

Comparative Report on the State of the Judiciary in Egypt, Jordan, Lebanon and Morocco



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Introduction

I. Overview of the Project

This report compares the overall state of the judiciary in four Arab countries: Lebanon, Jordan, Egypt and Morocco. It evaluates regional judicial independence and accountability and is based on wide-ranging research conducted by Arab experts from the region over the past two years. Lebanon, Jordan, Egypt and Morocco were selected for comparison because they have already implemented some judicial reforms and are among the most progressive in the region with respect to this issue. The experiences of these countries may provide best practices and valuable lessons learned. In addition, they may be receptive to working with civil society to deepen their reforms. This report was made possible by the financial support of UNDP-POGAR and technical support from IFES.

To our knowledge, this report is the first of its kind for the region in several respects:

- (1) It establishes a comprehensive framework for analyzing and promoting the independence and accountability of the judiciary from the perspective of both black-letter law and actual practice;
- (2) It establishes a multidisciplinary, participatory methodology for conducting research on all functions of the judiciary; and
- (3) It develops baseline indicators that can enable monitoring and reporting on the annual progress of reforms by either government officials, civil society or both.

One of this project's main objectives is knowledge-sharing within countries, across the region and with donors and the international community. An independent judiciary is now recognized as key to establishing good governance, the rule of law and sustainable democratic and economic reform. As a result, there is now the need and opportunity to share and debate lessons learned and best practices throughout the region.

The Arab experts who prepared the national reports adopted a systematic research methodology that is described in three succeeding chapters.

Chapter 1 describes the judiciary from a historical, socioeconomic, political and legal perspective. It also outlines why the judiciaries in these four countries have not been able to develop as a fully independent democratic institutions.

Chapter 2 analyzes the extent to which the four judiciaries possess the essential elements of a modern twenty-first century judiciary: (1) independence, (2) integrity/impartiality, (3) competence and (4) efficiency. This analysis was undertaken entirely by Arab experts who analyzed the roles of different stakeholders using a framework based on regional best practices. After debate and discussion among the experts, they produced an analysis that draws upon the perspective of both black-letter law and law in practice. It is hoped that their use of a best practices framework will enable countries, reformers, donors and civil society—either



individually or collaboratively—to chart the progress of future reforms and to capture and share lessons learned with each other.

Based on this analysis, **Chapter 3** then recommends a series of high-priority judicial reforms that could benefit all four countries as well as recommendations specific to each country.

This comparative report adopts the same methodology used by the experts who wrote the national reports and relies heavily on their results and recommendations in an effort to highlight where these four countries share common issues and concerns and where they do not.

Two surveys were conducted during the development of each national report. The first was a survey of legal experts, including lawyers, judges and legal academics. The second was a public opinion survey. (Both surveys are available on ACRLI's web site: www.arabruloflaw.org).

II. Key Conclusions of the Four Country Reports

As noted earlier, the national reports analyze the state of the judiciary in Lebanon, Jordan, Egypt and Morocco by comparing their functions to benchmarks developed by ACRLI, with technical assistance from IFES. These standards, as well as the indicators for each one, are generally based on four essential elements. They are (1) independence, (2) integrity/impartiality, (3) competence and (4) efficiency.

The national reports reveal many commonalities among the judiciaries of the four countries examined, even though they note differences as well. In all four countries, the basic legal framework is based on two common cultural heritages. The first was inherited in the late nineteenth century from the Ottoman Empire, whose legal system was based upon both Shari'a and French law. The second was the German Roman legal tradition, which was embraced in a number of European countries.

- **Judicial Independence**

The national reports all point out that the principle of judicial independence, as defined by regional and international norms, is clearly and expressly embraced in the constitutions of all four countries. However, they also note that the laws designed to implement this constitutional mandate are either not enforced or are flawed, both on paper and in practice. Indeed, the laws in all four countries often provide the executive branch with either the legal or effective authority to totally control the finances and administrative functions of the judiciary. Such a situation makes a judiciary vulnerable to significant political manipulation by the executive branch. Such manipulation is often achieved through the Higher Judicial Councils, over which the executive branch has de facto control.



- **Judicial Integrity**

The national reports indicate that the principle of judicial integrity, as defined by regional and international norms, is not clearly embraced and/or enforced by law or regulation. Again, the reports all note that the executive branch, not the judiciary, effectively controls much of the work of the courts through its control of the judiciary's budget and/or the establishment of extrajudicial courts. Another impediment to judicial impartiality is the influence of tribal, familial and sectarian allegiances on the judicial appointment process, which can serve to perpetuate judicial corruption. Finally, in many countries, the executive and legislative branches do not provide judges and judicial staff with appropriate compensation or physical/career protection given the sensitive, complex nature of their work.

- **Judicial Competence**

According to the national reports, both members of the judiciary and the public consider many judges to be incompetent. The experts find several reasons for this situation. In most countries, judicial training institutes (if they exist at all) lack the expertise needed to train judges, particularly in new areas of the law. Thus, often judges and judicial staff do not have adequate preparation in the administration, substance or ethical considerations of the legal profession. Moreover, even today there are a sizeable number of judges who were appointed to the bench without attaining the proper legal qualifications (regardless of legal requirements). Finally, most countries do not have clear written guidelines and procedures for selecting, appointing, promoting and dismissing judges—or they do not implement them in practice. The authors of all four reports see political control over judicial career paths as one of the most significant obstacles to both judicial competence and independence.

- **Judicial Efficiency**

The national reports find a number of common obstacles to the efficiency of the courts. The judiciaries in all four countries have large case backlogs and inordinately long trials, which can include numerous delays that are not adequately controlled or sanctioned. In addition, these countries' systems for managing the flow of judicial documents/actions and the scheduling of cases appear to be woefully lacking. Other serious problems are a shortage of judicial staff and a lack of professional training. Finally, many people (both inside and outside the judicial system) do not fully understand the serious issues confronting the judiciary and, as a result, do not appreciate the need for comprehensive judicial reform.

III. Key Conclusions of the Four National Surveys

A key element of ACRLI's research methodology was two surveys conducted with members of the legal profession and with the public. In each country, more than 150 judges and lawyers were surveyed as were more than 600 members of the public. For logistical and resource reasons, most of the people surveyed (through one-on-one interviews) were located in the capital cities of each country.



The survey questionnaires were carefully constructed following a series of discussions with country, regional and international legal experts, including IFES, and were focused around the regional/international judicial independence standards used by ACRLI throughout this project. The survey was developed and administered over a period of several months, with the technical assistance of a professional polling and survey firm; informal focus groups and pilot testing were used to test the validity and wording of every question. The surveys were conducted using random sampling methodology, and all questions were closed-ended. These surveys were designed with several objectives in mind, including enriching the analysis of the national reports and their recommendations.

Like the benchmarks used to analyze the state of the judiciary, the questionnaire for legal experts covered four major dimensions: (1) independence, (2) integrity/impartiality, (3) competence and (4) efficiency. The expert survey contained 108 questions, 70 of which asked participants to evaluate specific aspects of the judiciary, 17 asked about needed reforms and 21 asked for a general evaluation of the state of the judiciary in the participant's country.

