

Initiative on Good Governance for Development (G/D) in the Arab Countries:

Theme 5: Role of the Judiciary and Law Enforcement¹

The reform of the legal system is recognized as an essential component of good governance. Recently some Arab countries have initiated the review of existing laws with a view to modernizing those laws that govern business transactions, civil affairs and human rights and the rights of women in particular. The objective is to weed out archaic and unnecessary laws and replace them with new laws that correspond to international standards. Globalization and the shift to market economy by most Arab countries have necessitated the introduction of new laws to facilitate the management of national economy, provide needed protection of private investment, both domestic and foreign, privatize public enterprises and respect and apply international conventions.

The reform however, should include more than just legal review and modernization. There are other important ingredients in the reform process. These include: the system of litigation, access to justice, safeguarding human rights in investigation and prosecution, modernizing the courts, introducing and utilizing information technology to increase transparency and facilitate access to information, the renovation of knowledge both for judges and magistrates, the training of court staff and administrative assistants. The issues of remuneration for judges, the enhancement of integrity and accountability and above all the independence of the judiciary, all need to be addressed if the reform is to take roots.

The ability to enforce the laws is another dimension of legal reform. Many laws remain dead letters for a number of reasons, including the lack of participation and consultation with key stakeholders. The gap between legal pronouncements and enforcement remains wide. The enforcement machinery may need to be overhauled and re-equipped with new tools, knowledge and skills. Integrity, transparency and accountability need to be ingrained into the enforcement process to increase credibility, instill the respect of the judiciary in Arab countries. The veracity of the legal system, the integrity, transparency and speed of litigation and the capacity for enforcing judgments are essential areas in the investor's assessment of the business environment.

Proposed Strategic Policy Issues:

- Achieving genuine reform that takes into account the specific conditions of the country's cultural and legal heritage and sources of jurisprudence.
- Balancing these factors with the demands of globalization, application of free market economy, responsibilities of the country vis à vis the international community and its obligations to the regional and international organizations.
- Ensuring the independence of the judiciary without foregoing the need for accountability.
- Ensuring that checks and balances are in place without political interference.
- Balancing the pressures of public interest groups, particularly conservative religious institutions, with the requirements of modern management of the system of justice.
- Reforming the administrative systems and procedures in court management, the introduction of information technology at large scale and the necessity of improving the capacity and quality of educational and training institutions.

- Ensuring that the system of appointing and promoting judges, magistrates, court administrators and legal aides is carried out according to the best standards of competitive practices without political interference. Mechanisms, rules and procedures for carrying out these tasks need to be improved and strengthened.
- Reviewing the salary and remuneration system of all who work in the management of justice with a view to ensuring integrity and motivating the human resources for increased productivity, without raising the expectations of professionals in other fields.
- Increasing the number of highly trained judges in new fields that are brought about by modern economic systems and ensuring that educational and training institutions are capable of handling these new areas.
- Balancing the needs of reforming the legal system and with available financial resources; this necessitates efficient programming to match resources. The political will to support reform is an essential ingredient for success.

Sample of Possible Questions for Discussion:

Each country will devise the questions that best fit its circumstances. The following generic questions may be useful for launching the discussion of strategic issues:

- What is the most relevant priority in the legal reform process? Should concentration be on laws affecting the economic dimensions of governance?
- What are the means for effective participation of the private sector and the civil society in consultation during the process of legal drafting?
- What are the practical means for alleviating the burden on judges and accelerating court procedures and the administration of justice?
- What are the relevant best practices and lessons learnt from others that could be absorbed into the national system in the area of job performance evaluation, developing knowledge and skills, the role of the media and its impact on public opinion regarding the judicial process, etc.?
- How best to allow for access to information without jeopardizing the right to privacy and national security?
- How best can reform of the judiciary and legal enforcement be monitored?
- What are the proper mechanisms and effective means for evaluation and impact measurement of legal reform?

¹ *This Framework for Policy Dialogue* includes priority issues gleaned from international experience. This is not an exclusive listing of issues; countries may change or add their own priority issues. The purpose is to serve as a reference point, a guide for policy discussion. Working Groups in Arab countries may find them useful as they embark on the implementation of activities related to the six themes of the GfD Programme.