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**The Hashemite
Kingdom of Jordan
The Ministry of Justice**

**Programme on "Strengthening the Rule of Law in the Arab States –
Project on the Modernization of Public Prosecution Offices"**

**Regional Conference on
"Legal Structuring of Public Prosecution"**

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Explanatory Note

Introduction:

In 2002, the United Nations Development Programme – Programme on Governance in the Arab Region (UNDP-POGAR) launched an initiative for modernizing the public prosecution offices in the Arab countries. The initiative sought to activate the role of public prosecutors in strengthening the rule of law.

The project on Modernization of Public Prosecution Offices in the Arab countries mainly seeks to:

- a- Build and develop the capacity of the public prosecution institutions;
- b- Promote and strengthen the relationship between the Public prosecution offices and civil society organizations for better practice and protection of citizen's rights;
- c- Establish regional and international cooperation network among the public prosecution offices for crime prevention
- d- Review the laws governing the activities of the public prosecution offices, criminal court action, and criminal procedures.

The Project focuses on the important role played by public prosecution offices and investigation judges in the society, specifically in regards protecting and respecting human rights. The Project rests on the pillar that the public prosecutor or investigation judge is the person in charge of enforcing and activating these rights and even supervising the other agencies assigned to undertake procedures such as arrest and investigation.

Accordingly, the Project has adopted a set of activities including holding meetings and seminars in each of the pilot countries to enrich the knowledge of the public prosecutors about the issues related to the protection of human rights and enforcement of international standards at the national level. Admittedly, these activities and seminars usually help disseminate information, strengthen cooperation among the participants, and fill in the gaps by exchange of experiences.

The present seminar, which is held under the title "Legal Structure of Public Prosecution," is organized as part of a series of seminars and meetings planned for achieving the Project's aims. The seminar will discuss the following themes:

- The legal foundation of the concept and role of public prosecution in criminal procedures
- Independence of niaba from the judiciary.
- The regional and international standards on the role of public prosecutors.
- International experiences concerning the role of public prosecutors.
- National experiences and the challenges to the functions of niaba.
- Building on the others' experiences.

I. Background

Rule of law and criminal justice are two very important foundations in any democratic society. Rule of law implies the existence of laws, known to the public and respected by those in charge of enforcing them, particularly the public prosecution authority. Indeed, public prosecution is in the front defense line of the citizen and acts in the name of society's interest and welfare. It aims at achieving human security and a good administration of justice as well as to reduce the rates of crimes and corruption; all are matters which add to the citizens a feeling of security and confidence in the state and its authorities.

Accordingly, there is a pressing need to reach a modern and developed concept of the role and function of public prosecution to ensure harmony between its function as a sponsor of human rights and its role in combating crime. In short, the presence of an effective, independent and transparent public prosecution institution contributes to achieving justice and complying with the rule of law and human rights.

No doubt that the right of punishment is a serious right practiced by the community towards its members. The state takes utmost care to exercise this right and considers it an absolute duty for the safety of the society and its wellbeing as well as maintaining security among its individuals. To this end, the state specifies in its criminal laws the behaviors and acts which are considered as crimes and the penalties to be imposed against their perpetrators.

However, these penalties, though provided in legislations, cannot be immediately and automatically enforced against the perpetrators as soon as they commit their crime; such penalties should be decided by a competent judicial authority. The reason for this is that social reaction to the crime and perpetrators should not be arbitrary or vindictive in modern societies, but organized, conscientious, disciplined, and away from the spirit of retribution.

From an academic point of view, criminal procedures represent a connecting link between the crime and the penalty. Between these two extremes, other processes take place; investigation, interrogation and trial. Thus, the provisions of the penal code are transformed from mere principles and theories to practice in the form of formalities and procedures; a thing that adds formality to the nature of the criminal procedure code. Criminal legislation in their broad meaning include two types of rules: substantive ones (the penal code) and formal ones (the criminal procedure code).

Given the above relation, the application of the criminal procedure rules is linked to the penal code rules. This is usually evident when the committed crime involves an assault against the right of a community being related to the state or to individuals; a matter which entitles the state in general to impose punishment. This can be done only by filing a public lawsuit. Hence, the role played by the prosecutor/investigating judge in the case is an essential role, especially as he prepares the case file for the court hearing and performs all the tasks to reveal the truth.