The 74 questions of the public opinion survey also aimed to uncover participants' perception of their judiciaries with respect to the previously mentioned standards. Among other things, citizens were asked if they had had any experience with the judicial system or lawyers, as well as general questions about the judiciary and the need for judicial reform.

Both the expert and public opinion surveys were performed during the spring and summer of 2006 by a professional survey and polling firm with regional experience. However, despite our best efforts to achieve a nationally representative survey sample, our results contain some limitations that should be duly noted. The first is that most participants for the surveys, for logistical and resource reasons, were found in the capitals of each country, where people are probably most informed. There were also problems related to people's willingness to participate in some countries, which may be due to their perception of risks associated with participating in an exercise led by a civil society organization instead of by government.

That said, ACRLI and IFES believe the survey results are nonetheless valuable and telling. Because participants in all countries responded in overwhelmingly similar ways on key issues, we believe (and have been advised by polling experts) that these answers would not likely be significantly different even if the sample of participants had been more representative. It is also true that since the survey results come mostly from people in the capitals, they are probably quite credible, since these are people with the best access to information on the judiciary. Below, we present some selected survey conclusions.



- **Jordan's judiciary viewed most positively by both lawyers and judges, and Lebanon's receives low marks.**

Judges and lawyers in the four countries expressed significantly different views about a number of issues, although they overwhelmingly agreed that their judiciaries were not independent. Perhaps not surprisingly, judges painted the judiciary in a more positive light than lawyers. According to the survey, judges from Morocco and Jordan gave their judiciaries the most positive evaluation and those from Egypt and Lebanon gave theirs the least positive review. Lawyers from Egypt and Jordan gave their judiciaries high marks while those from Morocco and Lebanon were more pessimistic about the performance of their judiciaries.

- **Lawyers and judges concerned with competence and independence.**

The most common problems cited by all respondents related to judicial competence, including judicial officials with inadequate qualifications and skills. The most significant complaint from both lawyers and judges (in three of the four countries) related to their freedom of expression and association, which are very important elements of judicial independence.

- **Public concerned with bribery and competence in their legal systems.**

Members of the public in both Egypt and Lebanon reported minimal interaction with the courts (16% and 22% respectively), while the public in Jordan and Morocco reported higher levels of interaction (around 33%). One public concern—bribery of court staff—also varies among countries; survey results in Jordan report the lowest rate (19%) while those in Egypt record the highest (almost 60%). However, in all countries, bribery of judges is deemed significantly lower than bribery of court staff; the Egypt survey reports the lowest rate (11%) and the Morocco survey the highest (25%). When survey respondents who had used lawyers and the courts were asked to rate their experience as positive or negative, those in Egypt and Lebanon generally said they had a favorable opinion of their lawyers' performance but a negative one of that of their judges. Participants in Jordan also generally expressed a relatively positive opinion of their lawyers but gave their judges negative marks. In Morocco, by contrast, participants generally had negative opinions of both their lawyers and their judges' performance.

In comparing both the expert and public survey results, clear differences appear, particularly in Morocco. However, respondents to both surveys in all four countries agreed that comprehensive reform of the judiciary was needed, and all believed that the issues of judicial independence and efficiency should be given high priority. However, there were some variations among countries with respect to which judicial issues should be given highest priority. Participants in both Egypt and Lebanon believed that issues related to judicial independence should be given highest priority (followed by integrity, efficiency and competence). Those in Jordan believed issues related to efficiency should be given highest priority (followed by independence, competence and integrity). Moroccans also believed efficiency should be given highest priority (followed by integrity, independence and competence).



Chapter 1: Background and Context

I. Genesis and Evolution of the Judiciary

The Lebanese, Jordanian, Egyptian and Moroccan judiciaries all share a similar legal heritage, although there are some relatively minor differences among them. On the one hand, their legal systems are partially shaped by Islamic law (Shari'a) as well as social, tribal, familial and confessional inheritances. On the other hand, they are the fruit of the Romano-German system, which was brought to the region during Ottoman rule and during the European colonization of the eighteenth and nineteenth centuries.

The historical evolution of the judiciary differs from one country to the other. The modern Egyptian judiciary is the oldest, as it started to develop into its modern shape in the second half of the nineteenth century, beginning with the establishment of Mixed Courts in 1875 and then the Civil Courts in 1883. However, the judiciary as it exists today did not take full shape until the abolishment of foreign privileges in 1937 and of the religious courts and Mullah Councils in 1956. In general, the Egyptian judiciary was also viewed as distinguished, professional and somewhat independent throughout this time frame regardless of the ruling elites. This history has helped maintain the independence of Egypt's judiciary, despite numerous clashes with the executive branch, which has established many exceptional courts in Egypt throughout its history.

The modern Lebanese judiciary emerged under the strong influence of her French occupiers in the early 1920s. The country's 1926 constitution stipulated that the judiciary is one power among the three state powers. In the early 1970s, the Lebanese judiciary reached its peak level of performance. However, as a result of civil war in the 1980s and 90s and Syrian political domination, the judiciary became weak over time, losing much of its institutional stature. However, even under these circumstances, the judiciary has retained much of its independence, and a serious effort to restore its image is underway.

Until 1959, the Moroccan judiciary was made up of a dual system of tribal and religious courts. Over the next 15 years or so, it was reformed, and the dual system unified, under the strong influence of the country's French occupiers. Morocco largely retains the resulting structure to this day.

The Jordanian judiciary began to evolve with the establishment of the Emirate of TransJordan in 1920. While a religious judiciary and a tribal judiciary emerged in 1924, they were soon abolished with the passage of the Organic Law of 1928. The modern Jordanian judiciary was largely birthed in 1952, with the promulgation of the Jordanian constitution, which created the judiciary and guaranteed the independence of judges.



II. Judicial Regulation

The laws organizing the judiciary are similar in all four countries, in that they each have separate courts for administrative, penal and civil cases (with the exception of Lebanon, which does not have administrative courts). However, a law that would establish administrative courts in Lebanon has now been ratified, although the executive decree to make it operational has not yet been promulgated.

The Moroccan and Lebanese judiciaries adopt sub-judiciary dualism: that is, they have a separate civil and administrative judiciary (the latter has both administrative and financial branches). The Egyptian judiciary uses a similar dual system but does not have a financial judiciary within its administrative judiciary as the central system for accountabilities does not have any judicial powers. In contrast, Jordan has a unified judicial system that includes administrative courts. In the other countries, the administrative courts are treated as separate from the civil/penal courts and have a more limited role in the general affairs of the judiciary. In addition to regular courts, exceptional courts exist in all four countries, although their scope and power varies from country to country.

III. Key Recommendation: Comprehensive Judicial Reform

The national reports are all in complete agreement on the need for comprehensive judicial reform. They note the main target should be reforms that promote judicial independence, impartiality/integrity, efficiency and competence. They each review various judicial reform efforts from the region and highlight the progress (or partial progress) that has been achieved. Comparatively speaking, it appears more progress has been made in Morocco and Jordan than in Egypt or Lebanon in recent years.

