression of political dissent in authoritarian contexts may appear to be straightforward and designate the prominence authoritarian states exhibit to courts and related judicial processes to persecute political views and actions that are considered undesirable, deviant or oppositional and that are criminalized by law. Along these terms and depending on available data, one can certainly sketch developments over time with regards to the judicialization of repression as, for example, Pereira does for the military juntas in Latin America in comparison to a variety of other authoritarian regimes (Pereira 2005). However, Syria's various courts differ in their adherence to judicial procedures while extra-judicial procedures and measures coexist with the ways in which courts operate and acquire significance. First, when full judicialization is understood to denote the use of formal and permanent civilian courts that are part of the regular judiciary, Syria's "state of emergency" laws and the Baath regime's heavy reliance on "exceptional" courts immediately puts the country at a lower score in terms of judicialization throughout the period under study. These include the 1962 state of emergency law, the 1968 Supreme State Security Court (SSSC), and special courts formally under the supervision of the military. Military courts and the ad hoc military 'field courts' have, both in practice and based on legal stipulations, tried civilians on a range of charges derived from military laws and the country's Penal Code. In addition, and irrespective of what courts were involved, both the pre-sentence and post-sentence period systematically contained numerous extra-judicial practices including forced disappearances and preventive detention.

Syria's Judicialization of Repression: Main Trends

We can hold the period under study against a continuum whereby the means of repression of political dissent ranges from, for Syrian standards, high levels of judicialization involving the country's ordinary (criminal) civilian courts to shades of lesser judicialization in reference to the military tribunals and the SSSC, and culminating in the opposite extremes of marginal forms of judicialization signified by the military field courts and the abandonment of courts altogether. Based on available data, often impressionistic in nature but sufficient to establish trends, what emerges is a highly uneven or zigzagged pattern, whereby degrees of judicialized repression vary and are interrupted by full-blown extra-judicial clamp downs on opposition groups and individuals. Especially following the succession of Hafez al-Asad by his son Bashar in 2000, a more complex process of judicialization has begun to distinguish the regime's repression of political dissent as, from 2002 onwards, political activists increasingly were referred to criminal courts. However, expectations that the regime would opt for a clear-cut judicialization of repressing political dissent in favour of ordinary civilian courts –let alone show more respect for the right on a fair trial—failed to materialize.

Although the Syrian regime does seem to attach at least some importance to reach certain levels of judicialization, Syria's experience with judicialized and extra-judicial repression since 1963 does not conform to the evolutionary pattern Pereira expects most authoritarian regimes to show over time. (Pereira 2005: 178, 183) In this context, increased judicialization of repression over time is believed to signify efforts by authoritarian regimes to consolidate and routinize their rule. In contrast, in Syria modest levels of judicialization kept being interrupted by significantly long periods of extra-judicial repression -- primarily between 1964-5, and between the late 1970s and early 1990s— while the judicialization of repression only started to reach somewhat higher levels since 2002. Against this background, Syria's experience with varying degrees of judicialization seems to have zigzagged and interrupted by important intervals of outright extra-judicial repression. What explains these variations?

Judicial Strategies, Pathologies of Authoritarian Rule, and Regime Notions of Statehood

In their search for explanations why certain authoritarian regimes opted for a strategy wherein courts are relatively empowered after being neglected or marginalized for years, Moustafa and Ginsburg propose to focus on sets of motivations to address or remedy common "pathologies of authoritarian rule" by empowering courts. (Moustafa 2007, Ginsburg & Moustafa 2008). These suggested pathologies include, respectively: problems in creating credible property rights; pursuing controversial reforms; checking on state officials and the state bureaucracy at large; maintaining regime elite cohesion; and generating regime legitimacy. However, as we argued in far greater detail elsewhere, applying these arguments to the Syrian case generally shows an ill fit. Apart from restoring some of the independence of the country's administrative courts in settling disputes between state agencies and private contractors, Syria's "pathologies" of authoritarian rule, if at all relevant, thus far has not triggered significant judicial reform let alone judicial empowerment.