Arab penal systems differ on the jurisdiction of public prosecution. While some entrust this institution with both inquisitorial and accusatorial functions, such as in Jordan, others assign to it an absolute accusatorial function. In Lebanon's case, for

instance they assign the investigation task to an investigating judge. In the middle of the two extremes lies Egypt where the system entrusts the public prosecution with both inquisitorial and accusatorial functions but, by way of exception, authorizes it to request assigning an investigating judge in some cases.

II. The legal foundation of the concept and role of public prosecution in criminal procedures

Public Prosecution is a French system in origin. It goes back to the task of the King's agent who used to take care of the royal interests and the general attorney who was entrusted with law suits of the King. This system later developed to include lawsuits involving the public interests and accordingly the current public prosecution system came to be known. Some, however, trace its origin back to some systems of the Roman law such as the system of monitors and the system of defenders of the plaintiff whose task was to reveal to the King any blackmail practiced by his employees¹.

Public Prosecution is a branch of the judicial power which acts on behalf of the community, representing it in ensuring the public interests, and aiming to achieve the rule of law. Not only is it authorized to initiate the public criminal action, it also conducts investigation by itself, by assigning a law enforcement officer, or by requesting an investigating judge for this purpose, or even by ordering the accused person to appear before the competent criminal court for trial.

1- The role of public prosecution in criminal procedures in the various criminal justice systems.

A prosecutor performs an effective role in the criminal procedures and initiates prosecution only when authorized by law or local practice. He also investigates into crimes, oversees the due process of investigation and the execution of court decisions, and exercises other functions as a representative of the public interest.

When performing their duties, prosecutors are under the following obligations:

1. Carrying out their functions impartially and avoiding all political, social, religious, racial, cultural, sexual or any other kind of discrimination.
2. Protecting the public interest, acting impartially, bearing in mind the due considerations of the positions of the suspect and the victim, and paying attention to all relevant circumstances, being to the benefit or detriment of the suspect.
3. Keeping confidential all matters entrusted to them, unless their duties or justice interest otherwise requires.
4. Considering the views and concerns of victims when their personal interests are affected and ensuring that victims are notified of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

¹ See Mahmoud Hashem, *Judicature Act, Dar el-Nahda el-Arabya*, 1999, p. 184.

5. Refusing to initiate or proceed with prosecution, and making every possible effort to stop procedures, if investigation indicates that the charge is unfounded.
6. Giving due attention to prosecuting crimes committed by public servants, particularly corruption, abuse of power, grave violations of human rights and other crimes provided in the international law and, where authorized by law or the local practice so permits, investigating into these crimes.
7. If prosecutors know that the evidence brought against suspects was obtained by unlawful methods, thus gravely violating the suspect's human rights, especially by torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they must refuse to use that evidence against the suspects. Rather, this evidence must be used against those who resorted to such unlawful methods in order to take all the necessary measures to ensure that those responsible for using them are brought to justice.
8. Performing, fairly, consistently, and expeditiously, their duties as assigned by the law in such a way that respects and protects human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

2- The source of public prosecution's powers in the various criminal justice systems.

The judiciary is the entity in which justice administration is vested; therefore, it should be independent so that it can undertake its functions of achieving justice. Indeed, the judiciary independence is a grand guaranty to the defense of rights and freedoms, otherwise freedoms and rights would become meaningless. Actually, these rights would be easy to assault and violate by the other authorities of the state without being protected by anyone.

According to many international jurists, public prosecution derives its powers from international declarations, charters, instruments, constitutions of the civilized states, and the rules of natural justice. Others argue that public prosecution derives its independence from the doctrine of the separation of powers which was formulated by jurist Montesquieu.

At the national level, public prosecution is a branch of the judiciary. The role, functions, and powers of public prosecution in the society are provided in the judicature acts in almost all countries. They are provided in article (23) of the Judicature Act of the Arab Republic of Egypt and in article (53) of Judicature Act 1/1991 in the Republic of Yemen.

II. The independence of the public prosecution from the judiciary

The relationship between public prosecution and the judiciary differs depending on the laws in each country. The following are the major forms of this relationship.

