



Ministry of Justice
Republic of Lebanon



REGIONAL CONFERENCE ON "GOOD JUDICIARY AND CRIMINAL JUSTICE"

Beirut, Lebanon
29-30 November 2008

BACKGROUND PAPER

1. Introduction

The regional conference on "Good Judiciary and Criminal Justice" will be organized by UNDP-POGAR as part of its efforts to work with its Arab partners to support reform and development in the Arab region, with a focus on promoting good governance practices, building knowledge and developing the capacity of governments and nongovernmental actors in this area.

This conference seeks to create a practical platform for exchanging experiences and lessons learned which were gained during POGAR's work in promoting the rule of law as a main characteristic of good governance. It aims to launch a coordinated process of dialogue and activities for the purpose of developing a regional framework for modernizing the judiciary and justice systems in the Arab States. The developed framework will serve as a resource for policymakers and practitioners and will contribute to forming a comprehensive vision for improving justice systems in line with international and regional standards, and in accordance with the needs and priorities of Arab states in light of the vast changes and challenges facing the region and the world, at large.

The last few years of the 20th century and the first years of the 21st century witnessed many historical events which brought about great political, economic and social

changes. These changes have altered the trends that had prevailed in developed and developing countries alike. In this context, governments were mainly concerned with accommodating, and adapting to these changes in order to be able to face the new challenges, particularly those related to the Millennium Development Goals adopted by the world's heads of states in 2000. One of the main challenges is achieving justice, protecting human rights, and maintaining security and stability in society. All this may be summarized in one phrase "establishing the rule of law".

The presence or absence of the "rule of law" in a certain country basically depends on the quality of its judiciary and justice system. In this paper, "Justice System" refers not only to "the court system" in its narrow meaning but also to the entire formal and informal institutions and mechanisms involved in strengthening the rule of law. The justice system, thus, includes mechanisms of policy formulation and implementation; laws and regulations including the mechanisms used in law-making and measuring their quality; criminal justice institutions and law enforcement authorities; oversight and monitoring mechanisms adopted by parliaments and civil society; and other mechanisms which constitute as a whole the justice system establishing the rule of law in a particular country.

The rule of law is the most important component of good governance, which the international community unanimously considers as the single most important factor for achieving human development and in eliminating poverty¹. Hence, strengthening the justice system is the most important entry point for the reform and development process in general. This is because the justice system is the main guarantee upon which all other components of good governance are based, including transparency, accountability, participation, equity, and other element adopted and promoted by the international community and the United Nations.

The importance of strengthening the judiciary and the justice system is increased by globalization, which brought with it new challenges, particularly for the developing countries, including growing crime which is becoming more sophisticated, and the openness of markets to trade and investment. Moreover, it led to a growth in the body of international law, thus, posing challenges of adaptation and transposition to the national legal systems. Scientific progress and information revolution have made development dependent on the extent of knowledge and potentials available to individuals including policymakers, legislators, judges, law enforcement officials, and others involved in establishing and administering the judiciary and justice systems in the countries of the world. A major challenge at this stage, which witnesses so many changes, is related to developing the justice systems so that it can catch up with the rapidly-developing international principles and standards, and usher up the requirements of high quality, modern services and performance.

Indeed, a modern, efficient and transparent justice system should be in line with the general principles and standards endorsed by the international community. It should also directly reflect the will and needs of each country and benefit from the successful experiences and lessons learned in order to continuously improve and develop its performance. Only an appropriate justice system is able to guarantee the rights and freedoms of individuals without discrimination. It is also one of the most important factors in attracting and maintaining investments. It constitutes a guarantee against corruption, and misuse of public property. It is also the core system upon which the security and stability of citizens are based. Without an appropriate justice system,

¹ Report by former UN Secretary-General on the state of the UN, 2000.

human rights cannot be fully respected; the Executive cannot be held accountable; elections cannot be free and fair; civil society and media cannot be improved; and competitiveness cannot be encouraged and successful global economic integration and open markets may be obstructed.

2. The Good Judiciary and Justice Systems as a Main Entry point to Reform and Development in the Arab Region

Given the important role of the judiciary and justice systems in achieving good governance and its role in helping countries respond to globalization challenges and work better towards achieving development, it could be said that the Arab region is in dire need of focusing its efforts on strengthening the judiciary and justice systems to achieve development. This is particularly true because Arab laws are considered to be sufficiently developed in terms of norms and standards, although sometimes, some provisions may be ambiguous or conflicting. However, these laws have many shortcomings in terms of implementation frameworks and mechanisms whether at the level of concerned practitioners (judges, law professionals, policemen and others), or at the level of competent institutions which often do not meet the required standards of transparency and efficiency.