In Jordan, a Royal Committee for the Development of the Judiciary was established by King Abdullah II on August 29, 2000. With the participation of lawyers, judges and judicial staff, this committee studied the state of the judiciary, diagnosed some of its problems and recommended a series of reforms to enhance its human resource capacity and its independence. In 2004, after considerable planning and discussions, the Judicial Council and Ministry of Justice elaborated a strategy and action plan to implement the reforms, with cooperation and funding from the international community. However, despite these efforts, the minister of justice noted that the instability of his post made effective implementation of the plan very difficult. The narrow approach of implementing reforms in the general courts, and not all courts, meant that the reforms had only a limited impact on the overall system of justice.

In Morocco, the judicial system went through several stages of reform. During the 1970s, a wave of judicial reform legislation was passed, including laws related to judicial organization, judges, the code of civil procedure and (to a lesser extent) the code of criminal procedure. The main aim of this legislation was to reorganize the judiciary, to simplify judicial procedures, to guarantee the speedy enforcement of verdicts and to narrow the gap between the judiciary and litigants. During that time, communal and districts courts were also created to settle minor conflicts.



In the 1990s, reform expanded into many other areas. At that time, specialized administrative and commercial courts were established, the Ministry of Justice was reorganized, penitentiary by-laws were amended, the system of enforcing court judgments was reformed, the issue of rehabilitation was studied, the judicial inspection process was enhanced, the gap between the judiciary and litigants was narrowed, and new codes for criminal procedure and criminal law were developed. Despite all these efforts, the report points out that reform efforts focused almost exclusively on technical legislative issues and not on structural or political issues, such as those related to judicial independence. It notes that the performance of the judiciary still suffers because its judges are appointed by politicians for their own purposes. This fact effectively prohibits judges from participating meaningfully in the reform process.

In Lebanon, there is also an elaborate judicial reform plan in place but, like the plan in Jordan, its implementation is hindered and largely confined by the executive to technical issues. The clearest example is the president's current refusal to sign a new decree that would reform the judicial nominations process even after it had been unanimously approved by the Higher Judicial Council and ratified by the minister of justice. As a result, Lebanon is thus left with partial technical reforms, such as modern equipment and libraries installed in the Houses of Justice, newly computerized judicial offices, newly developed judicial institutes, and training courses for judges.

Likewise, in Egypt, current reform efforts are limited to technical and piecemeal reform. While judges, represented by the Club of Judges, are still demanding comprehensive reform, they cannot move forward because of political roadblocks put in place by the executive branch through the Higher Judicial Council, the exceptional courts and the Supreme Constitutional Court. The most important reform currently under study outside governmental circles is the draft law for the judiciary, which is being prepared by the Club of Judges.



Chapter 2: Assessment of the Four Judiciaries by Regional/International Standards

This chapter considers whether the judiciaries of Lebanon, Jordan, Egypt and Morocco comply with the regional and international standards developed in this project. As mentioned earlier, the judiciaries are evaluated in four main areas: (1) judicial independence, (2) integrity and impartiality, (3) judicial competence and (4) judicial efficiency.

I. Judicial Independence

1. Guarantees of Judicial Independence

A. Texts regulating the power and independence of the judiciary

Constitutions: Provisions in the constitutions of Lebanon (Article 20), Jordan (Article 27), Egypt (Article 65) and Morocco (Article 82) all provide for judicial independence from the executive and legislative branches. They all also guarantee the personal independence of judges in the performance of their constitutional duties. However, there are some interesting textual differences between the four constitutions with regard to these guarantees. The Lebanese constitution refers to clear legal guarantees while the Jordanian and Moroccan constitutions only briefly (and less clearly) refer to these rights. Indeed, the latter constitutions both stipulate that the transfer and dismissal of judges is subject to the will of the King and relegate the details of the law to other laws. The Moroccan constitution charges the Higher Judicial Council with the responsibility for protecting the guarantees of judicial independence (Article 87).

The Egyptian constitution differs from those of the other three countries in that it more clearly emphasizes the independence of the judiciary, including constraints on the dismissal of judges (Article 168). It also stipulates that the State Council is an independent judicial committee that settles administrative and correctional litigation (Article 172).

Legislation: All four countries have laws that purport to implement these constitutional guarantees of judicial independence.

International treaties: All four countries are active members of the United Nations and have ratified the International Declaration of Human Rights and the International Covenant on Civil and Political Rights. In addition, they all participated in the 1986 Milan Declaration on Judicial Independence.

However, exceptional and private courts are often used to arbitrarily move some cases beyond the jurisdiction of the regular courts, which violates the principle of judicial independence.

For instance, the Egyptian constitution (Articles 171, 179 and 183) provides for the formation of exceptional courts, such as the state security courts, military judiciary, the ethics



court and other courts. All of these courts work under the supervision of the executive branch. The law (Article 167) also states that “judicial committees” can be formed that fall under the authority of the Higher Council for Judicial Committees, instead of the judiciary. This means that the current judiciary could be defined as a judicial committee, which would place it under the control of the High Council instead of the judiciary (this is similar to what occurred in 1969).

In Lebanon, too, the law provides for the establishment of exceptional courts, such as military courts (whose jurisdiction extends over disputes between military officials and civilians) and the Council of Justice (which is a first instance court that examines crimes affecting national security). These courts will be discussed further later in this report. In addition, a number of judicial committees have been established, such as appropriation taxation committees, as well as other courts, such as the publications court and private courts for financially faltering banks and referee councils.

In Jordan, there is also a range of exceptional and private courts, the most important of which is the state security court. It is under the control of the prime minister, who can refer any case to it that threatens “national or economic security.” There are also customs and police courts, and a Military Council that is subordinate to the Intelligence Department.

In Morocco, while the constitution does not even refer to exceptional courts, there are laws establishing a number of them that primarily relate to cases involving specific crimes (including crimes committed by soldiers).

B. The process of making judicial appointments

A fair and depoliticized process of appointing judges is the most important tool capable of guaranteeing judicial independence. However, the national reports note that the executive branch effectively retains this important power in all four countries.

In Lebanon, the Higher Judicial Council prepares and ratifies judicial appointments, including individual or group annexations. It then sends the candidate’s name to the minister of justice (or to the minister of defense for military courts) for ratification before sending the nomination to the Cabinet for appointment by decree.

In Jordan, judicial appointments are generally under the effective control of the executive branch. The Higher Judicial Council is composed of “judges appointed to decide cases against government officials” (Article 57), and the chief judge and members of the Religious Council are appointed by a Cabinet resolution. Judges on the State Security Court are appointed by the prime minister; civil judges in the regular courts are appointed by the minister of justice and the Judicial Council (with approval from the royal family); military judges are appointed by the Joint Chief of Staff; and religious judges are appointed by judicial councils within the religious courts. With regard to the prosecutor general, the law gives the president the exclusive right to name the public prosecutor; he needs no approval from the Higher Judicial Council.



In Egypt, judicial appointments are made by the Higher Judicial Council. However, many laws have been amended to give the minister of justice effective authority to supervise the judiciary. For example, he has the power to appoint temporary judges, transfer judges or discipline judges (with the approval of the Higher Judicial Council). Article 119 of the law also stipulates that the public prosecutor be appointed by the president, who does not need the approval of the Higher Judicial Council. Transfers within the public prosecutor's office are made by the minister of justice.

