



National Report on the State of the Judiciary
in the Yemeni Republic

Workshop

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The Judiciary in the Yemeni Republic

Introduction

The issue of judicial reform in the Yemeni Republic has taken on a new dimension after the Yemeni authorities became aware that achieving economic development requires an increase in private sector investments, which would never be able to invest more or expand its scope of activities in Yemen or any other country in the absence of the right elements, among which are enhancing the role of a fair, impartial and effective judiciary and a reform of the judicial system which represents the only and optimum safeguard for investors, in addition to the need to implement administrative reforms to help create an investment environment.

In Yemen, the judicial body in particular, and the judicial system in general, are experiencing many problems, most important of which is the issue of separation of powers and the independence of the judiciary, judges and courts, as well as the inability of the judicial bodies to insure a speedy and effective administration of justice for the litigating parties.

The Yemeni Government did in fact endorse a reform plan for the judicial system at the end of 1997. It is still pending implementation to-date. At the conclusion of this report, we will review the steps that the government took in this regard.

We will begin this study with a comprehensive review of all the legal texts that deal with the judiciary in the Yemeni Republic.

SECTION ONE: ORGANIZATION OF THE JUDICIARY

The judicial organization in the Yemeni Republic as mentioned above is governed by the provisions of Law No. 1 of 1991 concerning the Judicial Branch.

I. The Ordinary Courts

In the Yemeni Republic, the function of the judiciary is undertaken by the following courts:

1. Courts of First Instance
2. Courts of Appeals

3. The Supreme Court

1. The Courts of First Instance

The number of courts of first instance, and their sites and jurisdiction, are determined by virtue of a decision by the Supreme Judicial Council upon the recommendation of the Ministry of Justice and the Chief Justice of the Supreme Court. The Court of First Instance is presided over by a judge who is responsible for managing its work, administering its affairs, and supervising the uninterrupted workflow therein. In the absence of such judge, or in case of his inability to perform his functions, another judge shall act on his behalf upon an assignment by the President of the Court of Appeals.

The Courts of First Instance are composed of a single judge or three judges if the required number is available therefor.

The Court of First Instance has jurisdiction to hear all cases, and their judgments are subject to appeal before the competent Court of Appeals except as otherwise provided for by law.

The Supreme Judicial Council, upon the recommendation of the Minister of Justice, may set up specialized courts of first instance in the governorates as necessary.

2. The Courts of Appeals

Courts of appeals have been established in every governorate pursuant to the judicial Branch Law, provided that the number of courts of appeals and their branches shall be determined by virtue of a decision by the Minister of Justice after consultation with the Chief Justice of the Supreme Court and the approval of the Supreme Judicial Council. The Court of Appeals is composed of a president, and one or more vice-presidents from among the presidents and judges of the appellate divisions. The president assumes the task of managing the court, administering its affairs and overseeing the regular flow of work therein. He has the right to delegate his authorities to the first vice-president, followed by the second and so forth. In his absence or inability to perform his functions for any reason whatsoever, the vice-presidents shall act on his behalf. However, in the event of inability of any one of the presidents of the appellate division to perform his functions for any reason, the most senior judge of the same rank shall act on his behalf.

The ruling panel in every one of the divisions of the Courts of Appeals consists of three judges.

The Court of Appeals has jurisdiction to decide cases that are appealable by law, judgments rendered by the Courts of First Instance, as well as all other cases appealable by any other law before the court of appeals.

Republican Decree No. 387 of 1999 established in addition to the specialized commercial court of first instance, one or more commercial divisions at the court of appeals in the capital and the courts of appeals in the governorates, consisting of three judges with jurisdiction to decide appeals brought against judgments rendered by the specialized commercial court of first instance.

Furthermore, a specialized appellate criminal division was established at the court of appeals in the capital by virtue of Republican Decree No. 391 of 1999, with jurisdiction to decide appeals brought against judgments rendered by the specialized criminal court of first instance with respect to the crimes provided for in said Decree.

3. The Supreme Court

The Judicial Branch Law provided for the establishment of a supreme court. In accordance with Article 10 of said law, it shall be the highest judicial body in the Republic. The Supreme Court is composed of a chief justice, one or more deputy chief justices and a sufficient number of justices to be determined by virtue of a decision by the Minister of Justice after consultation with the Chief Justice and upon the approval of the Supreme Judicial Council.

The Chief Justice of the Supreme Court assumes the functions of managing the court, as well as administering its organizational, administrative and financial affairs. He also oversees the workflow at the various divisions of the Court, and may preside over any one of these divisions or any judicial body within any one of said divisions. He has the right to entrust this function to any of his deputies. Moreover, the Chief Justice sends general judicial bulletins to all judges at all the courts, which contain remarks and observations that were concluded as a result of the Supreme Court's examination of the cases on review. Furthermore, he issues directives and decisions that are binding on all the courts. In addition, the Chief Justice calls the Supreme Court's General Assembly to convene, and attends and presides over its meetings. He submits his proposals and expectations to the General Assembly and the Supreme Judicial Council, which concern evaluating the judicial work of the courts. The Chief Justice of the Supreme Court grants leaves to the justices and staff of the Supreme Court and may take whatever measures are necessary against the Supreme Court staff with respect to any negligence on their part in performing their job duties.