We maintain that a more convincing if less straightforward explanation for the Syrian regime's insistence on judicial procedures and institutions --even if these fail to meet liberal standards, enjoy little autonomy and are often discarded-- may be found in the regime's discursive and normative notions of statehood and, related to this, its preoccupation with state sovereignty. Any discussion of state affairs and politics with Syrian state representatives or Baath officials is bound to bring up legal and juridical dimensions. Especially Syrian foreign policy discourses and presidential addresses on Syria's place in the world and the region are habitually riddled with references to international law, UN resolutions and legal stipulations regarding non-interference in domestic affairs; in short, key ingredients of juridical statehood. The emphasis on Syria's state sovereignty toward the outside world and within the international state system not only constitutes a remarkably consistent point of reference in regime discourses, it is often posed in direct opposition to, or as a substitute for, individual human rights. Evidently, this makes such narratives inherently authoritarian in nature. To understand the role of the judiciary in Syria, it is imperative to grasp these convictions and world-views. As elsewhere in the Arab world, Syria's juridical statehood, legal sovereignty and indeed judicial autonomy were at the heart of its struggle for independence against (French) colonialism. (Brown 1997: 236, 241, Reid 1981: 187) Consequently, in Syria as elsewhere in the Arab world, courts and state sovereignty came to be intimately associated with one another. (Brown 1997: 241) Syria's post-colonial difficulties to assert itself as a nation-state --given its own multiple and often transnational identities and being troubled by the regional permeability of its borders-- has given political elites' emphasis on juridical statehood additional urgency. Juridical statehood, as Jackson pointed out, denotes and enforces internationally rules of non-interference that generated "a new kind of territorial legitimacy and the freezing of the political map in much of the Third World". (Jackson 1990: 24) Against this background, Syria's judicial institutions, or even a semblance of judicial procedure, began to connote and embody the state's claims, from the 1960s onward aggressively expressed by the Baath regime, on external sovereignty. The embodiment of the state's external sovereignty by the country's judicial institutions may also explain why Syrian courts generally do not so much address domestic audiences or even the regime's own core constituencies;

they are rather accentuated and displayed vis-à-vis other states as if to remind them of Syria's sovereign statehood. Hence, the Syrian regime persistently chose international forums, such as the UN Human Rights Committee, to present its claimed achievements involving its judiciary in painstaking detail rarely offered to domestic audiences. (Office of the High Commissioner for Human Rights: 2001) These complex discursive processes can be further illustrated in reference to some recent developments involving Syria's courts in connection with its foreign policies. Since 2004, Western diplomats have been given access to attend court sessions at the SSSC, which otherwise has insisted on keeping spectators at bay. Indeed, at international forums Syrian state representatives explicitly invited their foreign counterparts to visit the court. One Syrian official said: "we let them [foreign diplomats] in [at the SSSC] because we want to say that we have our laws, we have our procedures. We are a sovereign state". (Author's interview in Damascus, March 2010)

Thus, the regime's discursive and normative notions of statehood and, more specifically, its preoccupation with displaying and preserving state sovereignty vis-à-vis outsiders perhaps better explain why courts matter to the regime. Yet as Brown (1997: 18) reminds us, "intentions should not be confused with consequences (a point often forgotten in research on legal systems)". The study of legal practices and the evolution of legal systems, including the judicialization of repression, cannot be reduced to exploring assumed interests, intentions, and deliberate designs divorced from their wider context. Such phenomena are "the outcome of intense political struggles rather than abstract reason". (Brown 2002: 105) It is to these struggles that we will turn next.

Courts and Judicialization within the ‘Struggle for Syria’

Even when for Syrian regime elites judicial institutions were deemed to be part of their claims on state sovereignty, the outcome shows only limited degrees of judicialization, generally and particularly in reference to the persecution of political dissent. Pereira’s (2008) historical-institutional approach, we concur, is a fruitful starting point to analyze Syria’s experience with limited and varying degrees of judicialization of repression since 1963. Accordingly, we propose to place Syria’s judiciary, the fate of its legal profession and degrees of post-1963 judicialization firmly in the much wider context of what Seale famously called the “struggle for Syria”. (Seale: 1986) The latter is to be understood in reference to the conflicts and instability governed by the intrigues of foreign powers and their penetration of the Syrian state and the foreign manipulations of this country’s political elites (as Seale presented it). Yet the struggle for Syria at the same time had a key domestic dimension as elites, popular groups and classes competed “to determine the organization of Syria’s political economy and what role the state would play in its management” (Heydemann 1999: 31). Syria’s legal profession was caught up and heavily involved in these struggles, which in turn had lasting repercussions for the levels of judicialization.