○ **Mixed System (Egyptian model)**

According to this system, public prosecution enjoys independence within the judiciary. It assumes both inquisitorial and accusatorial roles, and may request the assignment of a judge to investigate into certain cases. Basically, it has jurisdiction to investigate and indict; however, it may request the chairman of the court of first instance to assign a judge to investigate into certain cases. The Prosecutor General has the power to decide on requests for appointment and transfer, in addition to punishment, and recommendation of transfer outside a certain public prosecution office.

Hence, the public prosecution institution in Egypt is an independent entity of the courts within which it is located, and which are subordinated to the Minister of Justice according to article (26) of the Judicature Act. As a result of this independence, a court may not issue orders or instructions to a public prosecutor located within it nor may it reproach or criticize in its judgment his conduct towards the litigation or in the court session. Another feature of this independence is that a judge may not substitute a public prosecutor in undertaking a certain duty or procedure lying within his powers and jurisdictions. On the other hand, the independence of the public prosecution imposes on it the duty of non-intervention in the courts' activities. Therefore, a public prosecutor may not undertake a judge's duty or participate in the deliberations. However, it is worth noting that article (24) of the Judicature Act provides that public prosecution of the court of cassation may, upon the court's request, attend the deliberations of the civil, commercial, and personal status courts but its representative would not have a casting vote.

○ **Unity of Public Prosecution: Combining Investigation with Accusation (Jordanian Model)**

According to this system, public prosecution is authorized to undertake investigation and indictment. The public prosecutors are governed by the general system directing the judges in appointment, transfer, punishment, and retirement. Hence, public prosecution in Jordan belongs to the judiciary. Despite that there are differences between a public prosecutor and an investigation judge in terms of rights, requirements for appointment, and promotion, a public prosecutor may become a judge and vice versa. Thus, a public prosecutor undertakes prosecution and investigation, and also proceeds with the case before the court; acts as plaintiff; submits the substantiating evidence, pleas, and demands; and makes arguments. A representative of the public prosecution is described as a fair and honest opponent who makes sure not to let the perpetrator of a crime go unpunished and ensures that no innocent person is convicted. He, in the name of law, requests from the court such demands as he may find appropriate. The court must establish his demands in the minutes of the trial session and decide on them from the judicial perspective. Therefore, public prosecution works closely with the court at two phases; preliminary

investigation and trial. However, it is independent from the “sitting judges.” This independence leads to several legal results of which the most important are as follows:

- a. As a general rule, a sitting judge may not set the case into motion except where otherwise specifically provided. Article (307) of the Egyptian Judicature Act provides that “a defendant may not be punished for a fact other than that contained in the remittal order or writ of summons. A person other than a defendant against whom a lawsuit is filed may not be convicted.”
- b. A court may not order public prosecution to take a certain procedure lying within its jurisdiction.
- c. A court may not address criticism against public prosecution or restrict its freedom in its demands and arguments except as by required by the public order and respect of defense rights. On the other hand, a court is not restricted by the public prosecution's demands or its characterization of the crime. Rather, a fact is characterized in accordance with the proper application of the law in conformity with the judge’s conscience.
- d. A public prosecutor, who has investigated into a certain lawsuit or taken a certain procedure, may not sit as a judge and decide on that lawsuit, otherwise, his judgment is deemed invalid.

1) The powers and jurisdictions of the public prosecution and the judiciary: cooperation and interaction.

The legislator in the Arab countries has given public prosecution a judicial character and linked it to the judiciary. Being linked to the judiciary, public prosecution is, thus, separated from the Executive and the Legislative. For example, Article (1) of Act 39/1977 creating and organizing public prosecution in Yemen establishes a judicial authority called “public prosecution” to undertake the powers vested in it by law. Like judges, public prosecution is located within the High Judicial Council, but, in financial and administrative affairs, public prosecution is subordinated to the Prosecutor General under the supervision of the Minister of Justice.

Article (125) of Egypt’s Judicature Act provides that the public prosecutors are subordinated to their seniors and the Prosecutor General, and all of them are subordinated to the Minister of Justice. The Minister has the right to oversee and supervise public prosecution and its members, while the Prosecutor General has the right to oversee and supervise all the public prosecutors. Proceeding from this, some argue that public prosecution is not located within the judiciary, as it is subordinated to the Executive although many guarantees similar to those conferred upon judges are granted to the public prosecutors.

