



MIDDLE EAST INSIGHTS

MIDDLE EAST INSTITUTE, NATIONAL UNIVERSITY OF SINGAPORE
RULE OF LAW SERIES¹

CULTIVATING THE RULE OF LAW IN QATAR LEGAL PROFESSIONALS AND SCHOLARS IDENTIFY CURRENT PROBLEMS AND AREAS FOR IMPROVEMENT

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Qatar has emerged as a prominent actor in global politics and in the global economy. Given the rapid changes Qatar has seen in the last twenty years, certain institutions have been key to ensuring the country's transition from a rent-based economy to a knowledge-based society. Qatar has strengthened its position as an important financial, political, research and media hub. These significant changes have directly impacted the development of Qatar's legal system and its laws. A steadily increasing population, almost 90 Percent of which is non-Qatari, has compounded both the prospects and challenges Qatar faces with regard to the rule of law.

Qatar's Human Development Index rank is 39 out of 207 countries (UNDP 2014), making it one of the wealthiest and most developed countries in the Arab region. As Qatar steadily reaps the benefits of its vast natural gas reserves, it has positioned itself as a central player in energy supplies and has also invested heavily in higher education. One example is Qatar Foundation, which houses Education City as well as a number of other large-scale initiatives in the fields of science, technology and community development. Furthermore, the creation of the Al Jazeera television network in 1996 has since made Qatar a leader in media development in the Arab world. Qatar was host to the 2006 Asian Olympic Games and will host the 2022 FIFA World Cup.³

How do legal professionals, scholars and legal experts in Qatar perceive the rule of law? Based on interview findings from a first of its kind project, "The Rule of Law in Qatar: Comparative Insights and Policy Strategies," this paper outlines the role of social and legal institutions in enhancing the rule of law and areas for improvement. The findings are entirely based on interviews conducted with legal professionals and scholars in 2015 and 2016. This paper therefore serves as an insight into current understandings of and perspectives on the rule of law by the 'legal complex' in Qatar.⁴

¹ All the contributions to this Insight are inspired by, and many of the individual authors supported by, Qatar National Research Fund's National Priorities Research Program Grant 6-459-5-050, the Rule of Law in Qatar and the Arab Gulf Project. We acknowledge the invaluable assistance of Noha Aboueldahab, Sarah Kofke-Egger, Susan Newton, Gwenn Okruhlik, Lubna Sharab, Sylvain Taouti and RA's at Qatar University and the University of Massachusetts-Amherst.

² I am grateful to the Qatar National Research Fund National Priorities Research Program Grant NPRP 6-459-5-050. I would also like to thank David Mednicoff and Gwenn Okruhlik for their comments.

³ Noha Aboueldahab and Hady Amr, "Faithfully Qatari With a Global Resonance," *Al Manakh* 2 (12 January 2010).

⁴ David M. Mednicoff, "The Rule of Law and Arab Political Liberalization: Three Models for Change," *Harvard Journal of Middle Eastern Politics and Policy* (Vol 1: 55-83).

An Evolving Rule of Law

Attracting business, accommodating rapid population increase, and responding to international pressures

Qatar's legal system is constantly developing to accommodate for three principal factors. First, it has adopted a number of legal measures to attract an increasing number of businesses. For example, the Qatar Financial Centre (QFC) was established in 2005 and provides business and financial infrastructure for international financial institutions and multi-national corporations. Of note is the QFC's legal structure, which consists of the QFC Authority, the QFC Regulatory Authority, the civil and commercial court (first instance and appellate divisions) and the regulatory tribunal.⁵ It also created the Qatar International Court and Dispute Resolution Centre (QICDRC), which has jurisdiction over business disputes concerning companies registered under the QFC. The laws of the QICDRC are based on common law.⁶ The QFC thus serves as a strong source of attraction for foreign businesses eager to invest in Qatar while having a legal system in place to regulate its disputes.