The Legal Profession and the Struggle for Syria’s Political Economy

Popular mobilization prior to 1963 and the rise to power of a regime with primarily lower class and rural origins --and to some extent a particularly strong support base within marginalized communities including the Alawites-- all put the Baath regime from the onset on a collision course vis-à-vis a coalition of landed, commercial and industrial elites. Consequently, class divisions, a rural-urban divide and, to varying degrees, sectarian identities have all been important factors in the Baath regime’s strenuous efforts to build state institutions, expand the role of the state in the economy, favour popular socio-economic strata over others, and ensure and consolidate its control over the state apparatus and society at large. In a nutshell, and from a historical perspective, Syria’s legal profession –lawyers and judges— was caught up in the middle of –and negatively affected by-- these complex developments and confrontations. Its role in Syria’s ‘struggle’ informed a regime attitude largely hostile to the legal profession and courts generally. Within this wider context, the judicialization of the repression of political dissent was only to reach the modest levels prevailing until today.

Foreign Threats and Extra-judicial Repression

While modest levels of judicialization and the regime’s apprehensive and often hostile attitudes toward the legal profession and the country’s civilian courts can be explained in reference to the domestic political and socio-economic frontlines of the struggle for Syria, the latter may have contributed to but cannot sufficiently explain the regime’s significant extra-judicial violence against its perceived opponents, particularly from 1976 onwards and throughout the 1980s. In order to clamp down on the opposition and prosecute armed zealots as criminals, the regime still could have relied on its special courts –then firmly established— and on the by then fully submissive civilian judiciary.

We suggest that the regime's decisions to instead wage an all-out war against the opposition and indeed against innocent civilians --while incarcerating them en masse without trial-- originated in regime perceptions that the opposition and the attacks against it were instigated and supported by foreign governments. (Syrian Arab Republic: 1984, 73-101, Tlass: 1991) This, in the eyes of the regime, progressively called for an iron fist approach and war-like measures; not for the judicial subtleties designed to prosecute mere criminals.

Judicialization and Authoritarian Resilience

Does it matter that authoritarian regimes judicialize their repression of political dissent? Both strong normative considerations and, as emphasized here, a perspective on the resilience of authoritarianism suggest it does. One the one hand, human rights considerations overall render judicialization desirable. "Where repression is judicialized, regime opponents are likely to have a few more rights and a little more space in which to contest regime prerogatives." (Pereira 2005: 198) There is no reason to view Syria as an exception. Yet judicialization also is analytically significant because Syria's judiciary appears to have played a role in the upgrading of authoritarianism, albeit in ways that may not be immediately expected or even be intended.