Despite the independence of public prosecution from the judiciary, there is some kind of overlap between them. For example, a public prosecutor is deemed a member of the line-up of the court but has no casting vote in its deliberations. Public Prosecution also calls for holding the general meetings of the courts or attends these meetings and expresses its opinion on matters lying within its jurisdiction to achieve justice.

2) Identifying the extent of aspired independence from the judiciary and the other authorities: total independence or administrative and financial independence.

For public prosecution to be able to assume its functions as desired by the legislator, its independence from the Executive and the Legislative branches is necessary. It should be subordinated only to the High Judicial Council as a branch of the judicial branch while reserving the supervision of its activities to the Judicial Council rather than to the Minister of Justice who belongs to the Executive. When this is achieved, public prosecution becomes an independent authority undertaking its duties without intervention in its affairs or duties. This will definitely serve the interest of the community it represents and whom it defends its interests.

3) International Standards on Judiciary Independence

Independence of the judiciary is a basic requirement for the rule of law. It is a principle that guarantees a fair trial. The judge and the prosecutor must strengthen and materialize the independence of the judiciary both at the individual and institutional levels. They must exercise their judicial functions independently without any inappropriate or unwarranted interference with the judicial process, any restrictions, improper influences, inducements, pressures or threats. They must avoid inappropriate contacts with, or influence from, the executive and legislative powers. They must be also independent from their colleagues in the courts and public prosecution in respect of the decisions they issue, each in his/her jurisdiction. In addition to that, they must promote the public confidence in the judiciary.

A prosecutor's integrity is a fundamental requirement for performing his/her tasks properly. A prosecutor must be well-mannered inside or outside the court, preserve and promote the confidence of the public in his integrity, be disciplined in his conduct, and not make any comments that may affect or prejudice justice administration. A prosecutor must also step down in any lawsuit if he/she feels biased to or prejudiced against a party to the litigation, because of his/her personal knowledge of the facts of the disputed matters, or if he has an economic interest in the results of the lawsuit.

Moreover, a prosecutor must keep self censorship over his conduct in such a way that maintains decent and appropriate appearance; avoid situations that may raise suspicions; not allow his/her social or other relations to influence inappropriately his/her conduct or decision; and not use or divulge secret information he/she obtains in the course of performing his/her duties. A prosecutor or any of his/her family members must not solicit or accept any gifts, rewards, loan or benefit in return of any duties he performs. He/she must not allow the court's personnel or others under his authority to solicit or accept any gifts or rewards.

Another necessary attribute that the prosecutor must enjoy is his awareness of the extent of variety in his society and the differences that exist in race, gender, ethnic and religious origin, social denominations, etc. He/she must show regard and respect to everybody being a party to the litigation; be it a witness, lawyer, court personnel or colleagues in the judicial profession without discrimination. He/she must preserve discipline decency in all the investigation or court sessions and show good manners.

Finally, a prosecutor must seek to increase his/her knowledge and build his/her capacities and skills to improve his/her professional performance.

4) The United Nations Basic Principles on the Independence of the Judiciary, 1985

The UN Basic Principles on the Independence of the Judiciary were ratified by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. The principles indicated that judges are charged with the ultimate decision on the life, freedoms, rights, duties and property of citizens. The independence of the judiciary, thus, must be guaranteed by the State and enshrined in its Constitution or laws. It is also the duty of all governmental and other institutions to respect and observe the independence of the judiciary. The courts should decide on the cases brought before them impartially, and in accordance with the law, without any improper external influences, inducements, or pressures. The judiciary should have jurisdiction over all issues of a judicial nature and have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by the law. There should not be any interference with the judicial process. The judiciary shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions. The members of the judiciary, like other citizens, have the right to freedom of expression, belief, association and assembly; provided, however, that in exercising these rights, judges must always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

The members of the judiciary are bound by professional secrecy with regard to their deliberations and to the confidential information acquired in the course of their duties. Judges should enjoy personal immunity from civil or criminal suits against them in order to not be removed from office or suspended except on grounds of capacity or disgraceful conduct.

