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### **Development of The Judiciary in Syria**

1. The very title of this session of the conference implies that the judiciary in Syria suffers from certain problems which should be addressed and to which remedies should be found.
2. Since his first mandate, Syrian President Bashar Al-Assad has adopted a policy of renovation and modernization of the Syrian economy. As part of this process, significant changes have been introduced in the Country's legislation. New laws permitting the establishment of private banks and insurance companies, along with the offering of real opportunities for both foreign and Arab investors to invest almost in all sectors of the Syrian economy, are high profile examples of such changes.
3. To further succeed in this policy, real reforms in many sectors including the judiciary are needed. The first question an investor asks before investing in a country is about the performance of the judicial system. A corrupt or inefficient judiciary dissuades investors from doing business. the fact that Syrian government called upon a number of French legal experts to study the country's judicial and administrative systems, and make a number of recommendations to improve their performance is an indicator of the recognition that the highest levels of the government, have recognized the need for judicial reform.
4. The organization of Syria's judiciary was copied from the French system. Since Syrian independence, all constitutions have based the relations between the legislative, executive and judicial powers on the principle of separation of powers. Article 131 of the 1973 constitution provides That:

“ The judicial power is independent”, and “the President of the Republic shall guarantee this independence assisted by the Higher Judicial Council”. Furthermore, Article 133 states “ and in its that: “Judges are independent; the only authority they are submitted to is the Law” and “the honor, conscious and integrity of the judges guarantees the rights and liberties of the people”.

### **Factors affecting the performance of the judiciary**

5. The performance of the Syrian judiciary was pretty good in the years following independence. Over the last twenty years, however, certain factors have started to negatively affect its performance.

6. The trend to increase the executive’s influence over the judiciary has appeared little by little. One of the ways political authorities can interfere in the judiciary is via the manipulation of judicial appointments, salaries and conditions of services. Such interference risks to make the judges vulnerable to all kind of pressure emanating from the executive.

7- Another form of interference is to perpetuate a situation of exception which permits the executive to exercise real influence on the judiciary. A prime example here is the situation pertaining to the State Council, an administrative jurisdiction specializing in settling disputes between the Administration and plaintiffs. It was initially attached to the President of the Republic. Due to the unique circumstances prevailing after the collapse of the United Arab Republic in 1961, it was attached to the government where it still remains.

8. Another factor affecting the performance of the judiciary is the unbalance between the level of income and expenses in Syria. The salary of Syrian judges is not commensurate with his position, experience and performance. This has a dramatic effect on the judiciary . First, it becomes an unattractive career option for the best and brightest most suitable for recruitment to those who are good elements to be recruited to fulfill that function. Secondly, it encourages bribery under different forms involving some judges, lawyers and employees of the judicial administration.

9. A third factor is the low level of knowledge that the Syrian universities grant to those graduated from their law schools. Already having a BA in law is a necessary but insufficient requirement to have access to the judicial function. Up to the recent creation of the Institute of Judicial

Training of the Ministry of Justice, there was a complete absence of any professional training.

10. Delay in legal proceedings constitute a fourth factor affecting adversely Syrian judiciary. In civil and criminal judicial proceedings, one of the delay causes, is the decision of the government to stop the recruitment in the different Syrian administrations including the judiciary during more than a decade. This resulted in a gap between judges of high rank and a quite smaller one, and in a delay in examining accumulated cases. In the State council, one should add to this factor another one, which is the deterioration of the quality of civil servants in the Administration and, the fear they have to take any decision to settle problem according to an establish jurisprudence thus preferring that those who deal with the Administration file a case before the State Council against their administration. Consequently there is a considerable number of cases before the State Council causing thus a considerable delay in examining them. Certain cases take up to 8 to 9 years before a final decision is rendered.

### **Remedies destined to improve the performance of the Syrian Judiciary**

11. Given the prevailing situation, remedies should be thought of on two levels; long and term short term.

#### **Long term remedies**

12. Any reform must devote considerable resources not only to developing well qualified judges, but also lawyers and all other judicial administration employees.