According to some commentators, these shortcomings may be part of the explanation why the Arab region is unable to fully benefit from economic globalization and to efficiently utilize its vast financial and human resources, especially given deficiencies in strategic planning mechanisms and participation in decision making, highly-increasing population growth, increasing income gap, absence of stable political and security conditions in most parts of the region, increase and sophistication of crime, especially organized crime, and growing requirements for economic development.

Given these challenges, the Arab governments are required to develop their laws, regulations and institutions to be able to deal with these challenges more efficiently. This is actually what the Arab leaders declared in the 16th Arab summit held in Tunisia, 2004. The declaration was embodied in a document called "Towards Modernization, Development and Reform". However, these efforts have to be followed up and additional implementation efforts are required.

In light of this situation, it is important to intensify efforts to strengthen the judiciary and justice systems in order to participate in confronting the numerous challenges particularly those related to economy and investment, international human law, criminal justice, and access to justice particularly by the poor.

Indeed, several Arab countries supported many reform processes to reform their judiciaries and justice systems. However, many of these reforms were either partial or focused only on specific sectors. They also were not sufficiently based on a strategic and practical framework and a comprehensive vision of reform. Most reform activities focused on improving the legal environment of investment. However, focus is rarely placed on other issues such as criminal and human right matters, or matters related to litigation procedures and access to justice. Although judicial independence and integrity are often highlighted in public discourse, there remains to be a pressing need to give effect to related constitutional and legal principles. In particular, there is a need to improve, *inter alia*, the efficiency standard of court support personnel and law

enforcement officials; modernize the methods of operation of public prosecution offices; develop the basic and on-going judicial training curricula; improve the courses on enforcement of civil and administrative judgments; update the courses on prisons, rehabilitation institutions and correctional justice; activate the automation of judicial institutions; and facilitate access to legal and judicial information.

The international and regional events and developments reveal the need to deal with the modernization of judiciaries and justice systems in a more efficient and strategic way, including a renewed focus on formulating policies and monitoring its progress and impact; upgrading and integrating laws and regulations; improving legislative and regulatory quality; enhance transparency and accountability principles; modernize the judicial bodies and public prosecution offices by building institutional capacity, offering basic and continued training, and providing other basic elements of the justice system.

3. POGAR's Role in Supporting Rule of Law Reform

Since the establishment of POGAR in 1999, a significant part of its activities was devoted for promoting the rule of law and modernizing the judiciary and justice systems so that they can be more effective in strengthening the rule of law. This reflected the importance given to this type of reform in the efforts of strengthening good governance with the ultimate objective of achieving development in the Arab region. During recent years, POGAR's work has developed as it acquired, along with its partners in the Arab countries, solid knowledge, diverse expertise, good experiences, and lessons learned which can be used to go forward in developing and implementing initiatives of this nature in the future.

Indeed, with the political will in Arab countries becoming firmer and the growing momentum of efforts to achieve progress in modernization, there is an increasing need to develop a strategic reform approach to the judiciary and justice systems in Arab countries based on sound foundations at different levels. These include policy formulation, law-making, the court system, and enforcement levels. New methods of monitoring and measuring should be adopted as a means to achieve modernization and improve performance.

In this framework and as part of the regional efforts, POGAR prepares for the new phase of its projects in the field of the rule of law and the modernization of the justice system. The following are the projects to be implemented in several Arab countries²:

Project on modernizing public prosecution offices: The 1st cycle of this project, in the context of which this conference is being held, was launched in Cairo, Egypt, on 18 May 2005. The purpose of the project is to strengthen the rule of law and modernize the criminal justice system by modernizing the public prosecution institutions in selected Arab countries³.

The 1st cycle of the project was centered on following four themes:

² For more information on these projects, please visit: www.pogar.org or contact the UNDP senior advisor on the rule of law via the following e-mail: wharb@undp-pogar.org.

³ The project is implemented at present by the following pilot states: Egypt, Jordan, Morocco, Yemen, and Lebanon. More pilot states are expected to join, thus, extending the scope of the project.