In Morocco, the process is similar to that in Egypt, where the minister of justice has effective supervisory authority over many aspects of the judiciary and the careers of judges. The judges' bylaws and the penal procedure law give the minister of justice the power to appoint three judges of the public prosecution after consulting with the Higher Judicial Council. The bylaws also give the minister of justice the authority to appoint judges, be it court judges, public prosecution judges or investigating judges.

C. Respect for legal guarantees of judicial independence in practice

While the national reports make clear that the right of judicial independence is enshrined in all four constitutions, we will now discuss how this right is abrogated in practice in all four countries.

The Lebanese report concludes that the principle of judicial independence is severely weakened by the myriad laws that give the executive the power to control virtually all aspects of the judicial appointments process. There is no single law related to judicial appointments. Rather, different laws grant the executive the authority to name a wide range of judicial officials, including (1) the public prosecutor, (2) the chief and members of the judicial inspection committee, (3) the chief of the accountability office, (4) the public prosecutor of the accountability office, (5) the chief of chambers, (6) the chief of the State Council, (7) the chief of the State Council's bureau and (8) the chief justice of the Court of Cassation, who also serves as the chief of the Higher Judicial Council. The judges of the religious judiciary and the various judicial committees fall under the authority of the Higher Judicial Council, not the judiciary.

In practice, then, the report clearly shows that the Lebanese judiciary has been historically treated as affiliated with the executive branch and not as an independent power, as required by the constitution. This fact is corroborated by a number of media stories and governmental papers, such as the official communiqué issued by the Ministry of the Interior on 7/2/2002, which points to interference by the Premier and the minister of justice in the work of the judiciary during the elections. The report notes that a former Higher Judicial Council Chief is quoted in the daily newspaper *Al-Safir* (14/11/2002) as saying: "The independence of the judiciary in Lebanon is illusive and not true; it is a tool in the hands of politicians who interfere in its affairs." The report also describes a number of judges who said they resigned because of interference in the judicial process. The clearest example of political interference in the judicial process occurred in November 2005. As a result of disagreements within the



executive branch, the appointment of five new judges to the High Council (replacing judges whose terms had expired) is now paralyzed; as a result, the Council cannot perform its duties.

2. Institutional Independence of the Judiciary

For a judiciary to enjoy institutional independence requires many conditions be met. For example, the Higher Judicial Council must enjoy administrative and financial independence and must be able to make decisions according to the law without fearing repercussions from the executive branch. However, all four country reports make clear that these conditions do not exist in any of the countries studied.

The reports clearly show that judicial councils fall partially or entirely under the influence of the executive, whether that influence comes from the executive branch's ability to appoint members (as is the case in Lebanon) or from the powers exercised over the judiciary by others, including the minister of justice, the High Council, and people who work for the executive branch, religious courts or military courts.

In Egypt, some of the powers of the Judicial Council have been delegated to the High Council of Judicial Committees, whose membership includes officials who are not members of the judiciary, thereby undermining the independence of the judiciary. While a recent law in Egypt has reigned in some of the High Council's powers over the judiciary, the Ministry of Justice still has the right to inspect the work of the judiciary and recommend that judges be disciplined, among other ways it can limit the independence of the judiciary.

The reports demonstrate that the executive branch also has financial and administrative supervisory control over the judiciary, although the law varies somewhat from country to country. In none of the four countries are the budgets for the judiciary free of executive control, which also undermines the independence of the judiciary.

3. Factors Impacting Judges' Individual Independence

In order for judges to feel free to render judgments based only on their understanding of the law, they must not fear for their economic and physical safety. In addition, they must feel safe from unwarranted penal or civil prosecution and free from the interference of external forces aiming to influence their rulings.

Physical safety: None of the countries have made special provisions to protect the physical safety of judges, except for a general law that makes it a crime to exert any aggression against them. However, these laws do not provide sufficient protection for judges in charge of sensitive matters when they are outside their official offices or courtrooms. Though, the Moroccan report notes that judges may be due remuneration for any damages suffered during the course of their official duties.

Financial security: In general, the reports note that judges' salaries and benefit packages were not sufficient. As a result, judges are dependent on bonuses (often awarded by people outside



the judiciary) and on outside income. This situation appears to be especially acute in Egypt and Morocco.

Internal and external influences: An examination of the penal laws, judicial processes and the sources of judicial power in all four countries reveal many internal and external opportunities to influence the decisions of judges, whether through intimidation, indirect interference or bribery. The reports from Jordan and Lebanon offer examples of how such interference often manifests itself.

The Lebanese report describes judges that suffer professional consequences (or outright punishment) when they do not allow inappropriate interference. The report also notes that many external forces try to exert interference.

The Jordanian report notes that sanctions against judges and the code of judicial conduct are not enforced in practice. There is no litigation on record in either of these areas. In addition, a 2005 survey of citizens and lawyers revealed that 42% of those surveyed believed judges were subjected to pressure by individuals and groups aiming to influence their decisions. Twenty-seven percent of the judges surveyed in 2005 said that different individuals and groups tried to exert pressure on them during the decision-making process.

Judicial immunity: The four reports all state that judges enjoyed relative immunity against civil and criminal charges, unless the Judicial Council approved of such action. The exception related to serious cases in which the judge was caught *in flagrante delicto*.

4. Judges' Job Security and Career Issues

Judges' sense of their ability to render judgments based only on their understanding of the law can be impacted by their sense of their job security or the incentives created by issues like the promise of promotion or the threat of disciplinary action.

Retirement age: The age at which a judge must retire is set by law in all four countries, although it varies from one to another. It can be twice extended in Morocco for two additional years, if the minister of justice recommends it. In Jordan, the presidents of the Court of Cassation and Supreme Court can continue working, despite passing the retirement age, until their appointment has expired.

Nomination of judges: In general, the country reports note that judges are usually nominated according to objective rules, with some exceptions. For example, in Jordan, there were no objective rules for nominations to the state security and religious courts. The report from Jordan also noted that even when objective rules existed, they were often not properly implemented due to the limited capacity of the Judicial Council to administer them.

Promotions: The reports note that the process of promoting judges is codified in all four countries. The executive power, under the auspices of the minister of justice, plays the lead role, while the Judicial Council plays a consultative role. In Lebanon, the minister of justice is



legally required to ratify appointments and promotions without amending them if they have been ratified by the Higher Judicial Council with a two-thirds majority. The Jordanian law only states that the promotion of a judge is based solely on competence and qualifications and is subject to assessment by the Judicial Council and an investigatory committee.

Delegations and transfers: The rules governing the movement of judges between courts and institutions varies among countries. In Lebanon, there are no fixed criteria for the transfer of judges between courts. Generally, every two years, judges rotate from one court to another, though their movement is subject to the discretion of the Higher Judicial Council. The law bars the transfer of a judge for any non-judicial task, but does allow judges to seek (and receive) permission to teach in a university or to be transferred to various public institutions.