Secondly, Qatar's rapidly increasing population has meant that certain laws need updating. The rise in cybercrime, for instance, has been attributed to the population increase. As a result, a cybercrime prevention law was passed in 2014.⁷ One lawyer referred to the law prohibiting workers' accommodation to be set up within family residential areas as a law that appropriately responds to the simultaneous influx of foreign workers and families to Qatar.⁸ Moreover, the Qatar Lawyers Association has been leading discussion and debate on reforming and updating certain laws as well as on the restructuring of the court system to accommodate for the increasing number of criminal and civil complaints.⁹

Third, international pressure has driven some initiatives for legal reform. This has been particularly relevant in the aftermath of Qatar's winning bid for the 2022 FIFA World Cup tournament. A flurry of media reports on Qatar's labour laws, particularly its sponsorship, or *kafala*-related laws, were followed by a recent drafting of an amendment aiming to ease restrictions on freedom of movement of employees and on transferring between jobs in Qatar. While the amendment has not officially taken effect, the discussions surrounding this reform reflect the complex concerns of Qataris and non-Qataris, employers and employees regarding how the rule of law is implemented. The attention that traditionally comes with international events, such as the FIFA World Cup, thus provided an important opportunity for action on an issue that had already been on the political agenda domestically, but was shelved for some time.

⁵ Qatar Financial Centre, "About QFC," <www.qfc.qa/en/aboutqfc> accessed 8 March 2016. "In 2005, the Qatar Financial Center Law (No. 7 of 2005) was passed and introduced the QFC civil and commercial court. This essentially created a separate court system, distinct from the Qatari courts mentioned above. It applies separate rules and regulations based on common law. The QFC court has jurisdiction in any civil or commercial dispute that involves a party which is either a QFC-registered company or an employee of a QFC-registered company regardless of who the other party is. What this created is a system similar to a dual legal system with QFC courts and regulations governing QFC employees and companies and Qatari courts governing everyone else." QLRS Association <http://qlrs.org/?page_id=12> accessed 10 March 2016.

⁶ Martin Partington and Chloe Smythe, "The Development of Professional Legal and Judicial Education in Qatar," Qatar International Court and Dispute Resolution Centre (2013), p.12.

⁷ Law No. 14 (2014). For the text of this law, see: <www.almeezan.qa/LawPage.aspx?id=6366&language=ar> accessed 13 March 2016.

⁸ Law No. 15 (2010). For the text of this law, see: <www.almeezan.qa/LawPage.aspx?Id=2510&language=ar> accessed 13 March 2016. Interview with Sami Abu Shaikha, Lawyer. (Doha, 23 February 2016).

⁹ Interview with Riham Sheble, Court Reporter, Doha News (Doha, 24 February 2016). I elaborate on these points in the Conclusion.

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This essay highlights the emerging nature of these legal prospects and challenges by presenting the findings from interviews conducted with legal practitioners, legal activists, and legal scholars in Qatar.¹⁰ The findings primarily outline their reflections on the way in which the rule of law operates, the role of social and legal institutions in enhancing the rule of law in Qatar, the factors and mechanisms deemed necessary for a strong rule of law, and suggestions for improvements to the rule of law in Qatar.

The Rule of Law in Qatar

Inadequate enforcement and the importance of public participation

The diversity of understandings of the rule of law is reflected in the interview responses. On the important factors and mechanisms that make the rule of law work in society, the responses varied but centered on respect for and authority of the law, as well as adherence to a ‘culture of legality.’¹¹ Conrad Sturm, director of the Lawyering Skills Program at Qatar University’s college of law, stated, “The rule of law is only as good as its enforcement.”¹² He also cited the importance of oversight in the legal system. Others emphasised the importance of basic legal awareness and knowledge, which in turn impacts the ability of individuals to access courts, legal aid and information on which laws pertain to them and what those laws mean.¹³

Public participation as a necessary factor for a strong rule of law also emerged in the interviewees’ reflections. One lawyer at a Qatari law firm emphasised the importance of public participation in the legislative process. He explains:

If you have a fair bit of public participation in the legislative process, then that indicates there is a greater amount of rule of law...There is a commercial companies law that replaced the old one (Law No. 5/2002) in 2015. The process of legislating the new law involved a draft law that was circulated for feedback from stakeholders. So we had a draft law accessible to us last year and there was the opportunity to get back to the Ministry of Economy and Commerce with our views on it. So there was a year period in which stakeholders could get back to the government on the draft law. There are draft laws on certain websites, for example, for stakeholders to comment on. This does not happen consistently, but it does happen and in certain sectors.¹⁴

