

Report elements:

- 1- The general reality of the state.
- 2- Review of the general reality of the Public Prosecution (description- powers).
- 3- Obstacles and problems facing the Public Prosecution.
- 4- Proposals and development projects.

Firstly: The general state of affairs of the state

When it was agreed to declare unity on November 30, 1989 and the Republic of Yemen was founded on May 22, 1990 the constitution of the Republic was enacted to set the foundations of the state in the following domains:

- Political and economic
- Social and cultural as well as the national defence areas.
- Basic rights and duties of the people.
- State authorities (House of Representatives, Presidential Council, the Council of Ministers, Judiciary).
- Local government organisations.
- The State's insignia, flag, national anthem, principles of constitution amendment and general rules.

The Yemeni legislator has adopted the constitutional parliamentary system based on the principle of separation between the three legislative, executive and judicial systems.

The Constitution of 1990 stipulates the independence of the judiciary in Article 120 as it states that: (Judiciary is an independent authority in performing its judicial functions. Judges are independent and not subject to any authority, except the law. No other body may intervene by any way in the affairs and procedures of justice. Such intervention shall be considered a crime that must be punished by law. A charge regarding such intervention cannot be nullified with passing of time.)

Article 121 stipulates that: (The Judiciary is an integrated system. The law organises this system in terms of ranks, responsibilities, the terms and procedures of appointment, transfer and promotion of judges and their other privileges and guarantees. Exceptional courts may not be established under any conditions.)

Article 122 stipulates that (Members of the judiciary and Public Prosecution office shall not be dismissed except under the conditions stipulated by the law. They may not be transferred to non-judicial posts except with their own consent, the approval of the relevant judicial council, unless that was taken as a disciplinary measure. The law shall regulate the disciplinary trial of the judiciary and it organises legal profession/practice.)

Article 123 stipulates that ((The judiciary shall set up the Supreme Judicial Council. The law shall organize it, clarify its functions and system of nominating and appointing its members. The Supreme Judiciary Council shall execute these guarantees for the judiciary in the fields of appointment, promotion, discharge and dismissal according to the law. The council shall study and approve the judicial budget in preparation for inserting its as one item within the overall budget of the state.)

In embodiment of the principles and essences stipulated by the Constitution with regard to the judiciary, law No 1 in 1991 was enacted on the judiciary. It stipulates in Article 1 that (Judiciary is an autonomous authority in performing its functions. Judges are independent and not subject to any authority, except the law. No other body may intervene by any way in the affairs and procedures of justice. Such intervention shall be considered a crime that shall be punished by law. A charge regarding this intervention cannot be nullified with the passing of time.)

With regard to the Public Prosecution office Article 50 of the same law (The Judiciary Law stipulates that the Public Prosecution is a judicial institution performing the powers entrusted to it by law.)

It is worth noting that the Constitution of 1990 stipulates the judicial nature of the Public Prosecution as an institution of the judiciary, when it puts members of the Public Prosecution and judges in the same footing with regard to guarantees and constitutional rights according to Article 122, which stipulates that (Members of the judiciary and Public Prosecution office shall not be dismissed except under the conditions stipulated by the law. They may not be transferred to non-judicial posts except with their own consent, the approval of the relevant judicial council.) as the Public Prosecution office is the one concerned with the enforcement of the guarantees relative to protecting the rights and public freedoms stipulated by the Constitution.

Despite the above provisions which embody the independence of the judiciary with all its agencies, it was noted that text of Article 120 of the Constitution of 1990 had stipulated the independence of the judiciary in interpretive terms with regard to the concept of financial and administrative independence.

On September 29, 1994 the constitutional amendments of the articles from 149 to 154 on judiciary approved by the House of Representatives were decisive to argumentation and dispute which might have occurred on the concept of financial and administrative independence. It clearly stipulated the independence of the judiciary in all its affairs whether judicial, financial or administrative and with accurate terms that indicated the Yemeni legislator's intention to stress the independence of the judiciary in all its affairs and that the Public Prosecution office is a body of the judiciary. Running the affairs of this authority is entrusted to the Supreme Judicial council. Article 149 replaced Article 120 in the new amendments and stipulated that (Judiciary is an autonomous authority in its judicial, financial and administrative aspects and the General Prosecution is one of its bodies. The courts shall judge all disputes and crimes. The judges are independent and not subject to any authority, except the law. No other body may intervene by any way in the affairs and procedures of justice. Such intervention shall be considered a crime that must be punished by law. A charge regarding such intervention cannot be nullified with the passing of time.)

Article 152 of the Constitution defines the mechanism able to run the judiciary power and ensure its independence by stipulating that (the judiciary shall set up the Supreme Judicial Council. The law shall organize it, clarify its functions and system of nominating and appointing its members. The Supreme Judiciary Council shall execute these guarantees for the judiciary in the fields of appointment, promotion, discharge and dismissal according to the law. The Council shall study and approve the judicial budget in preparation for inserting it as one item within the overall budget of the state.)