In Jordan, the judicial independence law defines the rules governing a judge's transfer, delegation, seconding or resignation. This law gave the Judicial Council the power to delegate to a judge any task that serves the public interest for a period not to exceed three months.

In Egypt, the law describes in detail the conditions for transfers, which are under the direct authority of the minister of justice. The law provides for the temporary assignment of a judge in governmental administration, ministries, institutions, banks and companies for no more than three months. It also allows judges to receive permission to teach in universities.

In Morocco, there are constitutional prohibitions against transferring judges, except for public prosecutors. However, this constitutional guarantee is violated by a contradictory law that effectively binds the judge to accept any suggested transfer. The minister of justice has the authority to transfer justices.

Disciplinary system: As described by the four country reports, the disciplinary system for judges differs from one country to another. In Lebanon, discipline is meted out by a disciplinary and investigation committee. In Jordan, the Judicial Council has responsibility for discipline. In Egypt, members of the public prosecution fall under the authority of the minister of justice. With respect to the sitting judiciary, the law gives the president of each court the right to administrative supervision of his or her own court. The public prosecutor initiates a disciplinary lawsuit, on his own, on the suggestion of the minister of justice or at the request of the chief of the court with which the judge is affiliated. In Morocco, the minister of justice is responsible for all disciplinary actions and approves all sanctions.

5. Judges' Freedom of Expression and Association

Constitutional rights to freedom of expression and freedom of association help ensure the independence of the judiciary as an institution and the independence of individual judges. The national reports note that, while these constitutional rights exist in all four countries, they take different form in practice in each one. For example, in Egypt and Morocco, a judge is required to secure prior consent in order to participate in any forum or demonstration.



With respect to the right of judges to associate with political groups, the four countries do not vary. Such association is prohibited. However, while the law in Lebanon, Morocco and Jordan generally allows judges to join professional associations, they often do not exercise this right. In Morocco, many judges have recently relinquished their memberships in a number of associations, including those associated with human rights.

Egypt offers the best example of a country where judges have exercised the right to associate professionally, although their role in recent elections has raised questions about this right in some quarters. Egypt's Club of Judges was established in 1939 to strengthen fraternity and solidarity among judges, to watch over their interests, to facilitate meetings and to develop a savings fund for judges' general benefit.

II. Judicial Integrity

1. Institutional Integrity

Sound judiciaries require institutional integrity. They must be governed by codes of judicial ethics, conflict-of-interest laws, and clear regulations that fight judicial corruption. In addition, their jurisdictions (ordinary and regulatory) must be defined in a way that comports with the principles of fair trials. (The four country reports note that this is the case in each of the countries. It is also important that the judicial system operate in a fair and transparent manner).

However, the Lebanese report notes that some courts (such as military, state security, religious and quasi-judicial courts) often use investigation procedures that are secret and, therefore, suspect. These courts often operate in a manner that is non-transparent and antithetical to the principles of a fair trial. In addition, these courts allow no right of appeal to the regular courts, little hierarchical accountability, limited procedural transparency and sparse written rationales for their decisions.

The Jordanian report notes that the prime minister can transfer to the state security courts the prosecution of crimes deemed to be of national or economic security interest (cited in Article 6/B of the economic criminal law 1993 and Amendment 2 to Article 11/3 in 2004).

The Egyptian and Moroccan reports both note that the extrajudicial and specialized courts there suffered from some of the same problems as those referenced in the Lebanese report.

Special rules and regulations to fight corruption: The reports for Lebanon and Jordan state that judges are subject to the same laws as public servants and have no special laws to follow. The Egyptian report suggests that a new entity to investigate judicial misbehavior is in the process of being created.

Judicial ethics: The reports reveal that only Jordan had a law on judicial ethics (passed in 2005), although they note that there were criminal laws, codes, charts and instructions covering some aspects of this area. The Lebanese minister of justice has recently requested a code of ethics. Morocco has some relevant laws and codes but they are not enforced in practice.



2. Judges' Individual Integrity

There are many components to promoting judicial integrity and impartiality, including respect for the principle of equality before the law, clear and mandatory laws related to conflict of interest, income and asset disclosure, honest court procedures and judges' commitment to professionalism and justice.

The Lebanese country report notes the inherent difficulties that a judge often encounters when handling a case involving parties of various religious, tribal and ethnic groups, particularly if he or she is a member of one of them. The report states that the way to achieve impartiality in the conduct of lawsuits is mainly through strict adherence to the principles universally recognized in the right to a fair trial: the right to counsel, the right to an open hearing and the right to a reasonable sentence or fair damages proportionate to the crime or claim.

The Jordan report notes that impartiality is guaranteed by Islamic law (Shari'a) and that it is an essential source of all legislation aimed at establishing justice on the basis of equality among competent parties. Indeed, commitment to equality is one of the judges' duties as recorded in the Jordanian constitution (Article 6).

In Morocco and Egypt, the law also mandates judicial integrity and impartiality, and calls for sanctions for any deviations from this norm. The Egypt report outlines specific instances related to impartiality in which a judge must take action. It also points out that litigants can raise the issue of impartiality during the appellate process and through the supervisory process, when senior judges attempt to influence the decisions of more junior judges.

Conflict of interest: The four national reports highlight the laws related to conflict of interest and note that they differ somewhat from country to country. In Lebanon, conflict of interest as it relates to judges and arbitrators is covered by the code of civil procedure. The law provides that judges and litigants can use when this situation arises or is alleged. In Jordan, there are a number of laws to conflict of interest that pertain to different situations, and these laws designate different procedures with respect to the different courts, including the religious, military, security and ordinary courts. In Egypt, this law is found under another title—"the judges' relative non-jurisdiction" (the judges' response)—and judges can be held civilly liable should they prosecute a case in which they have a conflict of interest. In Morocco, the law is found in the law covering judicial organization and procedure.

Income and asset declaration: The national reports all analyze the laws related to income and asset disclosure. In Lebanon, judges are legally required to adhere to the *actio de in rem verso*, or code of illegal or unjust enrichment. This text requires every judge of the third degree or higher to submit an income and asset declaration immediately after starting his or her judicial career. This declaration must be signed and state the movables and immovables owned by the judge, spouse and children. However, no other declarations have to be submitted until the judge resigns or retires. Morocco has a similar law and makes the minister of justice responsible for continuous monitoring of a judge's wealth. In Jordan, the Patrimonial



Disclosure Law (Number 54 of 2006, Article 2-A-1) states that the law is also applicable to judges.

3. Integrity of Court Procedures

The last factor guaranteeing judicial integrity relates to the integrity of court procedures. The national reports all emphasize that the most important procedures and rights are the right to counsel, the right to the presumption of innocence, the right to a public trial, the right to a judicial decision within a reasonable time frame, the right to appeal judicial decisions, the right to due process and the right to access judicial decisions and information at no cost. The authors of the reports were in unanimous agreement that these principles are not upheld at a satisfactory level.

III. Judicial Competence

The reports all note that a competent judiciary requires competent judges and staff. Such competence in the judiciary generally results from training and a promotion policy that is based on merit and uniform, objective standards.