In the event of inability of the Chief Justice to carry out his job functions, the First Deputy shall act on his behalf; and if the First Deputy is unable to perform his functions, he will be replaced by the most senior deputy.

The Supreme Court consists of eight divisions as follows:

- Constitutional division
- Civil division
- Commercial division
- Criminal division
- Personal status division
- Administrative division
- Military division
- Appeals review division

The divisions of the Supreme Court are structured by virtue of a decision issued by the Supreme Judicial Council after consultation with the Minister of Justice and the Chief Justice of the Supreme Court.

The jurisdiction of the Supreme Court also covers the following matters:

- Review of the constitutionality of laws, statutes, regulations and decrees
- Decide jurisdictional disputes between judicial bodies
- Decide electoral appeals
- Decide appeals brought against final and peremptory judgments in civil, commercial, criminal and personal status matters, as well as administrative disputes and disciplinary actions
- Judicial review of all the courts in the Republic
- Decide appeals for cassation of final judgments and in cases involving military crimes
- Conduct the trials of high-level officials (subject to the provisions of Articles 101 and 111 of the Constitution)
- In addition to any other functions as prescribed by law

The ruling panel in every one of the Court's divisions is composed of five justices, with the exception of the constitutional division which is composed of seven justices. The panels issue their rulings by an absolute majority vote of their members.

The Judicial Branch Law decides the jurisdiction of all the divisions as follows:

The constitutional division decides the appeals brought against the constitutionality of laws, regulations, statutes and decrees, as well as electoral appeals. In addition, trials of high-level officials are conducted before this division.

The civil division decides appeals for cassation against final and peremptory judgments and decisions issued in civil, commercial, administrative and personal

status cases, with the exception of criminal cases. Moreover, it decides jurisdictional disputes between the various judicial bodies, whether negative or positive, and motions for change of venue and all other motions that legally fall within its jurisdiction.

The criminal division decides appeals for cassation against judgments and decisions issued in criminal cases. It also rules on motions for change of venue in criminal cases and any other motions that legally fall within its jurisdiction.

The commercial and financial division decides appeals for cassation against judgments and decisions issued in commercial and financial cases, in addition to motions for change of venue in commercial and financial cases and any other motions that legally fall within its jurisdiction.

The persona status division decides appeals for cassation against judgments and decisions issued in personal status cases, in addition to motions for change of venue in personal status cases and any other motions that legally fall within its jurisdiction.

The administrative division decides appeals for cassation against judgments and decisions issued in administrative cases, in addition to motions for change of venue in such cases and any other motions that legally fall within its jurisdiction.

The military division decides appeals for cassation against final, peremptory judgments and decisions issued in military cases, in addition to motions for change of venue in cases involving military crimes and any other motions that legally fall within its jurisdiction.

The appeals examination division decides the soundness of the appeals brought before the court to ensure that they are in proper form and fulfill all the legally stipulated requirements.

Finally, an expanded judicial body is established at the Supreme Court, composed of the Court's Chief Justice, his deputies and all the justices of the Court called the General Assembly, which convenes upon the summons of the Chief Justice or at the request of one-fourth of its member justices. The Judicial Branch Law determines the summons procedure, session formalities and the decision-issuing method therein.

The General Assembly reviews cases that are brought to it by any one of the Court's divisions, if such division was of the opinion to depart from a judicial interpretation previously established by the Supreme Court. In addition, the Assembly assumes the function of organizing the workflow at the various divisions.

II. Specialized Courts

In addition to the courts of first instance of general jurisdiction, several specialized first-instance courts were established:

1. Juvenile Court

It is a specialized first-instance court with jurisdiction to hear cases involving juveniles, established pursuant to Article 49 of the Judicial Branch Law. The organization, structure, jurisdiction and trial procedure of this court are governed by the provisions of a special law concerning juveniles, which is Republican Decree-Law No. 24 of 1992 that gave the Supreme Judicial Council the power to establish this court in the capital and all the governorates of the Republic upon the recommendation of the Minister of Justice. The Juvenile Court is composed of one judge and two experts who are specialists in the field, provided that one of the two is female as stipulated by law.

2. Specialized Criminal Court

A specialized criminal court was established to hear cases involving crimes of armed robbery, abduction of foreigners, sea and air piracy, and crimes against oil pipelines, oil installations and economic establishments that are public utilities ... in addition to numerous crimes provided for in Republican Decree No. 391 of 1999 issued on 17/11/1999.

3. Specialized Commercial Court of First Instance

A republican decree bearing the number 378, dated 6/1/1999, was issued, which provided for the establishment of one or more specialized commercial courts of first instance in the capital Sanaa and the capitals of the four governorates (Aden, Hudaida, Hadramout, Ta'iz), to be composed of one judge or three if available. This court has specific jurisdiction to hear disputes in which the amount in dispute exceeds two million riyals, and concern cases involving securities [commercial papers], bankruptcy, banks, relations, trade-names, and those involving foreign companies where one of the parties is a foreign entity.