The Constitution of 1990 and later the current Constitution represented an objective reflection of the development requirements in the various fields. In response to this important legislative document (the Constitution) a general strategy has been drawn for the state's comprehensive political, economic, financial and administrative reform with the aim of correcting the existing imbalances in the relations between the three authorities of the state, namely the legislative, executive and judicial authorities. It reorganized this relation and also organized the internal activity of these authorities to ensure integration and balance between them within the framework of the concept of separation between powers. Reconsideration has also been made of the functions of these authorities and those of the organizations that have originated from them in the light of the principles, basics and functions that are stipulated in the Constitution.

In the field of completing the establishment and development of the legal and institutional system of the state, the Constitution stressed the need to enact the necessary legislations in all fields, eliminate the provisions in the laws that are contradicting with their rules and purify some laws of contradicting provisions. It also stressed the importance of achieving legislative stability to ensure stability in dealings, enhance confidence in the existing economic policies and boost the contribution of the judiciary in this field through the expansion in setting up courts and specific and specialized prosecution offices throughout the Republic. It also stressed the principle of respecting the rule of law by everybody through the establishment of the necessary mechanisms and bolstering the role of the control agencies in all fields.

Realising the importance of achieving these objectives in the judiciary field, judicial organisations topped by the Supreme Judicial Council and the judges in general have sought to initiate reforms in the judiciary system to ensure that it copes with the current developments in the various fields, giving more importance to develop the judicial, technical and administrative administration. To attain this purpose a number of meetings and discussions aiming to identify the real problems the judiciary faces, evaluate the progress of work in the various judicial bodies, enhance positive elements and deal with the negative ones. These organisations have also worked hard to solve and address some of the problems facing the judiciary. They have already solved some of them, the most significant of which are the following:

- Approve the special cadre for judges.
- Solve the problem of retirement through the payment of big sums of money to cover the differences required by some agencies concerned with retirement in order to settle the retirement pensions for judges.
- Solve part of the problem of judicial buildings by building some while others are still under construction and planning
- Hold a number of internal preparation and reactivation courses for a number of judges, members of the Public Prosecution office and the administrative staff.

The document on the outlines of the judicial reform plan has come to extensively identify the problems facing the judiciary, asserting the importance of developing the Public Prosecution office, enhancing sound concepts and clear and specific basics on the relation between the Public Prosecution and courts, applying the system of preparation and reactivation scientific courses for members of the Public Prosecution office and providing the necessary resources for the purpose and organising and adjusting the relation between the judiciary and the judicial control agencies.

Within the framework of these efforts the 1st Judicial Conference was held on December 13-15, 2003 which issued a number of recommendations the most important of which were the following:

- 1- Amend the Judiciary Code to reflect the concept of a judiciary that is financially, administratively and judicially independent side by side with the other two executive and legislative authorities.
- 2- Urge the Supreme Judicial Council to shoulder its responsibilities provided in the Constitution to include the following:
 - 1- Form a committee to revise some laws whose provisions need amendments in order to facilitate litigation and achieve justice.
 - 2- Issue a special regulation for the judiciary support fund to get the maximal benefit of its objectives.
 - 3- Revise the judicial map for local specialisation.
 - 4- Authorise the two inspection administrations to prepare lists of judges and members of the Public Prosecution office entitled to settlements.
 - 5- Set up courts in governorates (provinces).
 - 6- Pay more attention to the specific, specialised and commercial judiciary.
 - 7- Unify the two judicial inspection administrations at the Supreme Judiciary Council as part of the guarantees for the independence of the judiciary. Take heed of a host of considerations and conditions included in the decisions (see the decisions and recommendations) which are mostly technical and professional that do not cover the structural problems included in the other documents.

Secondly: The general state of affairs of the Public Prosecution office (Description- powers)

1- Introduction:

The talk on one office for the Public Prosecution at the level of Yemen was impossible during the partition of the state in the past. The part called the Arab Republic of Yemen had adopted the public prosecution system, while the part called the People's Democratic Republic of Yemen had adopted the general attorney system.

However, the Yemeni legislator, after the unity of the two parts of Yemen, preferred to adopt the public prosecution system established under law No 39 of 1977, realising that this system is the most appropriate to protect public rights and freedoms. Moreover, it is more suitable for the Yemeni community under the new situation of the union state based on the democratic system and the freedom of political and party pluralism.

The law in its 1st article describes the Public Prosecution that it's a judiciary body when it provides that: (A judiciary body is established under the name Public Prosecutor office to undertake the authorities that are vested on it by the law. The Public Prosecution is affiliated to the Supreme Judiciary Council such as that of judges. It is also affiliated to the Council financially and administratively.)

It provides in Article 2 that (The Public Prosecution is formed of the Public Prosecutor and the first General Attorney and enough numbers of general attorneys, chief prosecutors and their assistants and assistant prosecutors. Members of the prosecution are responsible to their seniors according to their levels up to the public prosecutor. A number of administrators, clerks and workers are to be appointed to the office.)

