



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

Workshop

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The Judiciary in the Lebanese Republic

Introduction

The judicial branch is one of the constitutional powers in Lebanon. The Lebanese legislator has organized this branch pursuant to Legislative Decree No. 150 issued on 16/9/1983 under the title 'Organization of the Judiciary'.

SECTION ONE: ORGANIZATION OF THE JUDICIARY

There is no one single judicial system in Lebanon, but a number of systems, most important of which is the law concerning the ordinary courts and their two main divisions, civil and criminal (Legislative Decree No. 150/1983), and the Code of Civil Procedure (Legislative Decree No. 90/1983). The Ordinary Courts Law, in Article 1 thereof, states the following: This Legislative Decree shall organize the civil courts in five chapters that include provisions for the Supreme Judicial Council, organization of the judiciary, the system for judges, the organization of judicial inspection, and the system of judicial assistants.

However, the real estate courts (real estate judge and the additional real estate judge) and their jurisdiction are concerned with determining real properties and the release (and survey) thereof, and supervising the creation of a real estate registry and correcting any substantive errors therein. This is organized by Decree No. 186 issued in 1926 and the amendments thereto. As for the members of the labor judiciary (arbitration labor tribunals and arbitration and reconciliation committees), they are appointed by decrees. This labor judiciary has its own laws.

Members of the Justice Tribunal (where crimes of assault on the State's internal and external security are brought pursuant to a decree issued by the Council of Ministers) are appointed by decree. This tribunal has its own code of procedure with respect to investigation and adjudication. There are also the judicial committees provided for in Article 52 of Decree No. 150/83, whose member designations are the responsibility of the Minister of Justice; the committee for instituting installment plans for commercial debts incurred by merchants as a result of the events in Lebanon (Law No. 8/81); and the court set up for banks that were seized pursuant to Decree-Law No. 1663/79.

There is also a committee for objections raised in regard to transfer fees (Legislative Decree No. 146/59 as amended) and the committee for the revenue stamp fees (Legislative Decree No. 67/67), which are committees presided over by judges and with a membership of employees appointed by ordinary decrees and subject to special laws, such as the Transfer Fee and Stamp Fee Law (tax judiciary).

Thus, in addition to the ordinary judiciary, there is also a special banking, financial and tax judiciary in Lebanon, outside the general structure.

There is also a judiciary responsible for eminent domain (Law No. 58/91), for which first-instance and appellate committees are appointed. They are presided over by judges and with a membership of experts and engineers from the appropriating administration appointed by ordinary decrees and without consulting the Supreme Judicial Council. Furthermore, there are appropriation committees for several ministry appropriations, such as the National Defense Ministry. In addition, there are special committees for the appropriations of the Real Estate Company for the re-construction of downtown Beirut, presided over by judges (Law No. 117/91) and has its own code of procedure.

The administrative judiciary represents a twin to the ordinary judiciary. It is independent as an entity and system. It, in turn, is divided into an administrative judiciary represented by the State Consultative Council, and an administrative financial judiciary represented by the Audit Court. Each has its own law. This is in addition to the disciplinary tribunals for all sectors of employees, security forces, freelance professions, the University of Lebanon, and the like.

In terms of the personal status judiciary, it is spread out among the Muslim sects. It is a part of the State's judicial organizations with its own special legal procedure. It is also distributed among the Christian and Mosaic sects, and is not considered a part of the State organizations. These sects are independent in establishing their own judicial systems that are founded on their traditions and customs, and appointing their judges and different tiers of courts. Some of them derive their authority from outside Lebanon (e.g. the Ruthenium Court in the Vatican). The judgments of these personal status courts, as different and diverse as they are, are executed at the judgment execution departments, even if these judgments are not issued in the name of the Lebanese people.

This is not to mention the constitutional judiciary, represented by the Constitutional Council, which is responsible for reviewing the constitutionality of laws, and deciding presidential and legislative election appeals; as well as the political judiciary represented by the Supreme Council for the Impeachment of Presidents and Ministers. Both of these judiciaries are provided for in the Constitution and regulated by special laws.

We will briefly review the organizational structure of the judiciary in Lebanon:

I. Ordinary Judiciary

1. Ordinary Courts

In accordance with Article 12 of the Ordinary Judiciary Law No. 150, enacted on 16/9/1983, the ordinary courts shall be composed of the following: (a) First-Tier Courts; (b) Courts of Appeals; and (c) Court of Cassation.