The value of public participation in such legislation, then, proved beneficial for both legislators and legal stakeholders such as this local law firm. The lawyer added that public participation is rooted in Islamic political culture: “In the region where we are right now – the Arab world – we have to look at our historical context. [Qatar is] an Islamic country and Islam prescribes...public participation.”¹⁵

¹⁰ The interviews were conducted as part of the research for the project “The Rule of Law in Qatar: Comparative Insights and Policy Strategies.” This project is funded by the Qatar National Research Fund (QNRF) and its Lead Principal Investigator is Dr. David Mednicoff, University of Massachusetts-Amherst. The Qatari partner institution for the project is FIKRA Research and Policy.

¹¹ Interview with legal counsel at Qatar University (Doha, 27 June 2016).

¹² Interview with Conrad Sturm, Director of Lawyering Skills Program and Clinical Assistant Professor, Qatar University College of Law (Doha, 7 October 2015).

¹³ Interview with Riham Sheble, Court Reporter, Doha News (Doha, 24 February 2016).

¹⁴ Interview with senior lawyer, Sultan Al-Abdalla and Partners (Doha, 9 September 2016).

¹⁵ Interview with senior lawyer, Sultan Al-Abdalla and Partners (Doha, 9 September 2016).

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Mohammed Al Ruwaili, a French-educated Qatari lawyer, proposed a framework for a strong rule of law that is relevant to Qatari society. He lamented the importation of foreign legal procedures that often fail to apply to Qatar and instead suggested the following three-tiered structure:

First, we have to identify our society's values. Values such as justice, transparency, and so on. If people believe in these values, this can help form the foundation of the rule of law. Belief in these values is important. Let's believe in justice first, then let's have procedures for justice. Then, we must form a philosophy. By philosophy I mean people should conduct debates and research on what the values mean. What does freedom mean? So we need to have a philosophy for our country. Let's debate, let's talk, let's identify which tools, which mechanisms lead to justice... We know justice would be our target, but how do we get there? Through discussions, research, contribution. Once we form our philosophy and we understand [our values], then we build procedures and process... What's happening here is that the procedures come from outside, but we don't really believe in them.¹⁶

Al Ruwaili's proposed framework, then, also highlights the importance of public participation not only in legislative processes, but also in the philosophical foundations of the rule of law. This, inevitably, grounds the rule of law in Qatari culture. First, however, it is important to look at how social institutions in Qatar have shaped understandings and perceptions of the rule of law.

Social Institutions

Family, education, mosques and media

Family was repeatedly cited as one of the most important social factors that can and should serve as a role model and cultivator of respect for the rule of law.¹⁷ Abu Shaikha describes the role of family: "Family is very important because it instills in its children the soul of justice, so that when they grow up they respect the laws. And respect for the law is essential."¹⁸ Sturm added, "Usually, during one's formative years or in the course of one's life, one develops an understanding of why rules and laws are important and why one should respect them. Being a good person and living a good life becomes more than just doing what your parents say."¹⁹

Others, however, were critical of the way in which family has not done enough to cultivate respect for the rule of law in Qatar. Sheble, for example, explained how family has hindered the rule of law:

...[I]f you have a society where there is a very prevalent view that the bigger your last name is the bigger your chance is of escaping the law or being treated differently in court, then that is a problem... I've spoken to Qataris whose last

¹⁶ Interview with Mohammed Al Ruwaili, Program Developer, Qatar Foundation (16 September 2015).

¹⁷ Interview with Ahmed Matar Al Dosari, Prosecutor, Public Prosecution in Qatar (Doha, 29 February 2016); Interview with Christopher Grout, Registrar, QICDRC (Doha, 17 September 2015); Interview with Sami Abu Shaikha, Lawyer. (Doha, 23 February 2016).

¹⁸ Interview with Sami Abu Shaikha, Lawyer. (Doha, 23 February 2016).

¹⁹ Interview with Conrad Sturm, Director of Lawyering Skills Program and Clinical Assistant Professor, Qatar University College of Law (Doha, 7 October 2015).