Then came all the laws organising the functions of the Public Prosecution. (the Judiciary law, the law enacting its establishment and the Criminal Procedures Code) authorising it to undertake all procedures for initiating court action and follow it up before all criminal courts in all kinds of crimes and executing criminal judgements on them.

2- Formation of the Public Prosecution office: (see figures on the judiciary structure.)

Article 2 of the law of its establishment provides the following: (The Public Prosecution is formed of the Public Prosecutor and the first General Attorney and enough numbers of general attorneys, chief prosecutors and their assistants and assistant prosecutors. Members of the prosecution are responsible to their seniors according to their levels up to the public prosecutor. A number of administrators, clerks and workers are to be appointed to the office.)

Article 3 of the same law provides the following: (Law enforcement officers are affiliated to the Public Prosecution Office (*Niaba*) within the authority of the law enforcement functions authorised to them by the law and within the limits of their posts. Law enforcement officers include the following:

- 1- Governors.
- 2- District directors.
- 3- Directors of security.
- 4- Police and security officers.
- 5- Pilots of ships and planes.
- 6- All employees authorised to assume this function under this law or special laws enacted for them.

Article 4 provides the following:

(The Public Prosecution is composed of the office of the public prosecutor. Under his authority comes the inspection department, the prosecution department, the appellate department, the governorate department and the summary prosecution department.)

Article 6 provides the following:

The appellate department at the high court of appeal includes a number of chief prosecutors headed by a general attorney.

- The job of the governorate prosecution at each of the courts of governorates a number of the members of the Public Prosecution office headed by a chief prosecutor.
- The job of the summary prosecution at each summary courts and district courts is undertaken by a member or more of the Public Prosecution headed by deputy or assistant prosecutor.

After the declaration of Yemeni union the need arises to expand the formation of the Public Prosecution office starting from the Public Prosecutor's office to commensurate with the volume of its functions and to cover the geographical expansion of the regions of the Yemeni Republic and to guarantee the unity of the judiciary. However, this expansion is still minimal due to inadequate resources and support. Expansions include the following:

A- Office of the Public Prosecutor. It is formed of the following:

- 1- First general attorney:

- 2- The Technical Office general attorney.
- 3- Judicial Inspection Administration general attorney.
- 4- Cassation Prosecution general attorney (affiliated to him financially and administratively and independent of him judicially).
- 5- Public Money general attorney.
- 6- Military Prosecution offices general attorney.
- 7- General attorney of the office of the Public Prosecutor.

A number of departments and general departments that come under the authority of the office of the Public Prosecutor were established including the following:

- 1- Training and preparation department.
- 2- Human rights department.
- 3- Forensic medicine department.
- 4- 4-The general department for financial and administrative control and inspection. It controls all offices of the Public Prosecution in the Capital and governorates.
- 5- The general department for prosecution offices and planning.
- 6- The general department for financial affairs.
- 7- Prisons division.
- 8- The judicial assistance department.

B- Appellate and Primary (first instance) Public Prosecution offices: They are formed of the following:

- 1- Appellate prosecution offices (general, specific, specialised). They are situated in the Capital and the provincial capitals of the governorates. Their total numbers reached 34 offices. They assume the function of the Public Prosecution at the courts of appeal in the governorates. Their specific and location competence are defined by the competence of the courts of appeal they work in their domain. Each appellate prosecution office is headed by a member of the Public Prosecution (*Niaba*) at the level not less than chief public prosecutor assisted by a number of member at the level not less than deputy public prosecutor.
- 2- Primary (first instance) Public Prosecution offices: They reached 119 offices situated at the jurisdiction of the courts of first instance circuits in the cities, provinces and provincial capitals of the Republic's governorates. They are presided over by a member of the (*Niaba*) at the level of prosecutor assisted by an adequate number of members of the Public Prosecution office.
- 3- Specific and specialised primary(first instance) *Niabas*: Their number reached 70 *Niabas*. They undertake investigation in a specific kind of crimes as the decision to establish them includes the kind and scope of the cases they assume.

3- Functions of the Public Prosecution (*Niaba*): (See figure 2 on the course of criminal court action.

The Public Prosecution assumes many functions included in a number of laws the most important of which are: the judiciary law, the law establishing it, the criminal procedure code, the civil pleadings and enforcement. Following is a review of the most important functions of the *Niaba*:

A-Functions of the Niaba as included in the Judiciary Law No 1 in 1991.

Article 51 of the Judiciary Law provides that (*Niaba* undertakes the investigation and reference of criminal cases to courts according to the procedures of the Criminal Procedure Code.)

Article 52 of the same law provides that (law enforcement officers shall come under the responsibility of the *Niaba* with regard to their jobs. The Criminal Procedure Code identifies the law enforcement officers and the rules connected to them.