A. First-Tier Courts

First-tier courts are composed of chambers that issue the courts' rulings, and a chamber is called a first-instance chamber, which is an ordinary court. In the capitals of every governorate there are one or more first-instance chambers, among which the work is distributed by virtue of a decision by the Minister of Justice upon consultation with the Supreme Judicial Council and the recommendation of the First President of the Court of Appeals in that governorate. Moreover, in every district within a governorate, there are one or more single judges among whom the work is distributed in the same manner.

B. Courts of Appeals

The Courts of Appeals are composed of chambers; and the rulings of these chambers are issued by its president and justices. In the capital of every one of the Lebanese governorates there is a Court of Appeals presided over by a First President and is composed of several chambers. The work is divided among the chambers of any one of the Appeals Courts by virtue of a decision by the Minister of Justice upon consultation with the Supreme Judicial Council and the recommendation of the First President of the Court of Appeals. Moreover, in every Court of Appeals there is an appellate public prosecution headed by a public prosecutor who is assisted by solicitors-general. They are all judges, and thus subject to the same system in place for judges regarding appointments, promotions or transfers.

The main function of the public prosecution is to investigate crimes of all types, criminal or misdemeanor, and prosecute the perpetrators. The Criminal Procedure Code has specified

its rules of work. Even in civil cases the public prosecution performs a limited function provided for by law. In addition to the public prosecution there are investigating magistrates who are responsible for conducting investigations in misdemeanor and felony cases that are brought to them by the appellate public prosecution and which they are requested to investigate. Then upon its review of the investigation, the public prosecution states its demands. The investigating magistrates issue either decisions to drop the case or decisions to indict.

D. [sic] Court of Cassation

There is one Court of Cassation in the capital, Beirut. It is presided over by a First Chief Justice appointed by decree issued by the Council of Ministers on the recommendation of the Minister of Justice. The First Chief Justice can preside over one of the chambers of the Court of Cassation, which is the first chamber. A chamber is composed of a president and justices. There are currently eight cassation chambers. Originally, there were eleven chambers under the supervision of the cadre.

At the Court of Cassation there is a public prosecution headed by a public prosecutor appointed by a decree issued by the Council of Ministers on the recommendation of the Minister of Justice. The aforementioned cassation public prosecutor is assisted by solicitors-general, and they are all from the ranks of judges.

In addition, a financial public prosecution was established, and is under the authority of the cassation public prosecutor. It is responsible for prosecuting crimes that involve specifically public monies. All financial public prosecutors and solicitors-general are also judges.

The law has determined the jurisdiction of the Court of Cassation, as a court of law and not a third-tier court. It does not examine the merits of a case, unless and until the appellate ruling has been overturned on cassation and only with respect to issues that were raised on cassation. Moreover, the Court of Cassation reviews motions to transfer cases from one court to another for specific reasons stipulated by law, e.g. a security disturbance situation or suspicion of bias of a court or the inability of a court to convene. Furthermore, the Court of Cassation hears motions regarding the appointment of judicial authorities in the event there is a positive or negative disagreement on jurisdiction in exclusively specific cases, e.g. a disagreement between two ordinary courts, or between an ordinary court and a Shari'a or denominational court, or between Shari'a and religious courts. The Court of Cassation also reviews petitions submitted by the public prosecutor thereat for the cassation of any judgments in the interest of the law. We make mention of the jurisdiction of the General Assembly with regard to ruling on objections raised in regard to conclusive decisions issued by a Shari'a, denominational or religious court for non-jurisdiction of either of these courts or a violation of the basic precepts and the principles concerning public order.

The ordinary judiciary does not only deal with civil and commercial cases, but it is also a criminal judiciary, as the governing principle for the ordinary judiciary in Lebanon is the unification of the civil and criminal judiciaries in terms of composition and organization. What separates the two is the work distribution. Judges are not court-specific; but they may be transferred from civil to criminal courts or to public prosecutions, and vice versa. Based on this principle of one civil and criminal judiciary, a judge (single judge) can sit on either a civil or criminal trial indiscriminately. Similar to civil courts, the criminal courts are divided into first-tier courts with their own divisions, i.e. single judge courts (there are no first-instance criminal chambers), courts of appeals (second tier) and a court of cassation.