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name is not powerful enough or the tribe they belong to is not powerful enough. So [families] do the legal system a disservice.²⁰

Another interviewee argued that parents need to do a better job at encouraging their children to respect the rule of law.²¹

Education was cited as an equally important social institution necessary to enhance the rule of law. It was discussed as an especially important influential factor in day-to-day behaviour and in cultivating a culture of citizenship.²² A number of legal scholars pointed to the importance of all areas of education and not exclusively legal education. This stems from the notion that, as Al Ruwaili emphasised, “Law...is culture.”²³ He elaborates:

When we bring an education system from outside – from America, for instance – it will fail in the sense that it is based on *their* culture. This is why we have no real rule of law – it is based on French civil law. I think we should build a new system. I am educated in French civil law. It follows capitalism and it will hurt our economy in the future. That is why we need to build a customized system based on the Qatari culture. Because law to me is culture.²⁴

While most interviewees did not have much to contribute on the question of the role of mosques in strengthening the rule of law, Al Ruwaili commented that mosques and religious sermons provide an important opportunity to enhance the discussion on the rule of law in Qatar. This in turn would contribute to solidifying a belief system in the rule of law. He underlines the need to avoid regurgitation in sermons and to focus more on discussions surrounding more current and pressing societal issues such as the rule of law.

Most interviewees referred to the media as an important medium for public awareness regarding the rule of law, without commenting in great detail about its role. However, Sheble pointed out that the state and Arabic media have systematically neglected to report on the shortcomings of the court system, which has in turn misled the public on how the justice system works. She explains:

In cases where we have seen injustices such as defendants not having translation access, not affording a lawyer, and so on – none of this is reported in the Arabic media. If this is the main way in which people are getting their information, then how will they think that the judicial system is functioning?²⁵

It is clear, then, that the web of social institutions is regarded as crucial for instilling a ‘culture’ of rule of law, one that is grounded in Qatari society as opposed to one that is heavily imported from foreign countries. Family is at the heart of this web of social actors and serves as the foremost cultivator of respect for the rule of law as a mechanism that facilitates equality,

²⁰ Interview with Riham Sheble, Court Reporter, Doha News (Doha, 24 February 2016).

²¹ Interview with legal scholar, Qatar University (Doha, 10 September 2015).

²² Interview with Mohammed Al Ruwaili, Program Developer, Qatar Foundation (16 September 2015); Interview with Christopher Grout, Registrar, QICDRC (Doha, 17 September 2015); Interview with Clinical Assistant Professor, Qatar University College of Law (Doha, 7 October 2015).

²³ Interview with Mohammed Al Ruwaili, Program Developer, Qatar Foundation (16 September 2015).

²⁴ Interview with Mohammed Al Ruwaili, Program Developer, Qatar Foundation (16 September 2015).

²⁵ Interview with Riham Sheble, Court Reporter, Doha News (Doha, 24 February 2016).

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accessibility and accountability. The interview responses indicate that much is yet to be done to cultivate stronger ideals with regard to the rule of law in Qatar at the social level. While legal institutions are quite advanced, particularly in the field of business, interviewees pointed to additional areas for improvement, as discussed in the next section.

Legal Institutions

Strong business-oriented rule of law, inconsistent application of penal laws, under-qualified lawyers

Qatar's courts, judges and the Supreme Judicial Council are independent from the Ministry of Justice.²⁶ Its Public Prosecution is thus also independent from the Ministry of Justice and reports directly to the Emir. Many interviewees described Qatar's judicial system as a rare example of separation of powers in the Arab region. Despite this separation of powers,²⁷ some pointed to a number of issues surrounding the functionality of the judiciary. There were conflicting perspectives regarding the impartiality of judges. Al Ruwaili noted there is a problem of *wasta*.²⁸ A legal scholar described the problem of impartiality as one that stems from "relationships"; certain judges may issue decisions that are influenced by a special relationship that they have with an authority figure. This, he continued, occurs in many parts of the world, "but because this is such a small community I think it can play an even larger role." He added, however, "What might be called 'corruption' in Western countries might be called here just friendships or relationships."²⁹

The majority of interviewees indicated that a strong legal system is in place to regulate business disputes. As one lawyer put it, "The rule of law helps develop business in Qatar."³⁰ This is in large part due to the major importance Qatar places on attracting businesses. The establishment of the QFC and its legal institutions, along with the practice of arbitration and the presence of the QICDRC all point to the importance Qatar attaches to attracting and sustaining foreign commercial businesses. Some also noted that tribal justice is still predominant in the resolution of family disputes. This reduces the number of family court cases as many families prefer to resolve the issues outside of court.