1. Building and strengthening the capacities and working methods of the public prosecution institutions.
2. Enhancing the relationships and cooperation between the public prosecution institutions and the civil society.
3. Developing communication channels among the public prosecution institutions in the Arab countries and between them and the international community.
4. Reforming the laws governing the activity of the public prosecution institutions.

The above strategic themes were actually covered by implementing certain activities in the participating countries. They were also addressed at the regional level through implementing integration and networking projects, holding specialized conferences, organizing training workshops, regional seminars, and field visits, etc. Activities were closely coordinated with the Arab countries to support the national efforts in the region in the relevant fields. Studies were prepared, as part of the Project, on the conditions of the public prosecution institutions in the Arab countries, how their role can be activated and their performance be improved, and on the importance of improving and upgrading positive laws.

Preparation for the 2nd cycle is underway. It will last for 3 years (2009- 2011). The aim of this phase is to strengthen the Arab countries' capacities, to protect citizens' security by confronting the increasing risks of the criminal activities within the framework of the rule of law and respect for human rights. The focus will continue to be placed on public prosecution offices while other governmental and non-governmental bodies will be involved in the project's activities. The reason for this is that the public prosecution institution remains a major institution entrusted with ensuring a citizen's security as well as protecting and strengthening the respect for human rights.

Thus, the project represents a new approach to modernize the justice system in the region as it aims to promote national efforts exerted in the Arab region to establish the rule of law by strengthening the institutional capacities of bodies entrusted with formulating and implementing policies related to criminal justice.

Project for Judicial Training on Economic Laws: The project aims to empower judges in the Arab countries to better respond to the challenges of globalization, especially through settling the economic disputes with more fairness and knowledge. The Project, launched during a training workshop conducted in Rabat, Morocco, in June 2008, also seeks to enhance the capacity of the judiciary in the Arab countries in implementing economic laws with the ultimate goal of building well-established knowledge about the recent developments in the economic legal frameworks. The project is implemented in cooperation with the French Judicial Institute.

Project on developing the Arab Principles/indicators of a Good Justice: This project is planned to be launched in 2009. Preparations were launched during a core group ministerial meeting in Beirut, Lebanon, on August 20, 2008. The purpose of the Project is to improve the performance of judicial bodies in the Arab countries within the framework of the frameworks of good justice principles. Efforts are exerted to incorporate these principles into a coordinated Terms of Reference document proceeding from the international and regional principles and standards in this area and reflecting the distinct experiences of the Arab culture with its religious and social values. Therefore, the document will constitute a practical framework that can be used

as a tool for monitoring. This tool will help draw up policies and measure the performance and progress made in the relevant fields of reform.

The project also seeks to empower the Arab countries to help them build their judicial capacities in the areas of independence, integrity, competence and effectiveness. In addition, it will seek to promote the concepts of integrity, efficiency and efficacy in judicial performance by raising the awareness and building the knowledge and capacity of the legal professionals in the Arab countries. This will be achieved by implementing a number of relevant activities in this field.

Project on Strengthening the Enforcement of Judgments: This project is planned to be launched by the end of 2009. It aims to support and develop the mechanisms of enforcement of national and foreign judgments issued by the judicial authorities or through arbitration so that these judgments can be more effective and better bring about justice.

Hence, obviously the theme of modernization of the judiciary and justice systems is a major priority supported by UNDP-POGAR, given the importance of these systems in establishing the rule of law in Arab countries.

4. Overview on Key Regional and International Norms and Standards on the Judiciary and Justice Systems

The framework for modernizing the judiciary and justice systems in Arab countries is the set of relevant norms and standards which are adopted and promoted by the international community. These norms and standards constitute the global consensus on the need to improve the judiciary and justice systems in harmony with the countries' and societies' needs and in a manner that would ensure human right protection. The following is a descriptive list of key norms and standards:

The Universal Declaration of Human Rights (UDHR): It was adopted by the UN General Assembly in 1948. It is a universally recognized set of principles that regulates the conduct of all states. Some of its articles, particularly articles 10 and 11, set forth the rights related to fair trial. The right to fair trial, which is recognized in the UDHR, has also been widely recognized as part of the natural law or the general principles of law in most states. As a result, the right to fair trial has become legally binding on all states. Many regional and international treaties and standards were inspired by the principles set forth in the UDHR.