III. The Public Prosecution

The Judicial Branch Law addressed the matter of the establishment and organization of the public prosecution, as did Republican Decree-Law No. 13 of 1994 concerning criminal procedure. Upon review of these two legal texts, it appears to us that they were implicitly superseded by Supreme Council Decree-Law No. 39 of 1977.

The Judicial Branch Law defines the public prosecution as a judicial body responsible for investigation and referral in criminal cases in accordance with the procedures set forth in the criminal procedure code. The public prosecution specifically has the authority to prosecute criminal cases and exercise its procedure, execute penal sentences and decisions, investigate crimes, gather evidence, and render opinion in appeals brought against criminal sentences and decisions. It also intervenes either imperatively or optionally in all matters provided for by law.

Lastly, it is responsible for the supervision and inspection of detention centers, prisons and juvenile correctional institutions to ensure the legality of arrest and detention procedures.

Furthermore, the Judicial Branch Law determines the hierarchical structure of the public prosecution, atop of which sits the Minister of Justice. The law states that the members of the public prosecution shall be subordinate to their supervisors according to rank, up to the Attorney General followed by the Minister of Justice. However, the law also states that the public prosecution shall be judicially answerable to the Supreme Judicial Council.

Members of the public prosecution have the same rights and obligations as judges, particularly with respect to the conditions for appointment and the provisions regarding inspection, grievances against decisions, accountability and disciplining, unless otherwise excluded by a special provision of law.

The public prosecution is composed of the Attorney General, First Solicitor-General, an adequate number of solicitors-general, chief prosecutors, and assistant prosecutors. Within the office of public prosecution, there are a number of clerks, administrators and employees. Moreover, the judicial police officers are part of the public prosecution to the extent of their judicial policing authorities as given to them by law and within the limits of their job duties. The corps of judicial police officers is basically made up of the members of the public prosecution, governors, directors of general security, directors of directorates, police and security officers, chiefs of guard units, police precincts and checkpoints, and others who are assigned judicial police functions, such as the officials in charge of seizures in the villages, and captains of sea and air vessels. This is in addition to all employees who are granted such authorities by law and any other agency authorized by law to perform judicial police functions.

After this review of the courts of various types and levels, we will now explore the issue of whether or not there is a financial judiciary in the Yemeni Republic.

IV. The Central Agency for Audit and Control

Republican Decree-Law No. 39 of 1992 established a supreme audit body, which is a corporate person, known as the Central Agency for Audit and Control. It is a part of the Presidential Council. The purpose of this agency, through its exercise of the functions entrusted thereto by law, is to achieve effective audit and control of public monies and ensure the good management thereof as it relates to economy, efficiency and effectiveness. Moreover, its purpose is to contribute to enhancing the performance of the institutions that are subject to its review and play an active role in enhancing and raising the level of performance of the accounting and auditing profession in the Yemeni Republic.

The entities that are subject to the Agency's oversight are all the institutions which make up the administrative organization of the State, local administration institutions, as well as economic institutions and all the facilities that are a part of any of the above. This is in addition to the local councils and their constituencies, and the institutions that receive financial aid. Furthermore, among the entities subject to the Agency's oversight are any other businesses or establishments that are deemed subject to Agency review pursuant to the applicable laws or local executive decisions, or whose monies are deemed by law to be the property of the State.

The Agency is composed of a president who is appointed at the rank of minister by virtue of a decree issued by the Presidential Council. There is also a vice-president who is appointed at the rank of deputy minister by virtue of a decree issued by the Presidential Council upon the proposal of the Agency's president, and a number of deputies and directors of central administrations, who are appointed by virtue of a decree issued by the Presidential Council upon the proposal of the Agency's president. This is in addition to general administration directors and a sufficient number of specialist members.

Upon our review of the work procedures of the Central Agency for Audit and Control, it is obvious that this Agency does not have any judicial capacity. It is an agency that is part of the executive branch, i.e. it is under its control and actually works for it. It does not issue any decision of a judicial nature, and its members are neither judges nor students at the Judicial Institute. Contrary to some Arab countries that have established public audit oversight agencies of a judicial nature, the Yemeni Republic has chosen this type of agency which has no place in our report on the judiciary in the Yemeni Republic.

At the conclusion of our review of the judicial organization in the Yemeni Republic, we present some statistical data and indicators concerning the judiciary, which generally show some of the problems facing the judicial system in the Yemeni Republic:

- Number of judges set in the cadre:	974
- Number of trainee judges:	52
- Number of judicial assistants:	40
- Number of cases files in 2003:	123,143
- Number of cases decided:	66,480

In comparing the number of cases filed to the number of cases decided, it appears that the number of cases decided is approximately 54% of the cases filed, which indicates that the problem of judicial caseload will get worse year after year, especially because the number of trainee judges represents only 3% of the number of active judges. This is without taking into account the number of judges who will soon be retiring or resigning for any other reason. On the other hand, the figures we received reveal that the number of judicial assistants is very small compared with the number of judges on the one hand, and with the number of cases filed on the other hand. Based on the above, we can conclude that the Yemeni Republic is suffering from a problem of suffocation due to the high number of cases on the one hand and insufficiency of human resources on the other hand, whether at the level of judges or judicial assistants. It does not appear to us that the State is exerting enough effort to find a solution to this problem that is getting worse.