The significance of the judicialization of repression can be approached by considering its broad implications for regime survival. Accordingly, the question 'why judicialization matters' gets to be firmly placed in what Heydemann (2007) calls "authoritarian upgrading" in the Arab world at large. In Syria the judicialization of repression, intentionally or inadvertently, appears to have helped countering the perilous fallout on the regime of a reliance on extra-judicial, full-scale violence and war-like measures. From this perspective the use of courts seems to have helped neutralizing or preventing repeated and --for the regime-- likely fatal scenarios wherein specialized security agencies and (para-) military forces in charge of large-scale, extra-judicial violence turn onto the regime itself. In this context it is no coincidence that of all military coups attempts and power grabs by (para-) military officers since 1963 many occurred during and directly after the use of significant levels of extra-judicial violence. In some cases, carrying responsibility for extra-judicial violence made officers over-confident or insistent to be rewarded. When these rewards did not come as expected, (aborted) coup attempts followed. Of course, the most interesting and for the regime most challenging episode when (para-)military forces responsible for extra-judicial repression turned against the regime was in 1984 when the Defense Brigades led by Rifa'at al-Assad entered Damascus to take over the regime, but failed. According to Seale (1988: 425), Rifa'at viewed as one of his main credentials that he had taken a leading role in the violent clampdown on Islamists between 1980-82, especially in Hama. When his brother Hafez fell ill, he sensed the right moment to be rewarded for this role. This is not to suggest that all coups or coups attempts were linked to motivations informed by prior extra-judicial violence, or that the factors driving such coup attempts that did include such motivations can be reduced to them. Neither for that matter did all officers responsible for extra-judicial atrocities stage such coups. Yet it is clear that the use of extra-judicial violence can result in some dangerous unintended consequences for the regime because security and military personnel may strongly resent their involvement or, on the contrary, they may become over-ambitious in a bid to be rewarded. Against this background, a modest but still significant degree of judicialization of repression, or its gradual re-judicialization since the early 1990s and amplified since 2002, can be viewed as having helped to reduce such threats to the regime or, perhaps, as having helped to prevent their reoccurrence. After all, Syria's judiciary does the regime a service by organizing and conducting its coercive strategies and repression, but it does not control the means of violence that could be directed against the regime itself.

Implications for Foreign Assistance to Promote Judicial Reform and the Rule of Law

Now we have sketched, respectively, the structural factors behind Syria's zigzagging and modest level of judicialization, regime motivations behind judicialization, and the effects of judicialization on authoritarian resilience, we are better able to assess the opportunities for, obstacles to and limitations of efforts to encourage its judiciary's empowerment. Western donors and pro-democracy organizations have spent considerable effort and resources promoting the rule of law and judicial reforms in developing countries and transition economies. (Carothers 2006) Since the late 1990s such initiatives also began to focus on the Middle East; a region generally described as having witnessed the least reforms in terms of the rule of law and its judiciary worldwide. (Brown: 2004) Perhaps most prominently in terms of available resources, the U.S. Middle East Partnership Initiative –a multi-million dollar initiative to promote Arab reform launched in 2003—singled out judicial reform as one of its key priorities. (Blackton: 2003) Although missing out on U.S. funds because of its continuing and indeed burgeoning sanctions, Syria's judiciary also attracted Western attention. Starting in 2002, the French government sent some of its magistrates to help identify bottlenecks within Syria's judiciary primarily for the Syrian government to start designing reforms to restore business confidence in the courts. Syrian judges were flown into France to follow training courses at prestigious law colleges. At the same time, the United Nations Development Programme (UNDP) in Syria launched a technical pilot project to support the "increased accountability of the judiciary towards the general public" (UNDP: 2006), mainly by introducing information technology to the Ministry of Justice and the country's court system. In addition, a large conference on judicial reform was held in Damascus in July 2008, bringing together Syrian judges and lawyers and their counterparts from Britain and the U.S. (Syria Today August 2008) The conference was held under the auspices of Fawwaz al-Akhraz, Bashar's father-in-law, and organized by the Syrian-British Council of Commerce. A smaller workshop on judicial reform in the Arab world, organized by the German Heinrich Boll Foundation in October 2008, brought together judges from the region; Syria sent (or allowed attendance by) a prominent Syrian attorney. It may be instructive to discuss the implications of this paper for such and related initiatives, and identify some opportunities and challenges following from our conclusions on Syria's judicialization under conditions of authoritarianism.

Firstly, it should be noted that in the context of the Syrian regime's otherwise stiff resistance to receive or allow Western initiatives on political reforms, a focus on the rule of law and judicial reform may provide a rare window of opportunity for Western engagement directed at promoting reforms generally. As argued in this paper, the Syrian regime has often paraded its judicial system to the outside world to convey or effectuate its claims on external state sovereignty. Given such discursive processes, any cooperation on the judiciary is therefore more likely to be welcomed by the Syrian regime than, say, pro-reform initiatives with more overtly political connotations. Indeed, Syrian regime perspectives may explain its relative openness to Western initiatives regarding its judiciary since 2002.