2. Special Ordinary Courts

The legislator by law shall establish specialized courts to hear cases that involve the resolution of specific disputes; or he shall establish exceptional courts to hear certain

disputes which arise from extraordinary circumstances. All of these courts are considered special courts with respect to the ordinary courts. The condition is that these specialized courts not be temporary or transitional, but rather permanent for purposes of deciding certain types of disputes. They remain in existence alongside the ordinary courts; whereas exceptional courts are established as a result of specific extraordinary circumstances and terminate with the end of the problems caused by these circumstances. The Lebanese Civil Procedure Code, in Article 84 thereof, noticed this, as it states: "Special courts shall have the responsibility of hearing certain disputes on an exceptional basis and in accordance with the laws and regulations enacted therefor and the provisions of this Law that are not contrary thereto."

Specialized courts are composed of the ordinary tribunal (criminal) and the labor arbitration tribunal (labor and social security cases). As for exceptional courts, they are composed of arbitration committees that hear disputes that arise between landlord and tenant.

A. Ordinary Tribunal

The ordinary tribunal is currently composed of five ordinary judges, who are the First Chief Justice of the Court of Cassation, as president, and four justices from the Court of Cassation as members appointed by decree on the recommendation of the Minister of Justice after consultation with the Supreme Judicial Council. The public prosecutor at the Court of Cassation assumes the function of an ordinary public prosecutor. The Minister of Justice, pursuant to a decision by him, appoints an investigating magistrate called the ordinary investigating magistrate, who investigates the case, issues the indictment and binds the defendant(s) over to the ordinary tribunal. With respect to the jurisdiction of the ordinary tribunal, it hears cases involving crimes against the State's internal and external security and felonies committed against the public safety as provided for in the Penal Code. Cases are referred to him by decree issued by the Council of Ministers based on its own assessment and approval. The ordinary tribunal constitutes a special criminal court, and its decisions are final.

B. Labor Arbitration Tribunal

The Lebanese Labor Law, which was enacted on 23/9/1946, states that in the capital of every governorate one or more labor arbitration tribunals shall be established to hear disputes that arise from labor relations. The labor arbitration tribunal is composed of a presiding judge, a representative of the employers and a representative of the workers. The head of the department of social affairs, or whoever is acting on his behalf, performs the function of government commissioner at the tribunal (Article 77 of the Labor Law). The tribunal hears cases in a summary matter, especially those involving disagreements that arise as a result of dismissal from work or quitting, and all disagreements that arise between employers and the Labor Law enforcement procedure. It also hears disputes arising from work emergencies (accidents) and issues involving minimum wage. As of 1980, the jurisdiction of the labor arbitration tribunal has been extended to include all disputes related to work relations and those that arise from the application of the Social Security Law. Whereas the judgments of the tribunal were at one time not subject to any form of revision whatsoever, the law of 21/1/1980 has permitted the appeal thereof by means of cassation, as well as third-party objections and objections to default judgments.

III. Shari'a and Religious Denominational Courts

The Shari'a and denominational courts are courts for the Sunni, Shiite, Druse and Alawi Muslim sects. The religious courts are for non-Muslim sects; they are not included within the State's organizations and are under their respective religious authorities in Lebanon and abroad with their own special codes. These are Christian sects of Orthodox, Coptic, Catholic and Anglican denominations, as well as the Mosaic sect. The Sunni and Jaafari

(Shiite) Shari'a courts are organized by the law of 16/7/1962. They consist of first-instance courts (single judge) and a High Shari'a Court for each of the two sects. Moreover, there is an Islamic Shari'a Judicial Tribunal presided over by the *Mufti* of the Republic [highest Islamic advisory authority], who reviews appointment recommendations for Shari'a judges and the disciplining thereof. The Sunni courts are composed of Shari'a Sunni judges; whereas the Jaafari courts are composed of Shari'a Shiite judges. The High Shari'a Court of Appeals for each sect is composed of a president and justices and is located in Beirut. The official authority for the Shari'a courts is the presidency of the Council of Ministers, and not the Minister of Justice, because the Prime Minister is the highest Islamic authority in the Executive Branch.