III. The Regional and International Standards governing the Role of Prosecutors

1. The United Nations Guidelines on the Role of Prosecutors, 1990

The 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, on 27 August - 7 September 1990, adopted guidelines based on the Universal Human Rights Declaration. These Guidelines stressed that prosecutors play a crucial role in establishing justice. They urged the formulation of standards of performance for prosecutors in such a way that respects and complies with the Declaration's principles, thus, contributing to fair and equitable criminal justice and the effective protection of citizens against crime.

According to the Guidelines, prosecutors should be enabled to acquire the professional qualifications required for the accomplishment of their functions, by improving methods of their appointment and giving them legal and professional training. The states must adopt, as a priority, guidelines on the independence of the judiciary and the selection and professional training of judges and prosecutors.

It is worth noting that some of these guidelines are directed at the states and governments while other guidelines are directed at the prosecutors themselves. According to the first set of guidelines, states are called upon to ensure that the persons selected as prosecutors should be impartial and have appropriate training and qualifications. States must ensure that prosecutors be provided with appropriate education and training after they are appointed and should be made aware of the ideals and ethical duties of their office. The prosecutors should be enabled to perform their professional functions without intimidation, harassment, improper interference. Prosecutors and their families should be physically protected and provided with adequate income.

The second set of guidelines call upon prosecutors to perform their duties fairly, swiftly, impartially and in accordance with the law; respect the human rights and dignity; carry out their functions without bias; and avoid all racial, political or any other kind of discrimination. Further, prosecutors should keep professional matters totally confidential; consider the views and concerns of victims; refuse to use the evidence obtained by recourse to unlawful methods against anyone other than those who used such methods; and take all necessary steps to ensure that those responsible for using such methods are brought to justice.

2. The Bangalore Principles of Judicial Conduct

The Judicial Group on Strengthening the Judicial Integrity adopted the Bangalore Principles of Judicial Conduct in the roundtable meeting of the presidents of the Supreme Courts held in Kasr El Salam in The Hague on 25-26 November 2002. The meeting stressed that the Universal Human Rights Declaration recognizes, as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations. The Bangalore Principles also indicated that the International Covenant on Civil and Political Rights guarantees that all persons should be equal before the courts. The Covenant also stresses the importance of a competent, independent and impartial judiciary in the protection of human rights. Thus, the implementation of all the other rights ultimately depends upon the proper administration of justice. A competent, independent and impartial judiciary is likewise essential if the courts are to fulfill their role in upholding constitutionalism and the rule of law.

The Bangalore Principles also stressed that it is essential that judges, individually and collectively, should respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

3. Mechanisms for Selection of Prosecutors

As indicated in the UN Principles on the Independence of the Judiciary and the Guidelines on the Role of Prosecutors, a person selected as a prosecutor should have integrity and ability with appropriate training or qualifications in law. In addition, states should ensure that the selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice.

4. The regional standards governing the performance and conduct of public prosecutors.

Most democratic systems are keen to include in their constitutions or laws the standards regulating the performance and conduct of the public prosecutors in response to the UN Guidelines and so that the public prosecutors should be enabled to perform their duties properly.

The Problem

There is a pressing need for a modern and advanced concept of the role and function of public prosecution in order to ensure the harmonization of its function as a guarantor of human rights with its role in crime prevention. In a word, an effective, independent and transparent public prosecution would contribute to achieving justice and respect of the rule of law and human rights.

Such a reform requires a reconstruction of the public prosecution institution in the Arab countries. For example, the first national report on the status of public prosecution in Jordan, which was issued in February 2006, concluded that the following were the reasons behind the need for this reform:

1. The lack of a clear authority to which the public prosecution in Jordan is subordinated has adversely reflected on its functions and on the decisions that can be taken to improve and reform its activities.
2. The Public prosecution has no real powers in respect of organizing its activities and developing the capacities of its members. For example, it does not have the power to appoint or transfer prosecutors or hold specialized training courses for them. Furthermore, it cannot provide the financial and human resources with its needs due to the lack of the necessary information including statistics on the number of personnel and crimes broken down into felonies, misdemeanors, etc. All this prevents the public prosecution from achieving an accurate identification of its needs.
3. The fact that the public prosecution is not in control of its functions and affairs, has adversely affected the prosecutors' perception of their role provided in the law.
4. Jordan is committed to the guidelines on the role of prosecutors, (Havana Principles) adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 1990. According to article (10) of the Principles, the office of prosecutors must be completely separated from judicial functions. It is worth noting that Jordan signed these guidelines on 27 August 1990.
5. The National Agenda, in Chapter (5): Justice and Legislation (pages 64-66) adopted the viewpoint that the public prosecution office and the Civil Attorney General Department should be separated from the judicial authority as the nature and function of the trial judge is different from that of the investigating and referral judge and from those of the Civil Attorney General. Further, the skills required for each of these functions are also different. Separating the public prosecution from the judicial