The International Covenant on Civil and Political Rights (ICCPR): it was adopted by the UN General Assembly in 1966 and entered into force in 1976. The ICCPR aims to codify the civil and political rights in the form of a treaty that is binding on the states which ratify or accede to it. The ICCPR expands the scope of the civil and political rights recognized by the UDHR⁴

The Convention against Torture: It seeks to combat torture and other cruel, inhuman or degrading treatment or punishment. It was unanimously adopted by the UN General Assembly in 1984 and entered into force in 1987. State parties to the convention are required to stop and prevent any acts of torture in their territories,

⁴ The ICCPR protects fundamental rights, including the right to be free from arbitrary arrest or detention; the right to be free from torture and ill-treatment; and the right to a fair trial.

criminalize such acts and investigate all related claims and bring to justice those persons suspected of committing torture. The convention also ensures that any person who is suspected of committing torture will receive a fair treatment during the legal proceedings, that trials will exclude all evidences obtained as a result of torture, and that victims are entitled to adequate compensation.

The Convention on the Rights of the Child: It was adopted by the UN General Assembly in 1989 and entered into force in 1990. It contains guarantees of fair trial for children accused of violating the provisions of the penal code.

The Principles and Standards of Armed Conflicts: Some guarantees of fair trial were included in the four Geneva conventions of 1949 that protect the civilians and those fighting in time of war, especially during the international armed conflicts and also during internal armed conflicts such as civil wars. The provisions of conventions were supplemented by the First Additional Protocol that broadens the scope of protection for civilians and others during the armed conflicts and the Second Additional Protocol that protects civilians and others during the internal armed conflicts.

The Body of Principles for the Protection of All Persons under any Form of Detention: It was adopted by the UN General Assembly in 1988. It contains an authoritative set of recognized standards on how detainees and prisoners should be treated, applicable to all states. The principles set forth basic legal and humanitarian concepts and serve as a guide for legislators in drafting national legislation.

The Standard Minimum Rules for the Treatment of Prisoners: They were adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders and approved by the UN Economic and Social Council. They set out the generally accepted principles to be used in the treatment of prisoners.⁵

The United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty: They were adopted by the UN Economic and Social Council and approved by the UN General Assembly in 1984. The safeguards restrict the use of death penalty in the states which have not abrogated it.⁶

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty: It was entered into force in 1985. This protocol prohibits the use of the death penalty in peacetime.

Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms: Protocol n^o 7, which entered into force in 1985, provides for guarantees to protect the right to refer convictions of criminal offences to a higher court for review. It also guarantees the individual's right not to be tried or punished more than once for the same offence. It also sets forth the right to compensation for miscarriage of justice.

⁵ It is worth noting that in 1971, the UN General Assembly called on member states to implement these rules and incorporate them in their national legislation.

⁶ Among other protective measures, they provide that capital punishment may only be carried out after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the ICCPR, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

The Guidelines on the Role of Prosecutors: they were adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990.

The Basic Principles on the Independence of the Judiciary: they were adopted by the Seventh UN congress on the Prevention of Crime and the Treatment of Offenders, and approved by the UN General Assembly in 1985. These principles apply to the official and nonofficial legal practitioners, as necessary.⁷

The codes of conduct for Judges: Prominent among these are the Bangalore Principles of Judicial Conduct issued in 2002, and regional instruments such as Al-Sharqa Code of Ethics for Judges 2006 which was adopted by the Council of Arab Justice Ministers, and the Riyadh Document for Arab Judge 2007, which was adopted by the heads of the judicial training institutes in the Arab countries.

5. Themes, Objectives and Expected Results of the Conference

The efforts to modernize the judiciary and justice systems in Arab countries are faced with a number of obstacles. Among these obstacles is the lack of systematic and sustainable mechanisms to develop policies and strategies for modernizing the justice system, and the absence of efforts to monitor and analyze the conditions of the justice system and measure its performance; a matter which leads to the scarcity and inaccuracy of the available information and field data. This situation hinders the adoption of a strategic reform approach based on knowledge, and undermines efforts to develop strategies and policies to modernize the judiciary and justice system. Overcoming these obstacles is an important prerequisite for modernizing the rule of law and justice in the Arab region and an entry point to solid approach to reform as mentioned above.