One lawyer was emphatic in underlining the poor quality of legal education, which in turn produces weak lawyers:

We do not produce law graduates that would be considered lawyers anywhere else. We do not have a curriculum that helps to put qualified lawyers into the system. We do not help to create the system and make it more sustainable. We are more concerned with turnover and having graduates and not the quality. So from an education standpoint, we do not help the rule of law.³¹

Not surprisingly, under-qualified law graduates eventually have an adverse impact on legal decision-making at the professional level. For instance, a senior lawyer at Qatar's largest telecommunications company noted that while the rule of law is regarded as a highly important

²⁶ Judicial Authority Act, Law No. 10 (2003).

²⁷ It should be noted here again that the judiciary reports to the Emir.

²⁸ *Wasta* is an Arabic term that means nepotism.

²⁹ Interview with legal scholar, Qatar University (Doha, 10 September 2015).

³⁰ Interview with senior lawyer, Sultan Al-Abdalla and Partners (Doha, 9 September 2016).

³¹ Interview with legal counsel, Qatar University (Doha, 27 June 2016).

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ideal by government leaders, its day to day practice “is exercised by a poorly skilled and poorly informed and unauthorized body of in-house lawyers and advisors from a range of jurisdictions who just don’t have the authority to ensure that a semblance of law is adhered to.”³² He added that the legal departments in a number of ministries need to be staffed by better-qualified lawyers. He explains:

Within Qatari society, the role of the law or lawyer is not regarded as important – it’s more policies, regulations, etc. But there is a lack of Qatari talent getting into law. If they’re serious about it, they need to send their brightest people to spend time overseas and then come back. There are clearly talented Qatari lawyers trained here and abroad, but once they hit the ground running in Qatar, it comes to a grinding halt because they are managed by unqualified Qataris. The quality of legal professionals in the country has to improve. Decisions by a minister over a legal decision, it is reached in compliance with the law – but they need to be properly advised. My view at the moment is that the ministers themselves and those with delegated authorities are not properly advised.³³

Sheble gave a more detailed account of some of the shortcomings of basic court functions in Qatar based on her reporting on court issues since 2012. At the top of the list, she argues, is the language barrier. Weak translators and lack of access to a range of language interpreters (i.e. not simply from Arabic to English, but the inclusion of a larger variety of languages to reflect the diverse migrant community in Qatar, particularly from Southeast Asia) directly and negatively impact equal access to court and other legal services. There is, she continues, a lack of public awareness and dissemination of information – both of which would enhance individuals’ knowledge of how the legal system pertains to them. She critiqued the practice of handwritten transcriptions in court, many of which are difficult to read and are far from comprehensive. One transcriber apparently had hearing difficulties, which for obvious reasons complicated the task of ensuring an accurate transcription for the court proceedings. Sheble also pointed to the need to update some penal and civil laws. For example, laws pertaining to blood money or any monetary provisions were issued twenty-five years ago and thus took into consideration prices from that period.³⁴ On the role of Shariah in the Qatari legal system, it is often inconsistently applied:

Where a Muslim defendant is found guilty of drinking alcohol, he or she receives 40 lashes and a prison sentence. However, in cases where adultery was proven to have taken place, the defendants do not get the Shariah ordained lashes. Instead, they receive a prison sentence. If you’re non-Muslim and found drunk, you walk away unless you were driving. So it gets confusing as to when they apply Shariah and when they don’t...lawyers invoke Shariah to their benefit or interest.³⁵

That said, Sheble and others point to the fact that while Shariah tends to be applied more prominently in family law and penal law in Qatar, there is a tendency for family disputes to be resolved outside of court. This, as mentioned by Al Ruwaili and others, is a result of the tribal

³² Interview with senior lawyer at a large telecommunications company in Qatar (30 June 2016).

³³ Interview with senior lawyer at a large telecommunications company in Qatar (30 June 2016).

³⁴ Sheble noted that this is one of the legal reform issues that the Qatar Lawyers Association has been advocating for. Interview with Riham Sheble, Court Reporter, Doha News (Doha, 24 February 2016).