authority would enable it to assume its own affairs. In addition, prosecutors should be given guarantees similar to those accorded to judges to ensure their impartiality and fairness. Efforts should also be exerted in the future to expand the scope of work of the public prosecution in order to include all administrative, customs and tax lawsuits. Virtually, this would create a unified authority in control of all the public prosecution offices. The National Agenda made, in particular, the following remarks and proposals:

a. The Magistrate's Courts Act should be amended so that a magistrate should not have investigation power and, at the same time, the power to decide on the case. Thus, a public prosecutor can re-assume his investigative role.

b. A prosecutor must be authorized to undertake all investigation procedures in all lawsuits and prepare and collect evidence from the first phases of the lawsuit. The court and judicial officers should not be assigned to assume the function of the public prosecutor before the courts.

Some jurists argue that the independence of the public prosecution should be limited to the administrative and financial affairs. According to them, this independence is basically formal rather than substantive. Thus, the head of the public prosecution can be accorded the power to transfer prosecutors and decide on the financial matters of the public prosecution offices. The judicial authority is based on court judges and prosecutors. The Public Prosecution office is a part of the judicial authority. Appointment of judges is made by a royal order upon the nomination by the Minister of Justice and decision of the judicial council (article 14 of the Judiciary Independence Act). On the other end of the spectrum, prosecutors call for introducing the following reforms:

- An Act should be enacted on public prosecution defining its functions, duties and methods of discipline so that it should be separated from the executive authority.

- The Public Prosecution's supporting departments (judicial officers, forensic medicine, judicial enforcement) should be subordinated to its competence. Alternately, article (22) of the Criminal Procedure Code concerning the power to impose disciplinary penalties against the judicial officers should be amended.

- There should be introduced separate posts for "the investigating judge" and "the referral judge". The investigating judge would supervise the public prosecution's activities. The referral judge would refer the case to the competent court. Thus, the referral judge would enjoy legal independence from the investigating judge (like the situation in the 1950s).

- There should be introduced a post for "the punishment-application judge" who would be authorized to propose the ideal punishment that is proportionate to the convict's criminal danger, personality and capabilities.

In conclusion, there is no clear unified authority, if any, supervising the public prosecution's activities in Jordan. The Public Prosecution does not have broad powers in respect of regulating its activities and building the capacities of its members. For example, it does not have the power to appoint or transfer the prosecutors, nor does it

have the power to increase its financial and human resources. All these reasons show that there is a pressing need for restructuring the public prosecution.

The restructuring of the public prosecution will largely contribute to promoting and enhancing the effectiveness and efficiency of its activities and develop the capacity of the departments located within the public prosecution.

Restructuring should take into account the following:

1. The true concept of independence of the public prosecution from the judiciary should be activated. The focus of this concept is that none of them should interfere with the activities or affairs of the other. No authority may direct any orders or instructions to the public prosecution in respect of performing its legal tasks and duties. However, the public prosecution can consult and exchange views and ideas with other agencies.
2. The public prosecution must have an appropriate legal framework to establish the rules of justice. It is important to mention that the restructuring of the public prosecution does not imply granting privileges to certain members of it.
3. The head of public prosecutions should be given real powers with regard to the affairs of their institution. For example, they should have the power to transfer and distribute assignments among prosecutors.
4. Specific continuous training sessions should be given to prosecutors in such a way that takes into account the special nature of their functions. Such training could be either considered as a pre-requisite for their appointment or done in parallel to their performance of tasks. These tasks most often pertain to new, organized and transnational crimes, which threaten economic and political development; corruption crimes as well as information technology and money laundering crimes. Specialized training should also be given to prosecutors on criminal justice, public prosecution role and functions, Juvenile Act, and criminal investigation procedures.