However, the French experience also shows the delicateness of the paradox underlying Syrian regime motivations to engage on judicial reform initiatives. After all, as soon as the Syrian regime sensed that its sovereignty was under threat –in this case by French accusations over Syria's involvement in the assassination of Lebanese Prime minister Rafiq al-Hariri in February 2004—it simply terminated the cooperation. Syrian-French cooperation on judicial reform has since failed to resume, also likely because the new French President Nicolas Sarkozy has muted French ambitions in this respect. (Author's interview with French diplomat, April 2010)

Secondly, and related to the theme of merging judicial matters with state sovereignty concerns, foreign assistance to Syrian judicial reform is likely to be more successful when conducted in the context of bilateral, state-to-state relations. It may indeed have been for this reason that the Syrian regime has been more responsive to initiatives led by the French state than to those of Western NGOs such as the Heinrich Boll Foundation. This, of course, contravenes civil society enthusiasts' inclination to direct their reform initiatives at non-state partners congruent with their own notions of citizen's capacity building and empowerment. As such liberal convictions are unlikely to resonate in Syria, Western non-state groups focusing on the rule of law and judicial reform are better off to prioritize lobbying and assisting their own governments to initiate and oversee judicial assistance programs in Syria. For the same reason, Syrian civil society groups, such as its numerous human rights organizations, should also be much more active in approaching and encouraging Western governments to become active in the field of judicial reform and assistance. In addition, Syrian human rights organizations should much more intensively use multilateral forums, such as the UN Human Rights Committee, as platforms to stage their calls and proposals for judicial reforms and – empowerment[1]; an area wherein Western NGOs could offer some assistance in order to enhance their Syrian counterparts' professionalism and capacities.

Thirdly, foreign support for judicial reforms in Syria should direct its focus on areas where the Syrian authorities have already showed some level of awareness that judicial reform and relative respect for judicial independence will be beneficial to its wider policy goals. In our discussion on the "pathologies of authoritarianism" that are elsewhere believed to prompt judicial empowerment, Syria's administrative courts stood out as one of the very few judicial institutions that seem to have undergone some positive changes, if modestly so. Such administrative courts have been unusually active over the last few years when it comes to settling disputes between state agencies and private contractors, even allowing the latter to regularly win their cases filed against the state. (Author's interviews with Syrian lawyers in Damascus, April and May 2010) Syrian human rights lawyers[2] also sensed these changes, prompting them to try and stretch administrative judges' regained professionalism by raising cases challenging the legality of the country's draconian emergency laws and suing intelligence officers for violating human rights. (Author's interviews with Syrian lawyers and human rights activists in Damascus, December 2009, April and May 2010) Experiences elsewhere in the Arab world, for example in Egypt in the 1980s (Moustafa 2007), indeed suggest that even a small degree of restored judicial integrity related to protecting property rights may spillover into a more

[1] A few Syrian human rights organizations already present their own 'shadow' reports to the UN Human Rights Committee but do so only sporadically while concentrating on documenting human rights violations instead of presenting proposals to initiate judicial reforms. See e.g. Damascus Center for Human Rights Studies (2010).
[2] These include Syrian lawyers 'Abd al-Hayy as-Sayyid, Haytham al-Maleh and Khalil Ma'atuq.

active role of judicial institutions in protecting individual rights and the rule of law more generally. For now, however, Syria's administrative courts have rejected all legal challenges related to human rights.

Foreign rule-of-law assistance is advised to closely follow developments involving Syria's administrative courts and invite the Syrian authorities to cooperate on programs of assistance involving these courts. Given Syria's dire need to restore private sector confidence in the country's business climate generally and the administrative courts generally, such efforts may be more productive and are more likely to be welcomed than, say, repetitive denunciations of unfair trial practices at the SSSC. Yet Western (primarily European) assistance until now has focused on alternative dispute resolution mechanisms, or arbitration, involving business disputes, thereby pulling administrative judges out of their institutions in order to act, in a personal capacity, as arbitrator selected (and paid) by the conflicting parties. In fact, this insulation from Syria's otherwise corrupt court system in combination with resultant higher rewards for the judges involved may largely explain the relative improvement in terms of these judges' perceived impartiality and independence. (Author's interview with Syrian lawyer in Damascus May 2010) However, challenges on human rights are highly unlikely to be referred to such self-financing and voluntary alternative dispute resolution mechanisms. Sole reliance on and excessive attention to such arbitration mechanisms will therefore fail to set off the desired spillover to respect for the rule of law more generally. For this reason Syria's administrative courts should equally be the focus of substantial foreign, institutional support initiatives. Having said this, the Egyptian experience also has shown that expanding ambitions of incumbent judges vis-à-vis the rule of law more generally may easily backfire when authoritarian regimes reverse their policies of relative judicial empowerment in response. (Moustafa 2007) In the end, as Carothers (2006) put it, "rule-of-law reform will succeed only if it gets at the fundamental problem of leaders who refuse to be ruled by the law."