SECTION TWO: ADMINISTRATION OF JUSTICE

1. Ministry of Justice

The Ministry of Justice in the Yemeni Republic is considered among the primary and long-standing ministries since the first government, which was formed after the Revolution in 1962. It was one of the active ministries in subsequent governments.

A, Purposes and Functions of the Ministry

The goal of the Ministry of Justice is the organization and development of the judicial bodies and their support agencies. Moreover, its aim is to enhance the role of the judiciary in a manner that guarantees its carrying out its mission of administering justice among people and protecting their rights, provides all the technical, financial and administrative services and facilities to all the organizations of the judiciary, and oversees the workflow thereat so as to ensure the proper application of laws and administration of justice among people.

The Ministry carries out its work and designs the plans and programs necessary for it to perform the functions with which it is entrusted in accordance with the Constitution and the applicable laws. In addition, it develops economic and social development plans and judicial reform programs. In particular, it assumes certain tasks, most important among which are the following:

- Supervise the judicial bodies and their support agencies
- Prepare draft laws for the Ministry and the judicial bodies
- Propose and prepare draft laws
- Propose the establishment of specialized courts and public prosecutions
- Construct, furnish and maintain courthouses and public prosecution offices
- Work toward raising the level of job performance at the judicial bodies, the public prosecution and their support agencies
- Provide human resources, e.g. judges, clerks and staff
- Enhance judicial work, train judges and work toward developing the Higher Judicial Institute
- Organize and conduct inspections of the work of all the courts and their judges, assume responsibility for the promotion, assignment and transfer of judges in accordance with the Judicial Branch Law, and follow up on the implementation of the decisions of the Supreme Judicial Council in this regard.
- Conduct regular and surprise supervision and inspection operations on all the financial and administrative activities of the Ministry, the courts and the public prosecution, and their support agencies, as well as real estate notarizations, medical examiner's office and court experts, etc.
- Prepare the draft annual budget for the judicial branch and the agencies and bodies thereof.

This is in addition to any other functions that are required as part of the Ministry's work and as provided for by law.

B. Judicial Inspection Body

The Judicial Inspection Body was established pursuant to the Judicial Branch Law, and is composed of a president, vice-president and a sufficient number of judges selected from among court judges who are assigned thereto by virtue of a decision by the Minister of Justice upon the approval of the Supreme Judicial Council for a period of at least two years renewable. Its president shall be [chosen] from among the highest-ranking members of the Supreme Court for a period of at least two years renewable. This body has the authority to inspect the work of judges for purposes of gathering information about their level of efficiency in order to present such information to the Supreme Judicial Council at the time of judicial promotions. Moreover, the Body receives all complaints brought against judges; and it monitors the workflow at the courts and submits its recommendations in this regard to the Minister of Justice.

C. Relationship between the Ministry of Justice and the Judiciary

We have previously mentioned that the public prosecution in the Yemeni Republic is hierarchically and administratively linked with the Minister of Justice. The judicial police officers and members of the prosecution answer to their supervisors according to rank up to the Attorney General, followed by the Minister of Justice.

This means that the public prosecution, despite its being an independent judicial body, remains under the authority of the Minister of Justice who represents the executive branch within the purview of his ministry. This is considered a detraction from and violation of the principle of judicial independence.

On the other hand, we see that the law, especially the Judicial Branch Law, grants the Minister of Justice some powers with regard to the judiciary as a whole. However, pursuant to this law, the Minister, when exercising these powers, is subject to the Supreme Judicial Council, e.g. determining the number and divisions of the courts of appeals, which is done pursuant to a decision by the Minister of Justice upon consultation with the Chief Justice of the Supreme Court and the consent of the Supreme Judicial Council, or determining the number of justices on the Supreme Court which is also done pursuant to a decision by the Minister of Justice upon consultation with the Chief Justice of the Supreme Court and the consent of the Supreme Judicial Council.

From our perspective, there is no indication that the Ministry of Justice, or the Minister, is granted any authority over the Supreme Judicial Council; but, on the contrary, upon review of the authorities granted to the Minister of Justice, we notice that he actually supervises the process of including the Ministry's plan within the plans of the Supreme Judicial Council and the Council of Ministers, follows up on the implementation of this plan, and submits reports regarding the extent of implementation of decisions issued by the Supreme Judicial Council and the Council of Ministers to both councils respectively as prescribed by law.

Based on the above, the Ministry appears to be an implementation tool for the decisions of the Supreme Judicial Council.