With respect to the Druse denominational court, it was organized by Decree-Law No. 3472 of 5/3/1960. Similar to the Shari'a courts, the Druse denominational judiciary consists of single judge courts and a High Court of Appeals composed of a president and justices. Its official authority is the Minister of Justice, whose jurisdiction is to hear matters concerning the Druse sect that are included in the Personal Status Law enacted on 24/2/1948: marriage, dowry, alimony, *idda* [the period of waiting during which a woman may not remarry after being widowed or divorced as prescribed by Islamic Shari'a], custody, guardianship, trusteeship, interdiction, missing persons, lineage, wills, inheritance and endowments. In the absence of a provision in the Personal Status Law, the judge of the denominational court shall apply the provisions of the Islamic Shari'a as prescribed in the Hanafi denomination and all the legal provisions that are not inconsistent with Islamic Shari'a.

Moreover, the jurisdiction of the Shari'a courts covers the prenuptial engagement and the engagement gift, as well as marriage, divorce, separation, dowry, paraphernalia, alimony, custody, the joining of boys and girls with their guardians, lineage, guardianship, trusteeship, caretaking, puberty, proof of maturity of mind, interdiction, missing persons, wills, proof of death, determination of legal heirs, release of non-realty estates, administration of orphans' monies, endowment, appointment of executor of family endowments, guardians of absentees, removal of guardians and trustees from absentee trusteeship, auditing and removal of endowment executors, and the regulation and registration of wills (Article 17 of the Law of 16/7/1962).

III. Administrative Judiciary

1. State Consultative Council

Article 1 of Decree No. 10434 of 14/6/1975 states that the State Consultative Council is: "A high court that shall assume the responsibility of an administrative judiciary and oversight over the drafting of legislative and regulatory texts in the manner provided for in this Law."

The State Consultative Council is composed of a president, who is at the top of the hierarchical pyramid financially and administratively, a government commissioner (he is the vice-president of the State Consultative Council), chamber presidents, counsellors and assistant counsellors. They are appointed by decree issued by the Council of Ministers on the recommendation of the Minister of Justice. The counsellors are appointed by decree on the recommendation of the Minister of Justice and upon approval by the Office of the State Consultative Council. They are selected from among assistant counsellors, ordinary judges, Audit Court judges, first category employees, persons holding Ph.D.s in law who taught at the higher education level for ten years at law institutes, or lawyers who have been registered in the general roster for 15 years. And, contrary to every legal provision, any judge, upon his consent, may be transferred from the State Consultative Council to any one of the ministries, public administrations or institutions. The assistant counsellors are still taken from the pool of graduates of the Institute for Judicial Studies (the general section).

The State Consultative Council is divided into seven units: a litigation council and six chambers which are assisted by the government commissioner. The Office of the State Consultative Council consists of a president, the government commissioner, president of the judicial inspection body (it is an inspection body for ordinary, administrative and financial judiciaries), and the chamber presidents at the Council. Every judicial chamber at the Council is composed of a president and counsellors, and is augmented by one or more assistant counsellors for support, who may be assigned to complement the body as necessary.

The administrative chamber is presided over by the President of the State Consultative Council. He may delegate any one of the chamber presidents to assume this position. In addition, he has the right to assign one or more counsellors or assistant counsellors to join the body as incumbent members. This chamber assumes the responsibility of reviewing administrative and legislative matters that are referred by the administration to the Council for its opinion thereon.

The composition of the chambers and the distribution of work among them occur pursuant to a decree by the Minister of Justice on the recommendation of the Office of the State Consultative Council.

The litigation council is composed of the [State Consultative] Council president, chamber presidents and three counsellors. It reviews motions for transfer of cases based on a legitimate cause for suspicion, and every case pending before the Council provided that such cases were brought to it by the president, the government commissioner, the president of the chamber in charge of the case or on motions to re-examine that are submitted in the interest of the law.

The law has entrusted to the State Consultative Council some functions regarding administrative and legislative affairs. It renders its opinion on draft laws, draft legislative decrees, draft regulatory decrees that are prepared by the ministries, and draft international covenants. The opinion of the Council, whenever requested, is strictly advisory.

2. Conflict Resolution Court

It is a mixed composition court that consists of ordinary and administrative judges. The court is presided over rotationally every year by the First Chief Justice of the Court of Cassation and the President of the State Consultative Council. It hears disputes of negative jurisdiction whenever there is a declaration of non-competence of both the ordinary and administrative courts, an inconsistency between two rulings that would result in a denial of justice, or a conflict arising from a difference of interpretation between the ordinary and administrative courts.