Finally, and perhaps most disturbingly for pro-democracy supporters, our approach to Syria's judiciary and authoritarian resilience suggests that a more effective or empowered judiciary will not necessarily lead or enhance democratic change or political reforms more generally. On the contrary, by sustaining a modest but significant level of judicialization, authoritarian rule in Syria appears to have become more robust and resilient. Enhancing the judiciary's capacities may thus well end up serving the regime's authoritarian upgrading strategies. Yet at the same time, as argued earlier from a perspective of human and individual rights, judicialized authoritarian rule is to be preferred above indiscriminate, extra-judicial repression; and end that is worth pursuing in itself. The aims of providing foreign assistance to Syria's judiciary and promoting the rule of law more generally are therefore best and more realistically phrased from the start within the limiting parameters set by authoritarianism. Perhaps paradoxically, and up to a point, judicial reform and a strengthened judiciary will serve the agendas of both liberal rights' advocates and authoritarian regime incumbents who wish to tighten their grip on power. Which of the two will ultimately prevail is unlikely to be determined by judicial matters alone.

Bibliography

Beilin, Eva. “The Robustness of Authoritarianism in the Middle East: Exceptionalism in Comparative Perspective,” in: *Comparative Politics*: 36 (2).

Blackton, John Stuart. 25 October 2003. “Democracy Lite: Arab Judicial Reform,” in: *Arab Reform Bulletin.*

Brown, Nathan J. 1997. *The Rule of Law in the Arab World. Courts in Egypt and the Gulf*. Cambridge / New York: Cambridge University Press.

Brown, Nathan J. 2002. *Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government*. New York: State University of New York Press.

Brown, Nathan. October 2004. “Arab Judicial Reform: Bold Visions, Few Achievements,” in: *Arab Reform Bulletin*.

Carothers, Thomas. 2006. *Promoting the Rule of Law Abroad: In Search of Knowledge*. Washington D.C.: Carnegie Endowment for International Peace.

Damascus Center for Human Rights Studies. 2010. *Alternative Report to the Syrian Government's Initial Report on Measures to Fulfill Its Commitments Under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Damascus: DCHRS.

Ginsburg, Tom and Tamir Moustafa (eds). 2008. *Rule By Law: The Politics of Courts in Authoritarian Regimes*. Cambridge/New York: Cambridge University Press.

Heydemann, Steven. 1999. *Authoritarianism in Syria. Institutions and Social Conflict 1946-1970*. Ithaca, New York: Cornell University Press.

Heydemann, Steven. 2007. *Upgrading Authoritarianism in the Arab World*, Washington D.C.: The Brookings Institution, Analysis Paper 13.

Jackson, Robert H. 1990. *Quasi-States: Sovereignty, International Relations and the Third World*. Cambridge: Cambridge University Press.

Moustafa, Tamir. 2007. *The Struggle For Constitutional Power: Law, Politics, and Economic Development in Egypt*. Cambridge / New York: Cambridge University Press.

Office of the High Commissioner for Human Rights. 28 May 2001. *Comments by the Government of the Syrian Arab Republic on the Concluding Observations of the Human Rights Committee*. Geneva: UNOHCHR.

Pereira, Anthony W. 2005. *Political (In)Justice. Authoritarianism and the Rule of Law in Brazil, Chile, and Argentina.* Pittsburgh: University of Pittsburgh Press.