However, in the alternative, one could say that there is some inconsistency in the legal texts, particularly with regard to the powers of both the Ministry of Justice and the Supreme Judicial Council, which negatively affects the independence of the judiciary and judges in the performance of their functions. Perhaps this constitutes one of the main reasons which led to the deterioration of the state of affairs of the judiciary in the Yemeni Republic. Thus, the government was forced to develop a reform plan for the judicial system. As an example, we mention the contradiction in the legal texts with regard to the issue of subordination of the public prosecution to the Minister of Justice on the one hand, and to the Supreme

Judicial Council on the other hand, without clearly defining the concept behind this subordination to both the Minister and the Council.

As proof thereof, we mention here one of the compelling reasons that forced the government to develop a judicial reform plan after it was presented with a clear explanation of the *de facto* situation of the judiciary in the Yemeni Republic. As stated in the explanation: "This unfortunate reality is due to the incorrect conceptions of the functions of the Ministry of Justice, the Supreme Court and the Supreme Judicial Council, and the erroneous practices pursued by these organizations or in their names, which are founded on the conception that the Ministry of Justice and the Supreme Judicial Council are judicial bodies that issue judicial directives or orders to the courts, as if each of them was a court higher than all the other courts. The Supreme Court, along the Ministry and the Council, is also involved in these erroneous practices, in addition to the fact that it exercises administrative and executive functions not within its jurisdiction. All of this is considered a flagrant violation of the principle of judicial independence."

It is clearly obvious to us that the relationship between the Ministry of Justice and the judiciary as a whole is neither distinguishable nor precise. Although most of the legal texts affirm the principle of an independent judiciary as a branch of government in general, and the independence of judges in carrying out their functions in particular, we find some inconsistency in the legal texts and some confusion and error in the practices; and, as a direct result, the essence of this principle is totally lost and the Ministry of Justice becomes an authority subordinate to the Supreme Judicial Council on the one hand, while hegemonic over the public prosecution on the other hand, bearing in mind that the public prosecution is one of the judicial bodies which must not be under the domination the Administration [executive branch].

2. Supreme Judicial Council

The Supreme Judicial Council was established pursuant to Article 152 of the Constitution, which states that its organization, as well as the determination of its jurisdiction, shall be in accordance with the law.

A. Structure of the Supreme Judicial Council

The Judicial Branch Law provides for the composition of the Supreme Judicial Council as follows:

President of the Presidential Council	President
Minister of Justice	Member
Chief Justice of the Supreme Court	Member
Attorney General	Member

Deputy Chief Justice of the Supreme Court	Member
Deputy Minister of Justice	Member
President of the Judicial Inspection Body	Member

This is in addition to three members who are appointed by the Presidential Council, provided that they are not lower in rank than a Supreme Court justice.

B. Jurisdiction of the Supreme Judicial Council

The Supreme Judicial Council exercises the following powers:

- Formulate the general policy for enhancing the affairs of the judiciary
- Review all matters presented to it concerning the appointment, promotion, removal, accountability, retirement, transfer and resignation of judges in view of the articles set forth in this law
- Disciplining of judges
- Review draft laws that concern the judiciary
- Review the periodic inspection results with respect to the work of the presidents and judges of the courts of appeals and courts of first instance for purposes of evaluating their levels of efficiency, investigating complaints lodged against them and looking into the requests submitted by them

The Council issues its decisions by a majority vote of the members in attendance, and its meetings are not considered legal except with the presence of a majority of its members, provided that among them are the Minister of Justice or his deputy and the Chief Justice of the Supreme Court or any one of his deputies.

3. Conclusion

In addition to what we have shown above with regard to the current deteriorating situation of the judicial system in Yemen, and the inconsistencies in the legal texts which become even more serious by this confusion between the authorities of the Ministry of Justice and the judicial bodies, it warrants us to make the observation that the structure of the Supreme Judicial Council reveals the indirect domination of the executive branch over the Council, as the president of the Judicial Council is himself the president of the Presidential Council and three of its members are appointed by virtue of a Presidential Council decision, in addition to the Minister of Justice and his deputy who are in fact answerable to

the Council of Ministers and therefore the Presidential Council, i.e. the executive branch. The method by which the Supreme Judicial Council is structured does not guarantee independence in its decision-making, particularly because there is nothing to prevent their re-appointment once or several times successively or removal from their posts at any given moment by the executive branch, which appointed them in the first place. In view of the significant role and functions assumed by the Judicial Council with regard to judicial appointments, promotions or removal of judges, or holding them accountable, we believe that the structure of the Supreme Judicial Council must be organized in a manner that guarantees independence in its decision-making process because of the impact its decisions have on the judiciary as a whole.

After this detailed study on the judicial system, we must now describe the state of affairs of the judiciary in general before we can examine the reform plans that the State and government are undertaking in the Yemeni Republic for the sake of finding appropriate solutions to the problems facing the administration in general and the judiciary in particular.

SECTION THREE: THE STATE OF AFFAIRS OF JUDGES

The laws that are concerned with the judiciary, beginning with the Constitution up to the law of the judicial branch, state that the judiciary is an independent power and judges are independent under no other authority but the law, and any interference in the affairs of the judiciary constitutes a crime punishable by law and not subject to the statute of limitations.