³⁵ Interview with Riham Sheble, Court Reporter, Doha News (Doha, 24 February 2016).

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justice culture that persists in Qatari society, and which prioritises dialogue and mediation as opposed to retributive justice in the courts.³⁶

Conclusions

Cultivating a culture of citizenship through legal education, public participation and Qatari capacity building

Qatar is a young developing country in terms of its legal system. So Qatar needs more time. Qatar is trying to accomplish things in a decade that would normally take 40-50 years.³⁷

Upon further reflection on the rule of law issues outlined in this paper, lawyers, legal scholars and experts proposed several areas for improvement, or even changes to the way in which the rule of law operates in Qatar. The broader areas for improvement primarily relate to strengthening the role of public participation in both political appointments and in legislation. Al Ruwaili proposes a rather ambitious revamping of the legal system, one that emphasizes home-grown values, embedded in the Qatari belief in those values, and procedural laws that adequately enforce and protect those values. Many advocate for stronger public awareness and dissemination of information, both of which should cultivate a culture of citizenship that seeps into the role of the family as the prime educator and instiller of respect for the rule of law. Coupled with the role of family is education in all areas and not just legal education. This, as several argued, is important as the rule of law pertains to day-to-day interactions and not simply to interactions with courts and other legal services. It is worth reiterating here Al Ruwaili's emphatic statement: "...[L]aw to me is culture."³⁸

Another important area for improvement is strengthening legal education in order to produce highly qualified Qatari lawyers. A number of respondents encouraged both education abroad and in Qatar, all with a view to producing highly educated lawyers who are capable of handling the complex cases that arise in a multi-jurisdictional system. Moreover, making legal documents, court proceedings, government papers and laws under consideration accessible to the public in a timely fashion in both Arabic and English was cited as crucial to enhancing transparency and trust in the legal system.³⁹

The Qatar Lawyers Association has been advocating for an updating of procedural, penal and civil laws, as well as the creation of specialised courts. For example, murder and theft cases are often dealt with in the same court and by the same judges. Sheble explains that judges are overloaded as they often have to work on 200 cases "and it's a mishmash of cases."⁴⁰ The Qatar Lawyers Association, then, is pushing for the establishment of a traffic court, a court for financial crimes, and so on – a decentralization of the court system to make the justice system more manageable.⁴¹

One lawyer summed up the importance of capacity building in order to strengthen the rule of law in Qatar:

³⁶ Interview with Mohammed Al Ruwaili, Program Developer, Qatar Foundation (16 September 2015); Interview with legal scholar, Qatar University (Doha, 10 September 2015).

³⁷ Interview with legal counsel, Qatar University (Doha, 27 June 2016).

³⁸ Interview with Mohammed Al Ruwaili, Program Developer, Qatar Foundation (16 September 2015).

³⁹ Interview with Amy Sanders, Associate Professor in Residence, Northwestern University in Qatar (Doha, 21 July 2016).

⁴⁰ Interview with Riham Sheble, Court Reporter, Doha News (Doha, 24 February 2016).

⁴¹ Interview with Riham Sheble, Court Reporter, Doha News (Doha, 24 February 2016).

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[Qatar needs] a better education system for Qatari lawyers, better development of local law firms. Real incentives for Qataris to be lawyers: not just monetary ones, but appeal to people's sense of national pride to try and get locals involved. Better application of existing standards and rules. I, like everyone else, have no problem if they choose to enforce a rule entirely, but there is partial enforcement here. This is a serious problem here that needs to go away. Don't run before you can walk. Get a good foundation. I think the problems are really obvious and the way to fix them is to build up local capacity, not by bringing in Egyptians, but by helping Qataris learn and do it themselves.⁴²

This essay has outlined the reflections of lawyers and legal scholars in Qatar on the meanings of the rule of law, the role of social and legal institutions in enhancing the rule of law, and areas for improvement. The findings suggest that Qatar has come a long way in a short time in institutionalizing the rule of law in a complex, cosmopolitan and rapidly-changing society. Yet ensuring legal predictability and the prioritization of indigenous legal traditions and professionals remain works-in-progress, as is certainly the case in even more established legal systems.

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⁴² Interview with legal counsel, Qatar University (Doha, 27 June 2016).