Pereira, Anthony W. 2008. “Of Judges and Generals: Security Courts under Authoritarian Regimes in Argentina, Brazil, and Chile,” in: Tom Ginsburg and Tamir Moustafa (eds), *Rule by Law. The Politics of Courts in Authoritarian States*. Cambridge / New York: Cambridge University Press.

Reid, Donald M. 1981. *Lawyers and Politics in the Arab World, 1880-1960*. Chicago: Bibliotheca Islamica.

Seale, Patrick. 1986. *The Struggle for Syria: A Study of Post-War Arab Politics*. London / New York: I.B. Tauris (originally published in 1965).

Syrian Arab Republic. 1984. *Al-Ikhwan al-Muslimun. Nash'a Mashbuha Wa Tarikh Aswad (Vol. 4)*. Damascus: Syrian Arab Republic, Preparation Office.

Tlass, Mustafa. 1991. *Mar'at Hayati*. Damascus: Dar Tlass. Excerpt at http://www.moustafatlass.org/index.php?d=280&id=603

About the Author

Reinoud Leenders (PhD, SOAS - London University) is Assistant Professor in International Relations at the University of Amsterdam. As Syria researcher with the Hivos/UvA Knowledge Programme he conducts research on the role of the judiciary and on state-business relations. He was formerly Middle East analyst with the International Crisis Group, based in Beirut.

About the Knowledge Programme Civil Society in West Asia

The paper is produced in the framework of the Knowledge Programme on Civil Society in West Asia. This is a joint initiative by Hivos and the University of Amsterdam with the purpose of generating and integrating knowledge on the roles and opportunities for civil society actors in democratization processes in politically challenging environments. This programme integrates academic knowledge and practitioner's knowledge from around the world to develop new insights and strategies on how civil society actors in Syria and Iran can contribute to various processes of democratization and how international actors can support this.

For more information contact:

Juliette Verhoeven
General Coordinator
Knowledge Programme Civil Society in West Asia
University of Amsterdam
Department of Political Science
Oudezijds Achterburgwal 237
1012 DL Amsterdam The Netherlands
E-mail:J.C.Verhoeven@uva.nl

Kawa Hassan
Knowledge Officer
Knowledge Programme Civil Society in West Asia
Humanist Institute for Co-operation with Developing Countries
P.O. Box 85565
2508 CG The Hague The Netherlands
www.hivos.net
E-mail: khassan@hivos.nl

Other papers in this series are also available on www.hivos.net:

Working paper 1: Moth or Flame: The Sunni Sphere and Regime Durability in Syria, by Teije Hidde Donker.
Working paper 2: Civil Society Activism in Morocco: 'Much Ado About Nothing'?, by Francesco Cavatorta.
Working paper 3: Civil Society and Democratization in Contemporary Yemen, by Laurent Bonnefoy and Marine Poirier.
Working paper 4: The Downfall of Simplicity, by Stephan de Vries.
Working paper 5: Democratization through the Media, by Francesco Cavatorta.
Working paper 6: State-Business Relations in Morocco, by Farid Boussaid.
Working paper 7: Civil Society and Democratization in Jordan, by Curtis R. Ryan.
Working paper 8: Package Politics, by Aurora Sottimano.
Working paper 9: East European and South American Conceptions of Civil Society, by Marlies Glasius.
Working paper 10: Internet or Enter-Not: the Syrian Experience, by Salam Kawakibi.
Working paper 11: The Private Media in Syria, by Salam Kawakibi.
Working paper 12: The Uncertain Future of Democracy Promotion, by Steven Heydemann.
Working paper 13: Non-Democratic Rule and Regime Stability: Taking a Holistic Approach, by Stephan de Vries.
Working paper 14: Dissecting Global Civil Society: Values, Actors, Organisational Forms, by Marlies Glasius.
Working paper 15: Re- Rethinking Prospects for Democratization: A New Toolbox, by Stephan de Vries.
Working paper 16: Civil Society in Iran: Transition to which Direction?, by Sohrab Razzaghi.
Working paper 17: Authoritarianism and the Judiciary in Syria, by Reinoud Leenders.
Working paper 18: The Political Implications of a Common Approach to Human Rights, by Salam Kawakibi.