However, this principle remains merely ink on paper in light of the provisions concerning the appointment, promotion, transfer and disciplining of judges, particularly if we take into consideration the provisions concerned with the composition of the Supreme Judicial Council.

The law organizing the judiciary states that the appointment of the Chief Justice of the Supreme Court, his two deputies and the justices of the Supreme Court shall be made pursuant to a decision by the Presidential Council upon the nomination by the Supreme Judicial Council from among the list of names prepared by the Judicial Inspection Body.

Moreover, appointments to other positions in the judicial branch are made pursuant to a Republican Decree upon the nomination of the Minister of Justice and the approval of the Supreme Judicial Council.

The Attorney General and First Solicitor-General are appointed by virtue of a decision by the Presidential Council.

Furthermore, appointments are also made for judges who have degrees from the Higher Judicial Institute, after having received university degrees in law and Shari'a or a law degree from any recognized university in the Yemeni Republic.

The Higher Judicial Institute is the institution responsible for teaching new judges and training judicial assistants, in addition to offering training courses for active judges.

The promotion of judges and members of the public prosecution is based on aptitude. And they may only be promoted to the next highest grade level after having spent at least two years at the current grade.

With regard to the transfer of judges, it is effected pursuant to a Republican decree upon the recommendation of the Minister of Justice after consultation with the Chief Justice of the Supreme Court and approval by the Supreme Judicial Council for judges of the courts of appeals, and pursuant to a decision by the Judicial Council on the recommendation of the Minister of Justice after consultation with the Chief Justice of the Supreme Court for the other judges.

No judge may be transferred from one court to another until after three years of service at his court, except in extraordinary cases determined by the Supreme Judicial Council. Moreover, no judge may remain for more than five years in one court without being transferred.

In terms of salaries and allowances paid to the members of the judiciary, they are set in a schedule attached to the Judicial Branch Law. However, other allowances may be paid to the members of the judiciary by virtue of a decree by the Prime Minister upon the recommendation of the Minister of Justice. The Minister of Justice issues a decision to grant members of the judiciary an occupational allowance or achievement allowance ranging from 30-50% of base salary, and a rural area allowance ranging from 30-60% of base salary for judges appointed in rural areas, and a housing allowance for judges appointed in areas outside where they live. Furthermore, the law has objectively set a series of raises and bonuses that are given to judges in certain circumstances.

Contrary to the provisions of the Constitution, the Judicial Branch Law states that judges are non-removable unless the removal is a punitive measure as a result of an action involving accountability initiated by the Judicial Inspection Body before the Supreme Judicial Council (or an accountability tribunal composed of three members from the Council or three judges), at the request of the Minister of Justice and approval of the Supreme Judicial Council on the condition that an initial investigation of the judge had been conducted by the Judicial Inspection Body. In addition, no judge may be criminally prosecuted or imprisoned until permission is obtained from the Supreme Judicial Council except in cases of being caught in the act.

It is clear that judges enjoy a large measure of protection pursuant to the applicable laws; however, this protection is invariably tied one way or another to the Supreme Judicial Council, besides that fact that judicial appointments and transfer decisions, as well the disciplining of judges and whatever other procedures relative thereto, are all entrusted with the Supreme Judicial Council, which we have already shown is under the domination of the executive branch. This leaves the door wide open for nepotism and interference by politicians and especially members of the executive branch in the functions of the judicial institutions. In this same context, we cite the provisions of Article 67 of the Judicial Branch Law which allow the payment of other allowances to members of the judiciary by virtue of a decree by the Prime Minister upon the recommendation of the Minister of Justice.

In terms of the integrity of the judiciary, there is no doubt that salaries and compensation or allowances and bonuses that are paid to judges should be enough to meet their needs so as to prevent external elements, most importantly money, from influencing the administration of justice. Unfortunately, the information we have received is not adequate to paint a clear picture of the financial and living situation of judges in the Yemeni Republic. Moreover, we do not have information on whether or not judges are allowed to pursue any other work besides their judicial jobs, even if such work does not pose any conflict, e.g. education or writing, under Yemeni laws.

Finally, the information we have received on the cost of litigation confirms that the law concerning court fees was a stumbling block to litigants because of the excessive fees imposed thereon. These fees were modified by Law No. 28 of 1999 and have become within reach of a larger segment of low-income individuals and classes of people. This modification opened the door wide open to litigants; while at the same time opened the door to a larger number of malicious lawsuits which, in turn, has led to a heavier caseload at the courts.

From this brief presentation of the legal texts concerning judges and the structure of the judiciary, we can provide a general summary of the judicial system in the Yemeni Republic by outlining the principles upon which this judicial system stands:

1. The principle of an independent judiciary (as a consequence of the principle of separation of powers), with emphasis on the integrity and impartiality of judges.
2. The principle of the multi-tiered trial system, from courts of first instance to courts of appeals to a supreme court.
3. The principle of a multi-judge court system (multiple judges in the adjudicating panel starting with the court of first instance).