Article 53 provides that the (*Niaba* when assuming its functions according to the law shall follow the following:

- a- Enforce the law;
- b- Initiate court action and practice its procedures.
- c- Follow up the execution of penal judgements and decisions.
- d- Investigate on crimes and gather evidence.
- e- Advise on challenges on judgements and penal decisions, etc.
- f- Intervene mandatory and discretionally in the cases provided in the Criminal Procedure Code and any other law.
- g- Supervise and inspect custody centres, prisons and juvenile correction institutions to ensure the legality of arrest and imprisonment.

B- Functions of the Public Prosecution office (Niaba) as included in the law on the establishment of Niaba.

Article 7 provides in the articles on crimes that the *Niaba* assumes the following functions:

- 1- Investigate the crimes of vendetta, blood, retaliation and all the other crimes not contradicting with the functions of the administrative and financial prosecution office.
- 2- Institute criminal legal action and follow it up unless in the cases which Islamic Sharia (law) mandates the right to demand reprisal for the victim or his guardian, here it shall have the right to intervene.
- 3- Initiate criminal court action with regard to the public right if the guardian chooses pardon and when the perpetrator is known for evil or if the right has no guardian to demand it.
- 4- Demand the execution of final judgements in crimes and supervise sound execution, etc.
- 5- Supervise prisons conditions and the other places where punishment sentences are executed and report to the Minister of Justice of the *Niaba's* observations.
- 6- Supervise law enforcement officers with regard to their functions.

Article 8 provides the following:

(Other than articles on crimes the *Niaba* initiates court action on prerogative cases and all other general legal action, follow them up before courts. No other agency shall institute legal action with the exception of cases included in the law.)

C- Niaba's functions as included in the Criminal Procedure Code.

They are many and include those provided in the following articles:

Article 21 stipulates the following:

(The Public Prosecution is the one authorised in initiating, instituting and follow up legal action before courts and not to be initiated from any other party except in the cases included in the law.)

Article 23 stipulates the following:

(The Public Prosecutor by himself or through a member of his staff shall initiate legal action as provided in the law.)

Article 24 stipulates that:

(The defendant or the claimant for personal right or civil right is considered a litigant associated with the Public Prosecution in the criminal action and a defendant in the civil action associated with it if he has certain demands. The one responsible for civil rights is considered a litigant associated with the defendant in the criminal action and civil action associated with it if he entered or intervened in it even if no certain demands have been addressed to him.)

Article 85 stipulates that:

(Law enforcement officers shall be under the authority of the Public Prosecutor and subject to his supervision within the framework of law enforcement. The Public Prosecutor shall demand from the competent authority to take up whoever commits an infraction of his duties or neglect in his work and shall demand to institute disciplinary action against him. All this shall not prevent initiating penal action.)

Article 116 stipulates the following:

(The Public Prosecutor shall undertake investigation and prosecution and all powers provided by the law and shall follow up the investigation authority by himself or through one of his staff or who shall be delegated for that from judges or law enforcement officers.)

D- Functions of the Public Prosecution office as included in the Procedure Law (the Public Prosecution intervention in action.)

Article 126 stipulates the following:

(The Public Prosecution shall initiate or intervene in action in cases provided by the law. It shall have what the litigants have of rights and duties unless excepted by a special provision. It shall institute court action on behalf of minors or those who are wholly or partially legally disabled, or intervene in the action if they have no guardian or trustee as well as on behalf the absentees and the missing and institute other prerogative actions.)

Article 127 stipulates the following:

(The Public Prosecution intervention shall be either through the attendance of its representative of the court sitting to express its opinion on the action orally or by writing a memorandum after reviewing its documents or by the two ways together. The court shall fix an appointed time for it and order sending the action file to it to write a memorandum of its views if the court deems it appropriate.)

4- Principles and organisation of the Public Prosecution:

The Public Prosecution office is founded on the following principles and merits:

- 1- Gradual subordination (hierarchy).
- 2- Indivisibility.

3- Independence.

4-Irresponsibility.

These principles have their place in a number of the provisions of the Judiciary Law, the Law on the Establishment of the Public Prosecution office and the Criminal Procedure Code.

Article 2 of the Law on the establishment of the Public Prosecution stipulates clearly the principle that members of the Public Prosecution subordinate to their seniors according to their hierarchy then to the Public Prosecutor. Article 54 of the Judiciary Law provides the same principle. The following is summary review of these principles:

Hierarchy:

Members of the Public Prosecution office (*Niaba*) combine the investigation and prosecution authorities. Therefore their subordination is defined by the nature of the functions they practice so that this subordination is restricted to the prosecuting power only as they practice it in their capacity as deputies to the Public Prosecutor, while they are independent of him in performing the function of investigation as they get that power from the law such like judges as there is no authority over them by the law.