13. Recruitment of the judiciary should be carried out by an independent body through a competitive process. Candidates should hold a bachelor of Arts in Law as well as a diploma of an Institute specialized in professional formation of judges, their social environment should be considered carefully. Members of the judiciary should have also access to legislation, cases and court procedure and receive continuous training through out training throughout their careers. Young and promising law students should be identified and offered scholarship, first at a national faculty of law and then for a master or doctorate in law abroad.

14. For the lawyers, the conditions of their admission at the Bar association should be reviewed. In addition to their BA in law, they

should obtain a special diploma from an institute specialized in the training of lawyers. The Bar Association should also check their social environment.

15. A professional training program should be set up by the Ministry of justice or by a faculty of law to prepare judicial administration employees and entrance to this field should be via a competitive process.

16. It is crucial that the government adopts plans aiming at increasing the income of Syrian citizens to make it matching their expenses. This will contribute significantly to eradicate bribery in the judiciary. In the same time it permits government to insure judges and employees of the judicial organization convenient salary and pension on retirement.

17. Legislative reform is more than necessary. to start considering revisiting certain of our laws in order to give full application to the principle that a person shouldn't be trailed but by his natural judge. On the other hand, it is important to review all our laws and their ulterior amendments.

18. A number of bodies presently exercise judicial power outside the higher Judicial Council control. This include the Commission of Determination of Salaries and Wages for Agricultural Labor, the Superior Arbitration Council for Agricultural Work, and the Commission of Labor Dismissal. The members of such jurisdictions are far from having the conditions required to exercise the judicial function and their competencies should be transferred to regular tribunals.

19. A considerable number of amendments have been made to the laws of Syria including the criminal, civil , evidence, and of civil procedure codes. Amendments to these laws have become so numerous they are difficult to embrace. These laws need to be revised to unify and develop what is similar in them. The possibility of inviting some prominent Arab lawyers to participate in this process should not be ruled out.

20. Careful consideration should be given to reforming civil procedures in order to reduce the opportunities to postpone hearings and introduce summary proceedings, along with limiting certain proceedings to two courts appearances. This will help eradicating any chance of using the procedures on purpose or abusing procedural rights. Such use or abuse generates corruption and lets debtors of bad faith push their creditors to sue them.

21. To insure full independence of the judiciary, it is also urgent to consider the reorganization of the Higher Judicial Council. The President of the State Council and the President of the Department of State Lawyers should be added as members. The council is presided over by the Syrian President but in his absence the presidency should go to the president of the Court of Cassation or the President of the State council. The majority of the Council members should be independent judges. In addition to these measures, the legislation attaching the State Council to the Cabinet of the Prime Minister should be nullified. This Council should belong completely to the Judiciary and the same rules that apply to civil judges should apply to administrative judges.

### **Short term remedies**

22. Those who are to be recruited on the short term, they should fulfill three conditions at least: having obtained the best notes at the faculty of law, having passed through a competition, and their social environment having been checked. In addition to that they should be graduated from the Institute for judicial training of the Ministry of Justice.

23. As far as the government decision not to recruit civil servants including judges during more than a decade resulted in the lack of judges able to fulfill certain positions in the judicial hierarchy, one of the possible solutions might be to engage some Arab judges, having a high rank in the judiciary of their countries, to fulfill those positions on contractual basis.

24. While the judges enjoy full immunity in carrying out their judicial duties, measures should be taken to remove immunity in case of corruption or other criminal actions. The judiciary's inspection corps should be reinforced and reactivated and all allegations of corruption rigorously investigated. Cases of corruption should be publicly disclosed if the investigation is conclusive.

25. The Bar Association should exercise tighter control over the conduct of lawyers in their dealings with judges and judicial administration employees. A mechanism to that purpose exists in the association's regulations and it should be reactivated vigorously.

26. In terms of transparency, measures should be taken to ensure the full application of law No. 54/1958 relating to illegal earnings imposing on all

civil servants including judges and judicial administration employees to disclose periodically their assets.

27. Reform of the judiciary cannot be properly achieved if it is not part of a comprehensive reform vision. The judiciary does not exist in isolation from its surrounding environment. Administrative reform is the twin of the judicial reform. They should be realized together in a greater plan destined to modernise Syria.

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