4. The principle of open and public trials.
5. The principle of equality before the law.
6. The principle of a unified judiciary (no duplicity between the Shari'a and ordinary judiciaries, or between the ordinary and administrative judiciaries).

Perhaps we can find these same principles in the laws of most countries, particularly the Arab countries; however, the viability of all of these principles still lies in the application thereof. In this regard, we find ourselves compelled to express our utmost reservations on the following:

First: The inconsistency that we alluded to in some of the legal texts, which negatively affects the situation of the judiciary, especially its independence and integrity.

Second: The erroneous practices pursued by the judicial and administrative bodies, which result in obliterating the essence of the principle of judicial independence.

Third: The legal texts concerned with the structure of the Supreme Judicial Council, which should be an independent body that protects judges and the judiciary as a whole from any political interference, nepotism and the domination of any authority over the judicial branch of government, whereas, at the same time, it gives the executive branch too much room to control the decisions issued by the Council directly and indirectly.

Fourth: The ability to grant some members of the judicial branch allowances not provided for by law, simply by virtue of a single decision by the executive branch.

After this depiction of the current situation of the judiciary, we must quickly point out the reform plans that the Yemeni government is attempting to undertake to improve the situation of the judiciary.

SECTION FOUR: REFORM PLANS

The Council of Ministers in the Yemeni Republic, upon a recommendation and study prepared by the Ministry of Justice for the Council, has ratified a judicial reform plan in September of 1997.¹

¹ The main features of the judicial reform plan as ratified by the Council of Ministers in September 1997.

To-date, this plan is still pending implementation, bearing in mind that its implementation requires tremendous effort and huge material resources, and thus its implementation would have to be in stages.

In the aforementioned study, the Ministry of Justice first showed the reality of the situation of the judiciary in the Yemeni Republic prior to concluding with its practical expectations in the reform of the judicial branch of government. The judicial system in the Yemeni Republic is suffering from some incorrect practices of which the source is the confusion between the functions of the administration, particularly the Ministry of Justice, and the judiciary as a whole on the one hand, and conversely the confusion between the functions of some courts (e.g. the Supreme Court) and the administration. This plan is pivoted around the reform of the judicial system within the framework of a comprehensive reform plan for a large number of State institutions by means of the following:

- Completing the infrastructure of the judicial institutions
- Establishing qualitatively specialized courts
- Training and preparing judicial personnel. It should be noted here that the Ministry of Justice has established the Judicial Information Center which began to show significant results in 2002 in the area of computerizing State administrations.
- Introducing information technology and database systems into the work of the judicial institution
- Promoting the judicial police and activating its role in the execution of court judgments
- Activating the role of the Judicial Inspection Body
- Enhancing the role of commercial courts
- Determining the deficiencies in the legislation and deal with the inconsistencies, in addition to developing legislation

These steps, which directly affect the judicial institution and conclude with the judicial establishment, are part of a framework for a broader reform plan through which the State seeks to develop its institutions and administration in order to fight corruption and encourage foreign private sector investments. They include the following:

- Develop the security services sector
- Fight corruption and crime
- Reinforce the role of specialized security institutions and administrations
- Control the possession of weapons
- Enhance civil status services
- Fight corruption, protect public assets and reinforce control
- Develop legislation and complete the institutional structure
- Restructure the units of the State's administrative institution
- Move towards an e-government and train public sector employees

On the other hand, the United Nations Organization, through the United Nations Development Programme, has come to realize the situation of the judiciary in the Yemeni Republic, which essentially has two principal complaints: the difficulty in access to justice (particularly for women and in the rural areas) and poor administration of justice, i.e. the misadministration of the judiciary as a public establishment².

The Yemeni government in 2001 worked on preparing a detailed study of the situation of the judiciary in which it listed the priorities for the development and support of the judicial system as follows:

- Rearrange and restructure the courts.
- Establish commercial courts.
- Enhance and support the role of judicial inspection.
- Develop the infrastructure of the judicial sector.
- Train and develop the employees of the Ministry of Justice.
- Modernize the judicial information system.

The United Nations Organization has maintained that the implementation of the above reforms has been slow and not serious.

In conclusion, it would be of benefit to point out that the World Bank and the Yemeni government signed an agreement in 2000 regarding the first project for judicial reform, which included the training of Ministry of Justice employees and securing the necessary facilities therefor.

The issue of developing the judiciary and the judicial sector is among the primary concerns of the United Nations Organization within the Second Country Cooperation Framework 2002-2006.

Note:

This report was prepared on the basis of the information that we were able to obtain from our correspondents or sources published in various media.

Therefore, we apologize if there is any incomplete or inaccurate information. We would hope that the reader can provide us with any piece of information that may complete or correct the content of this report or any part thereof.

² The project to modernize the judicial sector in the Yemeni Republic (United Nations Development Programme).