1. Adequate Qualifications for Judges and Judicial Assistants

Judges and judicial assistants should both possess specific professional, moral and educational qualifications as measured by objective standards.

The Lebanese law requires such qualifications for staff in the criminal, administrative and financial courts, but not for those in the military and religious courts. However, judicial experts or assistants in all courts are exempt from these requirements. In **Jordan**, the laws do not distinguish among the courts or between judges and judicial experts or staff, given the way in which the courts are organized.

In Lebanon, the educational qualifications of judicial assistants are generally modest, and there are differences between the qualifications of experts versus staff. In **Jordan**, the law specifies that the president of the Supreme Court, and that of the Supreme Court of Justice, must have additional qualifications. However, the report notes that the executive branch is responsible for evaluating qualifications and making appointments. The law also sets the conditions to be fulfilled by the judges of the religious and military courts, which is mainly having a university degree in religion or certain kinds of military experience.

The rules and practice in Egypt are similar to those in Lebanon.

2. Judicial Selection

The reports all note that the existence of objective standards for selecting judges is another important guarantee of judicial competence and fairness.



All four countries have laws that outline the criteria for selecting judges, which are generally based on their educational and moral qualifications. In Lebanon, candidates must meet minimal educational and personal standards as judged by the examining committee. Approved candidates for judgeships or judicial assistantships must pass written and oral exams and then must study at the judicial institute for up to three years.

In Jordan, the educational qualifications are similar but the process for appointing highly ranked judges is more complex and involves the Judicial Council. Judges at the fourth, fifth and sixth degrees must pass an exam under the supervisory committee of the Judicial Council. Judges appointed to the regular judiciary at the lower court levels, as well as the military courts, need only pass an examination.

However, in Egypt, the judges are appointed by the president of the country. No law requires passing any exam or completing any training before the appointment is made. In Morocco, qualified people earn places in the judiciary in two ways. First, they take an entrance exam, which entitles educationally and morally qualified candidates to enter the judicial institute. (These candidates' chances can be improved by other factors, such as foreign language skills.) Judges may also gain their posts through the direct selection by university professors and the minister of justice.

In all four countries, judicial candidates are not subject to any psychological test, although they must be free of disease.

In Lebanon, a committee assesses the written and personal qualifications of candidates, while in Jordan, this is not the case.

In none of the four countries do laws specify that men and women should have equal opportunities for judicial appointments (or for any other employment). However, the law does not allow discrimination. That said, in practice, the large number of men appointed to the judiciary in Lebanon and Jordan makes clear that discrimination occurs during the appointments process.

In Egypt and Morocco, gender discrimination has prevailed for many years, although Morocco instituted some changes in the early 1990s, which brought some women into lower level judicial posts. In Egypt, no women held judicial posts until January 2003, when the first woman was appointed to be a judge on the Supreme Constitutional Court.

3. Promotions and Transfers

The country reports note that the principles of judicial competence and non-discrimination require an objective system for promotions and transfers.

In Lebanon, there are no clear, objective criteria for transferring judges from one court to another. Judges are subject to transfers every two years at the discretion of the Higher Judicial Council (or at the discretion of the executive for several high-level posts). Promotions are



governed by a number of factors, including the number of degrees a candidate holds and grades he has risen, as well as by other less clearly defined criteria. Promotions to certain judicial posts are subject to undefined criteria and possibly political interference. In Jordan, the law on judicial independence governs judicial transfers. In Egypt, the law is quite specific and identifies the conditions under which a candidate can be promoted and who can make judicial transfers. The minister of justice is in charge of prosecutorial transfers. In all four countries, seniority is one of the most important criteria for promotions and transfers.

Performance assessments of both a qualitative and quantitative nature are undertaken in Lebanon, Jordan and Egypt. In Lebanon, the assessment is performed by the judicial inspection corps. In Jordan, assessments occur at least once a year and are conducted by the judicial inspection directorate (except for assessments of first-instance judges). In Egypt, judicial inspections are undertaken at the direction of the Ministry of Justice, but they are restricted to lower level judges and prosecutors.

There is no gender discrimination in Lebanon and Jordan with regard to promotions and transfers; the situation is just the opposite in both Egypt and Morocco.

4. Judicial Discipline

The reports all note that judicial competence requires judiciaries to have an objective judicial disciplinary system. There must be clear criteria for disciplinary action and a transparent, objective process for applying them within the judiciary.

The disciplinary criteria should clearly state what is allowed, what is prohibited and what sanctions apply to each violation. In addition, they should ensure everyone's right to defend themselves. In Lebanon, a disciplinary action can be brought if a judge abstains from fulfilling job duties or commits an act against honor, dignity or morality. In Jordan, disciplinary actions can be brought when the judge contravenes his or her substantive or procedural obligations under the law or the code of ethics. The sanctions in both Jordan and Lebanon are similar, ranging from warnings to dismissals to license revocations. Both Lebanese and Jordanian laws grant the judge the right to defend himself or herself.

In Lebanon, the report notes that while the disciplinary system on paper is clear, comprehensive and fair, it is rarely applied in practice. In contrast, the Jordanian report notes that the country's disciplinary system is not as precise on paper and does not include appropriate sanctions.

In Lebanon and Jordan, highly ranked judges are responsible for the disciplinary process. This is not the case in Morocco, where the minister of justice is given this responsibility. In Egypt, the executive and judiciary share this responsibility.

In Lebanon, a judge is referred to the disciplinary council by the judicial inspection corps, which is composed of the president and two judges of the court where the offending judge resides as well as the presidents of the Court of Cassation and the Court of Appeals. The public



prosecutor presides over the judicial inspection corps. This procedure does not apply to judges from the religious courts, judicial experts, judicial assistants, notaries public and receivers. Each year, the Higher Judicial Council appoints the members of the disciplinary council. In Jordan, the disciplinary council is composed of three judges who are members of the Judicial Council.

5. Judicial Training

The reports all stress the important role continuing legal education and training institutes play in promoting judicial competence. The Lebanese, Moroccan and Egyptian reports all note their countries have judicial training institutes to educate judges before their final appointment. However, after their official appointment, judges do not receive training on a regular basis (with the exception of Morocco, where some episodic training occurs after appointment). The Egyptian report mentions the National Center for Judicial Studies (established in 1995) that organizes training sessions for new judges, although members of different courts receive different degrees of training.

The length of training at the judicial institutes varies from one country to another. In Lebanon, training lasts for three years and covers both theoretical and practical topics. In Jordan, training lasts two years. In Morocco, the single year of training covers theoretical issues. In Egypt, the National Center for Judicial Studies has plans to become a specialized academy and is currently developing separate institutes for judges, assistants and experts.

Training programs should also offer foreign language classes. In Lebanon, any candidates for the judiciary should be fluent in Arabic and another language, such as English or French. Since 2002, Lebanon's judicial training center offers classes in each of these languages. In Egypt, members of the judiciary must learn French. In Morocco, judicial candidates are also tested, in writing, on their foreign language skills.

All of the reports note that special resources are needed for training programs. The Lebanese report states that Lebanon's judicial institute benefited from external assistance. The Jordanian report notes that its training institute received only a meager budget from the minister of justice, leaving insufficient resources for training.