Indivisibility

The Public Prosecution, contrary to the other judicial organizations, is distinguished by being indivisible. When members of the Public Prosecution office work within the scope of one specific or spatial jurisdiction are considered from the legal aspect as if they are one person. If one of them conduct any procedure of investigation or prosecution, he does not do it under his name, but in the name of the Public Prosecution representing the community. According each member shall complete the work of the other member and replace him in doing his work.

Public Prosecution independence:

Although the Public Prosecution is a judicial body of the judiciary bodies, this does not extend to the right of supervision of courts over them or watch its work. Formation of the court and convening of its sessions shall not be sound and legal unless with the presence of member of the *Niaba* the sessions of penal action. The court must hear his statement and decide on his demands. Non-attendance of the member of the Public Prosecution of the court sittings results in nullifying these sittings. Based on this independence is the following:

- The court may not order the *Niaba* to institute legal action on a person or entrust it to conduct an investigation in a an initiated action before it, as the investigation, prosecuting, initiating and instituting the legal action is among the powers and functions of the Public Prosecution.
- The Public Prosecution is free to express its opinion before the penal courts and the courts has no right to restrict this freedom unless ordained by the system and the right of the defense.
- The courts have not the right to blame the *Niaba* or directly find fault with it due to the way or method of doing its job. If the courts finds a need to do that, it shall put it in a separate memorandum to be sent or delivered to the Public prosecutor.

Irresponsibility of members of the Public Prosecution:

When the members of the Public Prosecution practice their work in investigation and prosecuting in accordance with the powers invested on them by the law, they shall not be questioned on it. They may not be required to compensate for the procedures they take impairing the freedom of the defendant if found not guilty by the court so long as they do it according to the law. The wisdom in that is to prevent them hesitate in performing their functions lest they should bear the responsibility. It is very important to immune their work so that members of the *Niaba* would be confident in doing it, otherwise the public interest they protect would be at risk of serious harm.

5- Basics and criteria of appointment, promotion, detailing, discharge and immunity of members of the Public Prosecution office

Article 56 of the Judiciary Law stipulates that:

(Rules applicable to judges in this law apply to members of the Public Prosecution office particularly those in relation to conditions of appointment and the rules of transfer, delegation, rights, duties, forbidden acts and immunity, etc.)

Article 57 of the same law provides the following: (It is conditional for those appointed in judiciary jobs to have the following:

- a- Carrying the nationality of the Republic of Yemen, completely able, void of a handicap that affects judicature.
- b- Age not less than 30 years old and shall not assume judicial job unless after passing a training period in the judicial field not less than two years.
- c- He shall obtain a certificate from the High Judiciary Institute after the university degree in Sharia (Islamic law) and law or law from one of the recognized universities in the Republic of Yemen.
- d- To be commended for good behaviour and conduct and having a good reputation.
- e- He shall not be previously convicted judicially in a crime against honour and trust.
- f- Those joined the Public Prosecution are excepted from the condition of obtaining the certificate of the High Judiciary Institute and the age minimal limit.)

Article 59 provided the following:

(Appointment of the chief of the Supreme Court, his deputy and judges of the court by a decree from the Presidential Council upon nomination from the Supreme Judicial Council from a list of names prepared by the Judicial Inspection Administration for review by the council containing all information and efficiency reports on those included in the list.

The Supreme Court shall be formed for the first time after the enactment of this law through the selection of the Presidential Council of those appointed among the judges of the Supreme Court, courts of appeal or from those previously worked in the Supreme Court, courts of appeal, members of the Public Prosecution office , university professors or the legal profession.

Taking into consideration the rules included in the above two paragraphs, appointment in the judiciary other jobs shall be by a presidential decree upon the nomination of the Minister of Justice, the recommendation of the Public Prosecutor and approval of the Supreme Judicial Council with the exception of the assistant prosecutors who are appointed by a decision from the Minister of

Justice upon nomination from the Public Prosecutor. Assistant judges and assistant prosecutors shall be under two years probation. The Supreme Judicial Council shall issue, after the completion of the probation period and the confirmation of the proficiency of the appointed member, a decision affirming him as a judge or assistant prosecutor. If it is proved later his incompetence before the end of this period he must be discharged upon a decision by the Supreme Judicial Council.

Article 60 stipulates the following:

(The Public Prosecutor and the first General Attorney shall be appointed by a decree from the Presidential Council (Presidential decree).

Article 64 stipulates the following:

(Those who have left judiciary or the Public Prosecution office may be reappointed in the same position that they had before leaving work taking into consideration the appointee shall comply to the conditions included in Article 57 and his seniority shall be identified according to the above article.)

B. Promotions and seniority:

Articles 61,62,63 of the Judiciary Law defines the basics and criteria of promotion and seniority of the members of the judiciary as the following:

- Promotion shall be to the following level only and after the passing of at least two years in the previous level.
- Promotion of members of the judiciary and *Niaba* shall be according to efficiency. In case of equal level of proficiency seniority shall be taken into consideration. Proficiency of judges and members of the *Niaba* are determined by their work and inspection reports on them.
- Seniority of judges, members of *Niaba* and assistants are determined as from the issuance of appointment decision or promotion. If the promotion decision includes more than one member consideration is taken to the higher qualification and the older in graduation.