IV. International Experiences concerning the Role of Prosecutors

1. The Legal System adopted in International Criminal Courts

In the last two years, the international community has witnessed the establishment of several international criminal courts for the purpose of bringing perpetrators of atrocities to justice, and putting an end to their crimes. Chief amongst these is the International Criminal Court (ICC), which was established under the Rome Statute, and adapted by the UN Rome Diplomatic Conference of Reporters for the Establishment of the ICC on 17 July 1998. The ICC became operational on 1 June 2001, and its seat was and is still situated in The Hague, Netherlands. It has

jurisdiction to investigate and punish the most dangerous crimes affecting the international community; namely, genocide, crimes against humanity, war crimes, and aggression crimes.

The ICC has an international legal identity and has the full legal competence to practice its functions and achieve its objectives in the territories of any party state. The ICC may also exercise its competence in the territories of a state not party to the Statute by virtue of special agreements. As to the ICC's time related jurisdiction, it has jurisdiction only over the crimes committed after the Rome Statute became effective. However, if a state becomes a party to the Statute after it takes effect, the ICC can exercise its competence only over crimes committed after the Statute takes force in that particular state; this would be otherwise if the state has lodged before that time a declaration under article 12 (3) of Rome Statute accepting the jurisdiction of the ICC.

The ICC is composed of a Presidency, Appeals Division, a Trial and Pre-Trial Division, the Office of the Prosecutor, and the Registry. According to the Rome Statute, the Office of the Prosecutor acts independently as a separate organ of the Court. It is also responsible for receiving referrals and any substantial information on crimes within the jurisdiction of the Court for the purpose of examining and conducting investigation and prosecution before the Court. A member of the Office must not seek or act on instructions from any external source.

The Office is headed by the Prosecutor who has full authority over the management and administration of the Office, including its staff, facilities and other resources. The Prosecutor is assisted by one or more Deputy Prosecutors who serve on a full-time basis. The Prosecutor is elected by a secret ballot through an absolute majority of the members of the Assembly of the States Parties. The Deputy Prosecutors are elected in the same way from a list of candidates provided by the Prosecutor.

2. The International Criminal Tribunal for the Former Yugoslavia, 1991

The International Criminal Tribunal for the former Yugoslavia was established in 1991 to punish the persons responsible for the atrocities committed in former Yugoslavia. This court exercises personal jurisdiction over the people responsible for the flagrant violations of international humanitarian law that occurred in former Yugoslavia. The territorial jurisdiction of the Tribunal is limited to the territorial land, air, sea of former Yugoslavia and the Communist Federation. It has temporary jurisdiction from 1 January 1991.

According to Article 17 of its Statute, the Prosecutor is responsible for the prosecution of persons responsible for the serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991. The Prosecutor acts independently as a separate organ of the International Tribunal, and he/she must not seek or receive instructions from any government or any other source. He/she is appointed by the Security Council upon nomination by the Secretary-General.

3. The International Criminal Tribunal for Rwanda

Acting under Chapter VII of the United Nations Charter, the Security Council created the International Criminal Tribunal for Rwanda (ICTR) to prosecute the persons responsible for genocide and other serious violations of the international humanitarian law that was committed in the territory of Rwanda. It may also prosecute the Rwandan citizens responsible for the genocide and other similar violations of the international humanitarian law committed in the territories of the neighboring states between January 1994 and 31 December 1994. The ICTR decides on the crimes committed on the territorial land and air of Rwanda as well as in its neighboring states. These crimes involve serious violations of the international humanitarian law committed by the citizens. The ICTR had temporary jurisdiction from January 1994 to December 1994.

The ICTR was established particularly to prosecute the persons who committed the crime of ethnic cleansing. The term “ethnic cleansing” means the crime of genocide committed against all or part of a particular national, ethnic, or religious group. It also prosecutes the persons responsible for crimes against humanity such as premeditated murder, genocide, slavery, displacement, imprisonment, torture, and rape. The ICTR also exercises jurisdiction over the violations of article 3 in both the Geneva Convention and its second protocol which includes for example assault against life, health, physical and mental integrity of persons, particularly murder. Additionally, it includes the cruel treatment such as torture and mutilation or any other form of physical and collective punishment, taking hostages, terrorist attacks, violation of human dignity, looting, and delivering sentences and execution of death sentences before a sentence is delivered by an ordinary court.