IV. Financial Judiciary: The Audit Court

The Audit Court is an administrative court that assumes the responsibility of a financial judiciary, whose task is to watch over public funds and funds deposited in the public treasury, oversee the use of these public monies, rule on the legality of transactions and accounts, and prosecute officials for violations of the laws and regulations in regard thereto. The Audit Court in Lebanon is administratively tied to the Prime Minister and is located in Beirut. The Court was re-organized by Legislative Decree No. 82 of 16/9/1983, whereby its cadre of judges was expanded so as to include auditors along with controller and administrative judges.

The Audit Court is composed of the following judges: president of the Audit Court, chamber presidents, counsellors and a public prosecutor. They are appointed pursuant to a decree issued by the Council of Ministers on the recommendation of the Prime Minister. At the

Court, there is a public prosecutor and assistants working with him, who are responsible for initiating public prosecutions. They enjoy independence in the performance of their duties before the Court.

In terms of the controllers, they provide assistance to the judges, and are subject to the Civil Service Regulation; whereas the appointment and functions of the auditors are determined by a decree issued by the Council of Ministers upon advisement of the Audit Court's president.

The authority of the Supreme Judicial Council with respect to the Audit Court is exercised by a council composed of its president, the public prosecutor at the Audit Court, and the three highest-ranking judges thereat. The general assembly of the Audit Court, which is composed of Audit Court judges and the public prosecution judges thereat, performs the function of rendering opinion on matters concerning the workflow at the Audit Court. Opinions rendered by the general assembly in any matter are purely instructive and guidance, and not in any way binding. Moreover, the general assembly assumes the task of unifying interpretations in the event of any discrepancies in the course of the Court's exercise of its oversight functions.

Furthermore, the Court's council exercises the powers of the Supreme Judicial Council with respect to disciplinary matters. A judge is turned over to the disciplinary tribunal pursuant to a decision by the Court's council on the recommendation of the Audit Court's president. The judicial function of the Audit Court includes: advance and subsequent oversight over the budget implementation, and oversight over accounts and employees. The purpose of this control over the accounts is to rule on the veracity of the accounting of the public treasurers and any person involved in the receipt or payment of funds deposited in the treasury without having the legal capacity to do so. This is in regard to treasury revenues, authenticity of documentation, veracity of collections, distribution of the collected amounts among the public treasuries, or with regard to budget spending and the authenticity of the documentation thereof, the veracity of receipt and payment transactions, the validity of the process of receipt, maintenance and delivery of articles, the soundness of inventory data organization, the veracity of the accounts and their consistency with the laws and regulations, and the conformity of the restrictions with corroborating papers.

V. Military Judiciary

The military judiciary is embodied by the military courts, which are composed as follows:

- A military court of cassation, presided over by an ordinary judge from among the justices of the Court of Cassation, who is appointed pursuant to a decision by the First Chief Justice of the Court of Cassation (located in Beirut).
- A standing military court located in Beirut with an ordinary judge on its panel.
- Single judge courts in the governorates.
- A government commissioner who is an ordinary judge functioning as an appellate public prosecutor, assisted by ordinary judges functioning as solicitors-general.
- Investigating magistrates who are ordinary judges.

The military judiciary consists of officer judges who are appointed by the Minister of Defense on the recommendation of the Army Command with regard to army officers, and the recommendation of the director-general of the Internal Security Forces and the director-general of General Security with respect to officers who are affiliated with these two forces.

The ordinary judges are appointed by a decree on the recommendation of both the Minister of Justice and Minister of Defense upon the approval of the Supreme Judicial Council.

The military judiciary is an extraordinary judiciary by its nature, as is clearly stated in Article 27 of its establishing law, which states that the following persons shall be tried before a military court, whatever their nationalities and the crimes with which they are charged:

Military and military-like persons, internal security forces and general security personnel, captives, troops of foreign armies, the civilian staff at the Ministry of Defense, army, military courts or internal security and general security forces, if the crimes were committed as a result of their job or are subject to the provisions of the Military Judiciary Law, and all original perpetrators, associates and abettors are brought before the military court or any one of the abovementioned persons.

With regard to crimes for which the perpetrators are tried before military courts, they are set forth in Article 23 of the Military Penal Code. They include the crimes of dodging military duties, crimes that involve a breach of honor and duty, offenses in violation of military order and discipline, crimes of treason, espionage and illegal contact with the enemy, crimes related to combat weapons and ammunition, which are committed against any military personnel or any of the internal security and general security personnel, as well as terrorist crimes. In addition to these crimes, there are all the violations resulting from non-compliance with the provisions that concern service to the flag.