C- Delegation and Transfer

Article 65 of the Judiciary Law provides that:

- a- Transfer and delegation of judges shall be only on the conditions provided in this law.
 - b- Transfer movement of appellate courts judges shall be by a presidential decree, etc.
 - c- Transfer movement of primary courts judges by a decision from the Supreme Judiciary Council.
 - d- Other than exceptions approved by the Supreme Judiciary Council a judge may not be transferred from a court to another unless after three years of his work in this court.
 - e- A judge shall not stay in the same court more than five years.
 - f- The Minister of Justice may, if necessary, delegate a judge for six renewable months in the following cases: 1- Delegate a judge of an appellate court to another appellate court. 2- Delegate a judge of a primary court to another primary court.
- In all cases delegation shall be in accordance with a request from the concerned judicial body and after reporting to the Supreme Judicial Council. The judge shall retain his original job.

- As provided by Article 66 that (Judges may be delegated to a non-judicial position with their consent and by a presidential decree according to a request by the Minister of Justice and the approval of the Supreme Judiciary Council. Judges in this case shall keep all their privileges.)

D- Discharge (dismissal):

Article 111 of the Judiciary Law stipulates that:

(The Supreme Judiciary Council is the only body authorised to impose disciplinary measures against judges and member of the Public Prosecution when they violate their duties. The Council shall refer them to an accountability council formed of three members of the Council or three judges. etc.

Article 112 stipulates that:

(Taking into consideration the rules included in paragraphs 2,3 of the above article of this law the Judicial Inspection Administration shall prepare the action for initiation based on all the charges or some of them attributed to the judge. The judge shall be requested to appear before the council within one month of the date of his summoning to hear his statements and enable him to defend himself. If he does not appear before the council, it shall debate the action on his absence after making sure that he was truly subpoenaed.)

Article 115 stipulates the following:

(1- Disciplinary punishments that may be imposed on judges: a- b- c-d-e-.....f-....

E- Discharge with pension or reward.

2- The Supreme Judicial Council's decision on the disciplinary action shall be reported to the Minister of Justice. The judge shall be advised of the decision within 10 days of the date of its issuance.

F- Privileges and immunities enjoyed by members of the Public Prosecution office:

The Judiciary Law includes the rules on the immunity enjoyed by judges and members of the Public Prosecution office in equal terms without discrimination in the articles 56, 86, 87 and 88 according to the following:

Article 56 stipulates that (The same rules applicable to judges under this law shall apply to members of the Public Prosecution, especially those on the conditions of appointment, transfer, delegation, rights, duties forbidden acts, immunity, supervision, inspection, complaint against decisions, accountability and disciplinary measures unless excepted by a special provision.)

Article 86 provides that (Judges shall not be discharged from their positions, etc.)

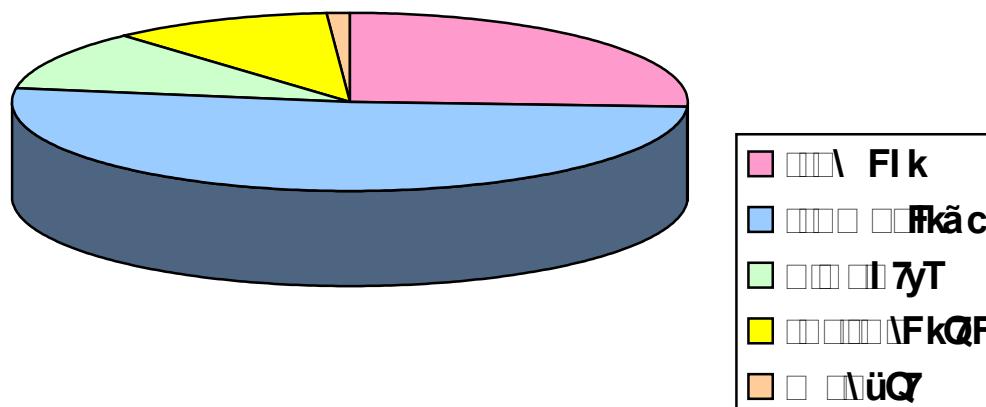
Article 87 provides that (Other than caught in flagrante delicto (in the very act) a judge shall not be arrested or put him custody unless after obtaining a permission from the Supreme Judicial Council, etc.)

Article 88 provides that (No penal action shall be initiated against judges unless after obtaining a permission from the Supreme Judicial Council according to a

request by the Public Prosecutor. The Council shall assign the court that shall try the judge.)