IV. Judicial Efficiency

The efficiency of the judiciary is an important element of both judicial competency and judicial independence. An efficient judiciary has clear, transparent and effective procedures; an effective case-management system; reasonable time frames for rendering decisions; and an effective system for enforcing court judgments.



1. Clear, Transparent and Effective Procedures

To guarantee judicial efficiency, court procedures should be clear, transparent and effective. This means clear and compulsory procedures for initiating lawsuits, adequate human resources and clear rules for reviewing and challenging judicial decisions.

The Lebanese, Jordanian and Moroccan reports indicate these countries have both modern and clear procedures and make effective use of modern technology. Jordan and Morocco have made particular progress in this field, where technology is now used to expedite various judicial processes, including the official notification process.

According to the reports, litigation procedures also need to be clear and compulsory. However, they all note that these procedures are not carefully monitored by judges, which means the judicial clerks are left with the task of enforcing them. The Jordanian report notes that there are not enough court officials to manage the large workload of the courts.

All four reports note that the procedures for challenging court decisions are not clear, transparent or effective, largely because of the existence of so many extrajudicial courts. The ambiguous nature of the process often means that decisions go unchallenged or cannot be appealed effectively.

2. An Effective Case-Management System

The reports all state that judicial integrity requires clear and objective criteria for managing trials. Judiciaries must have a system for assigning cases on the basis of clear, objective and just criteria. For such a system to function properly, it must receive adequate resources, which are (in turn) distributed fairly among jurisdictions.

Lebanon's system offers a good model of assigning cases based on objective criteria. Its criteria are fully elaborated, and its system includes a number of checks and balances to ensure fairness and judicial integrity. These checks and balances are required by law and relate to jurisdiction. Breaching these criteria may cause the case to be returned to another chamber. Within one court, jurisdiction is relative. Among courts, jurisdiction is absolute; contraventions lead to the dismissal of the suit.

In Jordan, there is no clear, transparent system for assigning cases. As a result, some cases are transferred by judges upon the simple request of a litigant. In many situations, the court's president assigns cases to courts.

In Egypt, cases are assigned by the court's general assembly at the beginning of each judicial year. Usually, the court president prepares a draft distribution of cases and submits it to the judges on his or her court for review and comment. After consulting with the inspection administration, the court president submits a final draft to all judges on the court. The final draft includes the number of divisions, the different categories of cases and the names of the presiding judges. After this process, the judges usually accept their assignments. The court



president might assign cases during the judicial year, though this process is supposed to be used only in states of emergency or judicial illness.

In Morocco, the judiciary is characterized by a system of specialized courts and chambers (as in Lebanon). The assignment of cases is linked to the structure of the court system. This system is noteworthy because it entrusts the power to assign cases to judges from the courts of first instance and the court of appeals. As part of a general assembly, their duty is to assign cases. Within the Higher Council, court assignments are made by an office represented only by the first president and the presidents of each chamber.

In Egypt, the right to litigate is guaranteed in the constitution, and all citizens have the right to resort to their “natural judge” (Article 68). However, the constitution does not clearly define the jurisdiction of the regular judiciary. Rather, it only gives the state council, as an independent judicial organization, the jurisdiction to decide administrative disputes and disciplinary actions. The law has been interpreted to give the regular courts general competence to decide all disputes, with certain exceptions. Indeed, Egyptian legislation sometimes makes exceptions as disputes arise. Egypt’s judicial procedure law determines the geographical and substantive jurisdiction of its courts.

In Morocco, there is a dual system that is centered around primary courts of general jurisdiction and courts of different groups and districts. The specialized courts have their own system.

The Jordanian and Lebanese reports note that their countries have no transparent process for financing the judiciary. Financing for the judiciary is under the complete authority of the minister of justice. The report authors state that this makes the modernization and development of the courts virtually impossible. In turn, this makes it necessary for the judiciary to search for and depend on independent resources.

3. Reasonable Time Frames for Rendering Decisions

The judiciary’s effectiveness also depends on the speedy settlements of lawsuits (without impairing the quality of their outcomes). This requires clear timetables for judicial action and clear procedures for categorizing lawsuits and actions, as well as sanctions for non-compliance or inordinate judicial delays.

The reports note that setting a definite and reasonable time frame for resolving cases is an important element of judicial efficiency and competence. While the reports state that their countries have laws and procedures on the books to accomplish these tasks, these laws differ from country-to-country. In addition, some countries (such as Jordan) have allowed cases to be delayed for five years or more. In Morocco, there are specific time limits for certain types of cases, such as those related to commercial or family matters. The reports also note that, at least in Lebanon and Egypt, delays are only prescribed by law to exchange pleadings and that time limits are not binding on either the court or the litigants.



While it is equally important for the law to include sanctions for undue court delays, the four reports note that only judges may impose sanctions and that none of the laws allow the judge to actually sanction lawyers. The only possible sanction judges can impose relates to lawyers' observation of ethical codes of conduct and integrity.

In Egypt for instance, the report notes that lawyers sometimes act arbitrarily by bringing lawsuits in which they have no interest. This is often done to enlist public support for their position or to delay cases. All of the reports conclude that the current laws prescribing sanctions for undue delays are not adequate and that they only serve to exacerbate the problem.

4. Effective Enforcement of Court Judgments

The reports all agree that an effective system to enforce court judgments is an essential component of an independent, impartial, competent judiciary. Such a system must have clear procedures; accountability mechanisms; laws with teeth; and competent, well-trained professionals.

The reports' authors also note that an effective enforcement system may be quite complex, sensitive and specialized, depending on the nature of the case. They also make clear that enforcing judgments sometimes leads to new litigation, lengthy delays and more legal fees. Moreover, the large number of unenforced judgments (including misdemeanors and infractions) places an undue burden on the execution units. A fair and effective enforcement system needs appropriate staff to make the system work. In Lebanon and Jordan, an enforcement judge and assistants are responsible for ensuring court judgments are followed. In Jordan, the number of officials is seen as insufficient. In Morocco, two categories of employees make up the office of enforcement: court officials and independent commissioners.

Judicial accountability mechanisms are just as important to a fair enforcement system as the soundness of judicial decision-making. In Lebanon, both enforcement judges and assistants are subject to the same judicial inspection, sanctions and accountability procedures as other judges.

In Jordan, there is no clear method to achieve accountability within the enforcement system. Instead, an official at the enforcement office is to hold his colleagues accountable. In Egypt, the enforcement units are part of the police force and are therefore under the supervision of the public prosecutor. In Morocco, the government has recently tried to tackle the challenge of accountability. Until recently, monitoring of enforcement personnel was assigned to court presidents, who were so busy that they could not effectively perform this complex task. They also had no right to interfere in the enforcement process unless a litigant complained to them. A relatively new law has tried to remedy this problem by establishing a separate judicial enforcement entity. Despite this positive development, the benefits of the new unit remain limited because the law does not clearly spell out this entity's responsibilities and powers and because jurisdictional disputes have arisen between the enforcement judge and the court president that executed the decision.