Annex No. 1

Legal Texts Concerned with the Judiciary

Title of Legal Text	Type of Text	Text No.	Date
Constitution of the Yemeni Republic	Constitution	N/A	10/1/1994
Law of the Judicial Branch	Law	1	26/1/1990
Establishment of the Higher Institute for Judges	Law	16	19/6/1980
Establishment of a Specialized Criminal Court of First Instance and a Special Appellate Criminal Division	Republican Decree	391	17/11/1999
Establishment of the Commercial Courts	Republican Decree	378	6/11/1999
Organizational Regulation for the Courts of Appeals and First Instance	Ministerial Decree	245	31/10/2000
Law concerning the Establishment and Organization of the Public Prosecution	Law	39	19/3/1977
Criminal Procedure Code	Law	13	12/10/1994
Civil Procedure Code	Law	40	12/10/2002
Juvenile Care	Law	24	6/4/1997
Central Agency for Audit and Control	Law	39	30/4/1992
Decree concerning Prisons and amendments thereto	Republican Decree	48	1/1/1991
Law concerning the Legal Profession	Law	31	28/6/1999

The Yemeni Constitution, promulgated in 1990 (26 January), addresses the matter of the judicial branch in six articles in Section Three of Chapter One.

The Constitution upholds the principle of independence of the judicial branch, which administratively includes the public prosecution, thereby affirming the principle that judges are independent and are not subject to any authority but the law, and any interference in the judiciary and the affairs of justice shall be deemed a crime punishable by law and not subject to statute of limitations (Article 149). Moreover, the Constitution affirms the principle of a unified judiciary, thereby denying the establishment of emergency courts and leaving in the hands of the law the matter of organization of the judicial branch and the levels and jurisdiction of all the courts, as well

as the requisite qualifications of judges and their transfer and promotion and other safeguards afforded them (Article 150).

The Constitution also affirms the principle of irremovability of judges and members of the public prosecution, except in specific cases as determined by law (Article 151).

Moreover, the Constitution grants the power of administration of judicial affairs, such as appointments, promotions, removals and the preparation of draft budgets for the judiciary, to the Supreme Judicial Council whose organization and authorities are determined by law.

The Constitution thereafter provides for the establishment of the Supreme Court as being the highest judicial authority, and determines the jurisdiction of this court in general (Article 153).

Lastly, the Constitution provides for the principle of open and public trial, except in cases that involve a violation of public order and morals (Article 154).

It is noteworthy that the Constitution of the Yemeni Republic upholds the principle of equality among people in rights and duties (Article 41); however, it does not explicitly provide for the principle of equality before the courts. In addition, the Constitution includes several provisions in Chapter Two that entrust the judicial bodies with the task of protecting individual as well as public liberties.

Whereas the Constitution depicts the broad outlines with respect to the judicial branch, it is however the Judicial Branch Law (Law No. 1 of 1991) that is concerned with the organization of this branch of government in a precise and detailed manner. It determines the levels of the different courts and the jurisdiction of each beginning with the Courts of First Instance and ending with the Court *[sic]*. In addition, it deals with the matter of rights and obligations of judges and the conditions for their appointment and transfer as well as their protection. Furthermore, it undertakes the organization of the Judicial Inspection Body and the Supreme Judicial Council, in addition to the conditions for appointment and promotion of court employees and the provisions that are concerned with their employment and job duties.

With respect to the establishment and organization of the public prosecution, they are governed by the Supreme Council Decree No. 39 of 1977 (Decree-Law issued by the Supreme Council). This is the provision by which the public prosecution was established, which also determined its authorities and the conditions of appointment and promotion of members of the public prosecution and the method of impeachment thereof.

It is also noteworthy that the Criminal Procedure Code No. 13 of 1994, enacted by a Republican Decree, in certain provisions thereof takes care of the individuals of the judicial police and their functions and duties, in addition to the jurisdiction of the criminal courts and the disputes between these courts and the jurisdiction of the public

prosecution. Moreover, the Criminal Procedure Code provides for certain criminal procedures, among which is the principle that trial proceedings shall be open and oral.

As such, the Criminal Procedure Code has legally amended some of the provisions of the aforementioned law concerning the establishment and organization of the public prosecution. Moreover, Law No. 40 of 2002 concerning the Civil Procedure Code embraces some other principles regarding the judicial branch, among which are the principle of equality before the courts, even for foreigners, the principle of cross-examination, as well as the principle of judicial impartiality. Furthermore, this law states that litigation shall be at two levels, and affirms the principle of public and oral trial proceedings. This law also includes a chapter regarding judicial ethics, thereby confirming the importance of the integrity and impartiality of judges.

With regard to the Central Agency for Audit and Control, it is the agency responsible for overseeing the departments and agencies of the State with respect to public monies. The Agency was established pursuant to Republican Decree-Law No. 39 of 1992.

Finally, it would be useful to mention that the legal profession is also regulated in the Yemeni Republic by virtue of Law No. 31 enacted by a Republican Decree in 1999.

After this review of the legal texts that are concerned with the judiciary, we will illustrate in detail the judicial structure in the Yemeni Republic.