Accordingly, the regional conference on "Good Judiciary and Criminal Justice" is held on 29-30 November 2008 in Beirut, Lebanon, by the UNDP's Programme on Governance in the Arab Region- Regional Bureau for Arab States (POGAR-RBAS) of under the auspices of the Lebanese Minister of Justice H.E Prof. Ibrahim Najjar. The conference aims to serve as a platform for modernizing the judiciary and justice systems in the Arab countries, specifically in relation to supporting relevant policies and strategies. The focus of the conference is placed on the importance of monitoring mechanisms, which are needed to develop these policies and strategies in an objective and scientific way and to measure their effectiveness.

The conference covers three themes, which are on the scale of priorities of reform in the Arab region. These include 1) the international and regional frameworks needed to modernize the judiciary and the public prosecution institutions; 2) criminal justice policies; 3) criminal laws and human rights. The conference seeks to address these themes by explaining to the Arab policymakers and practitioners the requirements for applying the international principles and standards. It also aims to address best

⁷ These principles were formulated to assist governments in securing and promoting the independence of the judiciary. They should be taken into account and respected by Governments within the framework of their national legislation and norms and be brought to the attention of judges, lawyers, members of the Executive and the Legislature and the public in general.

practices to develop the knowledge required for supporting the policies and strategies of modernizing the judiciary and justice systems in the Arab region, with emphasis on monitoring mechanisms. The conference provides an important opportunity to share successful experiences and the lessons learned among the Arab countries and between them and other non-Arab countries in the fields related to the modernization of the judiciary and justice systems.

Session (1): This session will review and discuss the "*international and regional frameworks for modernizing the judiciary and justice systems*". An overview of the international and Arab principles and standards adopted in the domain of justice will be given. Discussions will cover the importance of the monitoring mechanisms as a means to develop the justice system in light of the regional and international frameworks implemented in this field.

Session (2): This session will shed light on "*strengthening the judiciary and justice systems' role in maintaining security and crime prevention*". The role of public prosecutors in applying effective and coordinated policies in the field of criminal justice and the role of specialized research centers and criminal evidence investigation centers in supporting policy formulation will also be highlighted. Discussions will cover the importance of conducting a periodic evaluation of the criminal justice systems and of the major evaluation tools applied in this area.

Session (3): Session (3) is divided into two parts. The first part focuses on the issue of "*modernizing criminal laws as an approach to improve the justice systems in the light of respecting the principles and standards of human rights*". This session will review and examine international and regional principles and standards of human rights in justice administration. Case studies on the modernization of criminal laws and procedures in some Arab countries will be presented. For example, the making of penal laws in both Jordan and Egypt will be discussed. The second part will continue to discuss the theme of modernization of penal laws and will focus on the situation of penal laws in some Arab countries. Case studies on the making of penal laws in Lebanon, Morocco, and Yemen will be presented.

Session (4): Session (4) will address the theme of "*regional and international cooperation in strengthening justice*". An overview of Arab cooperation in strengthening justice will be given. In addition, the Arab-European joint action in strengthening justice will be reviewed. The session will also cover the efforts of the UN bodies in consolidating justice at the regional level in the Arab region and the role of professional institutions in activating international cooperation in the field of achieving justice.

Closing Session: This session will be devoted to reviewing the conclusions of the above sessions, declaring the recommendations, and delivering the closing speech.

6. Themes, Objectives and Expected Results of the Conference

The Regional Conference is expected to serve as a starting point towards a broader regional action to support the efforts exerted to develop and use monitoring mechanisms as a means for strengthening the formulation of policies and strategies required to modernize the judiciary and justice systems objectively and practically in the Arab countries in line with the conditions and needs of these countries. In addition, comments and remarks, which will be made during the conference, will

constitute a new opportunity for exchanging expertise and experiences among the Arab countries and between them and other non-Arab countries with experiences in this field. This will, undoubtedly, contribute to enhancing regional policy dialogue and promoting the process of knowledge and capacity building in different fields of judicial reform let alone strengthening these countries' policies and strategies. The conference is also expected to support the process of peer learning and consultation.

Finally, the Conference is also expected to provide an important opportunity to discuss the best ways and mechanisms for enhancing cooperation and coordination and to improve the exchange of knowledge in the area of supporting the formulation of strategies for developing the judiciary and justice systems at the national and regional levels on the basis of the experiences presented by Arab and non-Arab countries. This is expected to contribute to the development of a regional framework that will serve as resource for reform efforts in the region.