The enforcement of decisions against public entities and officials face even larger obstacles than enforcement of decisions against private entities, although the law in Lebanon allows for fines against public entities that do not comply with judicial decision. In Jordan, attempts to enforce judgments against public officials/entities must be submitted to the prime minister, who in turn decides whether to enforce the court order.



Chapter 3: Key Recommendations

In addition to the specific country report recommendations outlined below, the reports make some overall observations that are worth noting:

The Lebanese report observes that, in the past, judicial reforms have only been undertaken on a piecemeal basis under the direction of a few politicians. Its author calls on civil society, particularly the bar association, to launch a comprehensive reform plan through more research, participation, public awareness, advocacy, monitoring and reporting.

The Jordanian report came to the general conclusion that professional reform of the judiciary be done within the context of the country's overall plan for comprehensive democratic reform, since the overall plan's success will largely depend upon the creation of an independent judiciary and institution of the rule of law.

The Egyptian report notes it is important to evaluate reforms, separately and then collectively, that promote both the institutional independence of the judiciary and the individual independence of judges.

The Moroccan report observes that the Moroccan judiciary suffers from a "quasi-crisis" that has serious structural, institutional and relationship issues with both the state and the citizenry that need to be addressed through comprehensive reforms.

I. Judicial Independence

The Lebanese country report recommends

- the implementation of the judicial independence provisions of the Lebanese constitution in a manner consistent with international standards, and
- the passage and implementation of laws that unify the various branches of the current judiciary into one judicial system and limit the powers of the exceptional and military courts.

The Jordanian country report submits 16 recommendations, including

- the passage of laws that rein in the power of the legislature to regulate the judiciary,
- the passage and implementation of a law that unifies the courts under one judicial authority,
- the passage and implementation of a law giving the regular courts jurisdiction over cases involving ministers and high level officials,
- the passage of a law that establishes a constitutional court and gives the judiciary the power of constitutional review, and
- the passage and implementation of a new law that supports the development of an independent judiciary based upon Jordan's constitutional obligations and international standards.



The Egyptian country report points out that the current legislative system governing the judicial authority serves to consolidate executive power and threaten the independence of the judiciary as an institution, which in turn enables the executive power to unduly influence the judiciary through judicial assignments, transfers, promotions and other benefits. The report recommends that

- all legislation that allows the executive to interfere with the independence of the judiciary be repealed, and
- these reforms be followed by legislation that adopts and implements the judicial independence standards set forth in the Egyptian constitution as well as international law and best practices.

The Moroccan country report calls for

- the passage of laws that promote the implementation of the constitutional right to judicial independence,
- the repeal of legislation creating extrajudicial courts or exceptional civil or criminal legal procedures for certain classes of persons or institutions,
- the passage of laws that strengthen the judiciary's constitutional review powers, and
- the passage and implementation of a law that expressly incorporates the United Nations' principles for judicial independence.

II. Judicial Integrity and Impartiality

The Lebanese country report calls for

- the issuance of a binding law that promotes judicial integrity and sanctions,
- the passage and implementation of an amendment to the judicial organization law that requires judges to submit an annual income and asset declaration statement, along with the simultaneous passage and implementation of a related law allowing their bank records to be made public,
- the development of training courses for judges on ethical, conflict-of-interest, judicial independence and judicial accountability issues,
- the development of a systematic monitoring and reporting system that promotes more judicial accountability, and
- the development of an efficient system for accessing judicial information.

The Jordanian report calls for

- the repeal of the law allowing the prime minister to refer cases to the security courts,
- the passage and implementation of a constitutional amendment guaranteeing due process in criminal proceedings,
- the passage and implementation of amendments to the law regarding conflict of interest,
- the passage and implementation of a new law related to income and asset disclosure,
- the passage and implementation of a law guaranteeing the right to appeal any court decision before the Court of Cassation,
- the reform of the law on the Higher Court of Justice, and
- the creation of courts to resolve administrative disputes against government entities.



The Egyptian country report observes that even though the law guarantees the integrity and impartiality of judges and the judiciary as an institution (as well as due process), structural changes in the Egyptian economy and social changes over the last several decades have had an overall negative impact on the independence of judges and judicial integrity.

The Moroccan country report calls for

- more transparent procedures during the trial process,
- the development and implementation of a draft code of ethics for judges,
- the passage and implementation of a law requiring income and asset disclosure with effective sanctions,
- the enhancement of judicial accountability,
- increased public access to the judiciary,
- increased public legal awareness,
- public access to judicial information and decision-making and judicial access to legal information, and
- enforcement of the conflict of interest laws.

III. Judicial Competence

The Lebanese country report calls for

- a clear, transparent, non-discriminatory and meritorious process for the selection of judges to all courts,
- the development of a comprehensive training program that includes specialized training in several areas, such as international issues, comparative legal regulation and the role of judges in democratic societies, and
- the development of clear, fair, objective promotion procedures and disciplinary rules with effective sanctions.

The Jordanian country report has 12 recommendations, including

- the development of legal rules for clear, objective meritorious appointments, and
- reform and clarification of the powers of the Judicial Council.

The Egyptian country report calls for

- clear, objective procedures and rules for evaluating judicial competence,
- judicial promotions and judicial discipline without executive interference, and
- the development and implementation of a comprehensive judicial training program.

The Moroccan country report has eight recommendations, including

- reform of the law organizing the Higher Judges' Institute so that it operates independently of the central administration and the minister of justice, and
- the promulgation of clear qualification guidelines for judges and judicial staff.



IV. Judicial Efficiency

The Lebanese country report calls for

- the modernization of Lebanon's procedural codes,
- the passage and implementation of laws that require definitive time frames for judicial decision-making,
- the passage and implementation of laws that provide sanctions for undue delays and malicious lawsuits,
- the passage and implementation of laws that make the judge accountable for managing cases from beginning to end within required time frames, and
- the development of institutionalized training programs for judges and judicial staff that promote the implementation of judicial reforms and international judicial independence and accountability norms.

The Jordanian country report has 11 recommendations, including

- the development of a uniform case management and mediation system for the courts of first instance, and
- the reform and modernization of the criminal procedure code and the powers of the public prosecutor in conformity with international standards.

The Egyptian country report points to the great reform challenges facing the Egyptian judiciary, including

- the reduction of huge caseloads and backlogs, and
- reform of the inefficient process related to the disposition and enforcement of cases.
- These reforms should be coupled with reforms that simultaneously promote the right to counsel, the right to presumption of innocence, and the right to access justice within a reasonable time.

The Moroccan country report calls for

- reform of the Code of Civil Procedure,
- reform of the system for enforcing court judgments,
- reforms that strengthen the capacity and independence of the judiciary,
- the passage and implementation of a law that establishes a reasonable but certain time frame for judicial decision-making, including the disposition of cases,
- the development and employment of guides that serve as monitoring and reporting frameworks for purposes of promoting judicial reform and judicial accountability, and
- the enhancement of the capacity of the courts' general assemblies (sitting judges) to engage and more independently manage judicial governance processes, including the assignment of cases and the development of specialized training programs, such as those related to judicial administration and financial court management.