The Special Security Court was established pursuant to Law No. 2/78 after the Arab Deterrence Forces entered Lebanon and bloody clashes broke out between the Lebanese army and those forces. This court was terminated by Decree No. 603/1 issued on 19/5/1983.

VI. Special Criminal Courts

1. Juvenile Courts:

These are criminal courts of a special nature due to the class of parties who appear before them. They represent an affirmation of the importance of care, caution, reform and protection of minors, more than they do punitive institutions in the criminal sense.

They are composed of a single judge in violations and misdemeanors, and become courts of first instance (civil) in felony cases. These courts have jurisdiction to hear and decide all offenses committed by juveniles and cases involving delinquency, vagrancy and deviation of juveniles. These courts have absolute and complete competence.

2. Courts Specialized in Anti-Trust Crimes

The law has established special courts to hear cases involving anti-trust crimes, and has granted jurisdiction to the Courts of Appeals to hear these crimes and violations concerning the non-disclosure of a commercial business and violations regarding profit-making, pricing, commodities, service fees, invoicing, monopoly and speculation. The judgments of these courts are not subject to revision except for correction of substantive errors and objections to default judgments.

3. Publications Court

The publications court consists of an appeals court in every governorate. It is a first instance court with jurisdiction to hear cases involving crimes related to publication. Their judgments are subject to revision by the Court of Cassation in its capacity as an appellate authority. It

also hears cases of crimes resulting from a violation of the law concerning television and radio broadcasting. Cases are brought to it directly by the public prosecution; and an individual plaintiff can also bring a claim directly to this court.

VII. Bodies of a Judicial Nature

These bodies are represented by the eminent domain committees and disciplinary tribunals. We make special mention of the first-instance and appellate eminent domain committees, which are chaired by a judge and whose members include an expert and an engineer selected from among the administration employees. The judgments of the first-instance eminent domain committee are appealable before the appellate eminent domain committee in accordance with the provisions set forth in the Civil Procedure Code. The judgments of the appellate committees, which were once appealable by cassation, are now appealable by means of objection (to default judgments).

The court which hears matters concerning the liquidation of banks under seizure (for defaulting on payment) is composed of three ordinary judges; and experts or bankers may join the panel for dealing with matters of seized banks. Its judgments are not subject to any form of revision except appeal before the Civil Court of Appeals. This court may be terminated by decree.

The tax judiciary in Lebanon is made up of several committees with judicial authority. The composition of these committees is established pursuant to the tax laws which determine the methods of revision of their decisions. These committees are appointed by decrees issued by the Executive Branch, and its decisions are subject to cassation before the State Consultative Council.

VIII. Alternative Conflict Resolution

In Lebanon, there are no civil bodies in place to resolve conflicts before they are brought to court.

However, we can briefly point out that there is a recognized Bedouin customary law that is sometimes applied outside the realm of the courts and the law. This process results in tribal reconciliation in return for a payment of *diyya* [blood money] in cases of death, or removing the murderer into exile in some remote area. The residual effects of this customary law still remain in some Lebanese areas, but this does not prevent the setting in motion of a common right claim as a matter of due process. Yet there is a new face to mediation and arbitration in collective labor contract cases as provided for by law. Committees set up for this purpose are presided over by a judge.

Thus, the state of affairs of the Lebanese judiciary is complex and non-uniform in terms of form and substance. Hence, one cannot safely say that there is one independent judicial branch with its own unifying law, which opens the door wide for interference by the executive branch and others (e.g., the religious authority) in the structure of the various judicial bodies. This requires the embodiment of the Judicial Branch as one whole and unified body by virtue of a law that would make the judiciary the supreme authority over all judicial work by eliminating all forms of subsidiarity and banding together in smaller groups, particularly in the special and extraordinary judiciary, and by having a unified system of procedure at all judicial bodies. This is in addition to providing guarantees for specialization at these judicial bodies, particularly technical specialization, so that courts are not composed of unqualified judges, while imposing stricter requirements on the non-judicial members of these bodies (e.g., eminent domain committees). If the notion of making the personal status judiciary for all the eighteen different Lebanese ethnic groups a part of the ordinary judiciary organizations still remains an unrealizable dream, then we must take steps, even if slowly, on this long path that is intrinsically tied to the development of the general political system in Lebanon. In the

meantime, this judiciary will remain aloof from any compliance with the precise standards of fair trial in the modern sense, as demonstrated by the aforementioned general assembly of the Court of Cassation, which reviews only violations of the basic precepts of public order without dealing with the issues of the inconsistency of the Shari'a, denominational and religious provisions with the law.