4. The specific powers and jurisdictions granted to public prosecutors in international criminal courts.

A prosecutor in the above-mentioned ICCs initiates investigation ex officio or on the basis of information obtained from any source. He/she evaluates the information received or obtained and decides whether there is sufficient reason to proceed with the investigation. For this purpose, the prosecutor has the power to question suspects, victims, and witnesses; gather evidence and conduct investigation at the crime scene; and may if necessary request help from the authorities of the involved state. When the prosecutor finds that the accusation is serious, he/she prepares an indictment and submits it to the Chamber's judge.

Having evaluated the available information, the prosecutor initiates investigation unless he/she decides that there is no reasonable reason for taking legal action under the court's Statute. If he/she finds, as a result of the investigation, that there is no sufficient reason for prosecution for any of the reasons provided in the Statute, he/she must notify the Pre-Trial Chamber and the state requesting the referral under Article (14) - or the Security Council in any of the cases mentioned in paragraph (b) of Article (13) of the Court's Statute – of the result he/she concluded and the grounds of these results.

A prosecutor may at any time reconsider whether he/she must initiate investigation or prosecution on the basis of new facts or information. For reaching the truth, he/she

may broaden the scope of investigation to include all facts and related evidence to determine whether there is criminal liability under the Statute. A prosecutor may conduct the investigation in the territory of the involved state; request the appearance of the suspects, victims, and witnesses and question them; appeal for cooperation from any state or international governmental organization; take any necessary arrangements or conclude any necessary agreements insofar as they are consistent with the Statute; and take or request to take the necessary arrangements for ensuring the secrecy of the information, protection of any person, or preservation of evidence.

If after closing the investigations, there was substantial evidence that the suspect has committed any of the crimes attributed to him/her, the prosecutor submits the indictment to the Pre-Trial Chamber for approval. The Pre-Trial Chamber should certify that the suspect has been notified of the crimes attributed to him/her and of his/her rights under the Statute including his/her right to request temporary release pending trial. In case of approval, the Pre-Trial refers the indictment to a first instance court of the ICC for trial.

5. The relationship between the prosecuting authority and the judge in international criminal courts.

There is a relationship of cooperation and overlapping among the prosecutor's and judge's functions in the Statutes of all the ICCs. A prosecutor conducts the investigation and decides on the case in the light of that investigation. He then submits his decision for approval to the judges of the Pre-Trial Chamber. The Chamber issues upon the prosecutor's request, decisions and orders to preserve the evidence and protect the persons who need such protection. This happens only if the Chamber is convinced of the evidence and information submitted by the prosecutor. It may also permit the prosecutor to amend the charges after the indictment has been approved, however the defendant should be notified of that amendment. Thus, obviously, there is overlapping and cooperation between the functions of the prosecutors and the judges in the ICCs.

V. Objectives

The main objective of the workshop is to increase the knowledge of the public prosecutors about the legal organization of public prosecution. Therefore, the focus of the workshop is placed on the legal position of public prosecution both in the countries where it practices the inquisitorial and accusatorial powers and where it initiates the criminal lawsuit. Furthermore, light will be shed on the role of public prosecution in the international criminal systems.

Other objectives can be outlined as follows:

1. Developing a modern and advanced concept of the role and function of public prosecutions, which ensures conformity between the function of public prosecution as a guarantor of human rights and its crime prevention role.
2. Enhancing the efficiency and effectiveness of the public prosecution including raising its performance and productivity.
3. Regulating public prosecution's activities in the light of the experiences of the advanced countries in this connection.

VI. Participants, Venue, and Date:

The conference is organized in cooperation between the UNDP-POGAR and the Ministry of Justice in the Hashemite Kingdom of Jordan.

It shall be held in Le Meridien hotel, Amman, Jordan on the 13th of November 2007 and will continue for one day and a half. Sessions will start at 9.00 am.

For more information on logistical matters, please contact Ms. Lina Ghoussoub on Tel.: 009611981641/43 or at lina.ghoussoub@undp.org

VII. Methodology:

- Three sessions will be held on the first day and two sessions on the second day. Each session will last for 2 hours.
- The session chairman is responsible for managing the session. The speaking time of the chairman/reporter is 10 minutes.
- The time allocated for each speaker is not more than 20 minutes after which time is opened for discussion and answering the questions