6. Volume of work

It is evident from the above that the work and functions of the Public Prosecution office are several and big. It is enough to refer here to the total statistics of the number of cases that were undertaken by the *Niaba* during 2000, which reached 34575, a big figure in comparison to the number of members of the Public Prosecution office –virtually- as the total number of personnel is not more than 800 members distributed over the various general, specific, specialised *Niaba* offices throughout the Republic totalling 223 *Niabas*.



The above diagram demonstrates the types of cases undertaken by the first instance and specific *Niabas* throughout the Republic.

Thirdly: Obstacles and problems facing the Public Prosecution office

The Public Prosecution office faces many problems, the most important of which are slowness and monotony in modernising and developing of judicial work and judicial administration in general.

A- Taking care of the individual aspect and rights of the member of the judiciary.

The judge is the cornerstone and the first brick to rely on in the operation of building the edifice of justice. The judge will not be able to undertake his tasks properly unless by taking care of preparation to commensurate with the judicial functions he performs, in addition to ensuring his rights and spare him the need and privation. Therefore, we believe that it is incumbent on us to pay attention to him as a person, his conditions and rights in the following:

- 1- Prepare and qualify him properly before performing specialised judicial functions.

- 2- Continuity of training and specialised instruction to all the members of the judiciary in order to cope with the new trends. (such as training on the specialised judicial functions undertaken by members of the judicial including commercial, marine, public funds, personal status, penal judiciary, etc. as well as training on the various judicial administration technicalities, accounting and administration, especially directors of courts and prosecution offices.)
- 3- Social welfare for all the members of the judiciary in the various fields requiring this care, such as health, social, housing, services, and retirement care.
- 4- Provide a legal library containing all Yemeni legislations, jurist and legal references through making available publications and electronic sites dealing with judiciary and containing all the legislations the judge or member of the Public Prosecution office needs in his work.

B- Provide work requirements and means for all the judicial administrations and offices.

Without providing the financial means, resources and budgets to perform judicial work, it is not expected from any of them to do quality work or even to perform it properly. Therefore, it has become necessary to provide the requirements of work by drawing a practical plan to provide at least the essential requirements such as:

- 1- Provide buildings suitable for judicial work.
- 2- Provide adequate number of human cadres commensurate to the volume of work in each court and *Niaba*.
- 3- Introduce computerisation into the judicial offices to replace manual work.
- 4- Provide office furniture for the buildings.
- 5- Allocate enough funds and budgets to ensure sound performance of work.
- 6- Provide the proper housing for judges and Public Prosecution members in their places of work.

Fourth: Proposal and development projects

It is possible to summarise the most important obstacles and problems facing the Public Prosecution office in Yemen in the following points;

- 1- Inadequacy of proper buildings for the Public Prosecution branches.
- 2- Specialised and specific *Niabas* do not adequately cover all the vast regions of the country;
- 3- Inadequate number of trained and qualified human cadres(judicially and administratively) to cover the current and future requirements of the various *Niabas'* offices.
- 4- Inadequacy of resources needed for qualifying and training and holding practical and reactivating courses.
- 5- Unavailability of legal and legislative references for each member of the *Niaba*.

Therefore, it is imperative to address these problems and give them priority. Accordingly the Public Prosecution office has worked on:

a-Complete the construction of buildings and establishments necessary for the work of the judiciary and provide appropriate means of transport needed for the work of the *Niabas* in the following:

1. Public Prosecutor office building. (completed)
2. Public Prosecution building at Hodiada (completed)

governorate.

3. Construction of the Public Prosecution building at Aden governorate. (under construction)
4. Construction of the Public Prosecution building at the governorate of Thamar. (under construction)
5. Construction of the Public Prosecution building at the governorate of Al-Mehweet. (under construction)

Work will begin in the following projects after the completion of the above projects.

- 1- Public Prosecution building at Al- Mekala, governorate of Hadramout .
- 2- Public Prosecution building at Siaon, governorate of Hadramout.
- 3- Public Prosecution building at the governorate of Ab.

b- A number of Niaba offices has been established.

A request has been submitted to the Supreme Judicial Council to establish another number of *Niabas* necessary to cover the current courts and to cope with the changes made on the administrative division of some of the governorates of the Republic as the following:

Niabas

Governorate	Niaba	
	2001	2002
Ta'az	Munawba <i>niaba</i>	Juveniles <i>niaba</i>
Hadramot(Al-mokla)	Investigation, security and prisons <i>niaba</i>	-
Hadida	Juveniles <i>niaba</i>	-
Ebb	Prisons <i>niaba</i>	Sobra <i>niaba</i> Sada and Nadra <i>niaba</i>
Shabwah	First instance financial <i>niaba</i>	Investigation, security and prisons <i>niaba</i>
Hojja	Harad <i>niaba</i>	-
Saada	Investigation and security <i>niaba</i>	Razeh <i>niaba</i>
Dale'		-
Omran	Investigation and security <i>niaba</i>	-
Mahweit	Shibam and Tawila <i>niaba</i>	-
Total	10 <i>niabas</i>	5 <i>niabas</i>

Proposal Niabas

No.	Governorate	Niaba	No. of members
1	Secretariat	South East (b)	3
2		Western Secretariat (b)	3
3	Sanaa'	Heima	3
4		Heiraz	3
5		Saafan	3
6		Kholan and Bani-bahlool	3
7	Aden	Dar Saad	3
8	Ta'az	Hifan	3
9	Hadida	Blad-el-taam	3
10		Gaafaria	3
11		Zohra	3
12		Hees	3
13		Gabal Ras	3
14		Sokhna	3
15		Salafeiah	3
16		Kasma	3
17		Lehia	3
18		Khokha	3
19		Mansoura	3
20	Lahg	Moqatara	3
21		Hadd and Maflahi	3
22		Munawba	3
23	Ebb	Kafz	3
24		Hizm-el-adin	3
25		She'r	3
26	zemar	Wesab	3
27		Heidaa	3
28	Hojja	Aflah- el-sham	3
29		Kafl-shamar	3
30		Keidna	3
31	Dale'	Damt	3
32	Mahweit	Khabt and Hafash	3
33		Malhan	3
34		Tawila	3
35		Bani-saad	3
Total		35	105

c- The training and qualifying administration has been established.

The administration organized during the years 2001-2002 a number of qualifying, reactivating and legal courses especially those in relation to check rules, juvenile judicature and legal and Sharia (religious) sciences. The number of participants in these courses of the members of the Niaba and administrative assistants reached 268 people. The following table states the types of these courses and the targeted groups.

No.	course	Targeted group	Judicial staff		Adm. staff		Total
			2001	To June 2002	2001	To June 2002	
1	Qualifying	Prosecutors	40	0	0	0	40

2	Refreshing	Prosecutor Assistants (a-b)	64	0	0	0	64
3	Refreshing	<i>niaba</i> members at court of appeal	30	20	0	0	50
4	Qualifying, Shari'a	<i>Niaba</i> members	22	0	0	0	22
5	Refreshing	Chief clerks and clerks at criminal courts	0	0	31	0	31
6	Refreshing, A/c Fin. System	Fin. & A/c. Managers	0	0	53	0	53
7	Commercial-criminal provisions on cheque	<i>Niaba</i> members	0	3	0	0	3
8	Workshop on juveniles	Prosecutors at juvenile courts	0	5	0	0	5
Total			156	28	84	0	268

d- The technical bureau of the Public Prosecutor office has achieved the following:

- 1- Prepare a legislative group of publications relative to the functions, competences and powers of the Public Prosecution for printing and distribution among the *Niabas* to be available to all members.
- 2- Compile and arrange circulars, periodicals and leaflets of judicial nature issued by the Public Prosecutor during the years 1990 till the first third of 2002 and have been already distributed.
- 3- Prepare an index of all laws since the foundation of the Republic till the year 2002 in alphabetical order to facilitate reference.
- 4- Print the most important laws relative to the functions of the *Niaba* and enter them in the computer programmes at the office.
- 5- Computerise cases entries of the office.
- 6- Currently printing groups of bilateral and international agreements .

CONCLUSION

The Public Prosecution office has been established in Yemen as judicial authority so that Yemen would cope with the current judicial systems that concern with the protection of rights and freedoms. This constitutes a gain of the gains achieved by the Yemeni revolution and a true translation of its implications and objectives.

From the above it is evident that the Public Prosecution office is concerned with the general legal action on behalf of the community through its performance of its legal competences.

It was able during the period going along with the emergence of the movement to canonise the Islamic Sharia (law) and the enactment of procedural and positive laws in Yemen to prove its position and assure itself. The citizen has realised its importance and the importance of litigation and initiation of legal proceeding through the official judicial authorities.

However, it is still working hard to overcome the problems preventing it from performing its functions properly. The most important point is to provide the necessary requirements to develop judicial work in the Public Prosecution apparatus including the following:

- 1- Provide the Public Prosecution with qualified human cadres (judicial and administrative) to cover its growing needs.
- 2- Provide the appropriate building for the *Niaba* branches in all the governorates of the Republic and equip them with the necessary capabilities to perform its functions.
- 3- Establish a computer network and link all the *Niaba* branches to it. Establish a data centre to include all references and legal legislations needed by the member of the *Niaba* in performing his functions and train them on using it (according to the attached study).
- 4- Establish computer software on the procedures to initiate court action during investigation and trial phases. Document all judgements passed in criminal cases and train member of the *Niaba* on using them.
- 5- Hold external and internal training courses for the members of the *Niaba* in all fields of public prosecution, especially those connected with specialised and specific *Niabas*.
- 6- Develop forensic medicine work and provide it with financial and human resources.
- 7- Develop statistical works to include all its purposes.
- 8- Work on expanding the scope of law enforcement officers to cover all the *Niabas* and courts functions with the provision of its needs and requirements and follow up its performance of its duties properly.