SECTION TWO: ADMINISTRATION OF JUSTICE

I. Ministry of Justice

The administration of justice is represented by the agencies of the Ministry of Justice. They perform their functions as follows:

1. Minister of Justice

The Minister of Justice plays a fundamental role, as he is responsible for overseeing all the departments of his ministry. He recommends the appointments of senior judges, as we have seen, and approves and gives instructions to the public prosecution. Moreover, he supervises the work of the judicial inspection body, besides the fact that many of the legal provisions have given him the right to appoint the presiding judges of judicial committees and the like without even having to consult the Supreme Judicial Council and obtain its consent. Furthermore, he reviews the minutes of the Supreme Judicial Council that are sent to him, and organizes the distribution of judicial assistants. He also determines the number of candidates required for admission to the Institute for Judicial Studies from among trainee judges.

2. Director-General of the Ministry of Justice

He is the second in command under the authority of the Minister, and has the powers vested in him by the laws and regulations, particularly the Civil Service Law (Legislative Decree No. 112/59). The post of director-general is occupied by a judge appointed by decree issued by the Council of Ministers upon the recommendation of the Minister of Justice and selected from among ordinary judges of a certain grade, or administrators or persons with law degrees from outside the cadre.

3. Legislation and Consultation Body

The legislation and consultation body is headed by an ordinary judge. This body assumes responsibility for the preparation and formulation of draft laws, decrees, regulatory decisions, circulars and draft international covenants and agreements, as requested. In addition, it is requested to render opinion and consultation on matters presented to it, and offer proposals with respect to the updating or amendment of legal provisions. Furthermore, it is requested to render its opinion on work and contracts in which the State is involved, the disputes that arise between the administration and others, the settlements that are effected by the State and its public institutions prior to initiating legal action, as well as establish Lebanese law at the request of foreign governments. The administration is not bound by the body's advisory opinion, but in the event of a violation a justification would be required. Affiliated with this body are a number of ordinary and administrative judges.

4. Litigation Body

The litigation body is headed by a judge who assumes the function of representing the State within Lebanon and abroad before all the courts and the judicial bodies in person or through one of his assistants from among the ordinary or administrative judges at the litigation body, or through the State's attorneys who are appointed by decrees after being contracted. The

judgments issued in State cases are announced by the head of the body, who has the right to vigorously pursue all methods of appeal thereof. The litigation body also assumes the task of bringing actions in the name of the State and representing the defense in cases brought against it.

5. Directorate for the Affairs of Judges and Employees

The directorate for the affairs of judges and employees is responsible for the affairs of judges, judicial assistants, employees, State attorneys, experts, receivers in bankruptcy, preventive conciliation monitors, and the affairs of notaries public and the oversight thereof.

6. Bureau of Prisons

The bureau of prisons is still nothing more than a name because Lebanese prisons have not yet been made a part of the Ministry of Justice. They are still under the supervision of the Ministry of Interior.

7. Medical Examiner Bureau

The medical examiner and forensic evidence bureau has begun its work by issuing the list of coroners who have fulfilled their appointment requirements.

8. Juvenile Bureau

The juvenile bureau at the Ministry of Justice assumes the task of regulating the work regarding all the affairs of the concerned juveniles, as well as designing and overseeing appropriate preventive and rehabilitative plans, and coordinating with any other ministries and the community sector.

II. Supreme Judicial Council

The Supreme Judicial Council is composed of ten members, of whom three are legal appointees: the First Chief Justice of the Court of Cassation (president), the Public Prosecutor at the Court of Cassation (vice-president) and the Head of the Judicial Inspection Body (member). The authority of these three appointees continues in effect throughout their entire term of service. The Council also includes two members from among chamber presidents at the Court of Cassation, who are elected by the justices of the Court of Cassation, and five members appointed by decrees on the recommendation of the Minister of Justice from among chamber presidents at the Court of Cassation (one member), chamber presidents at the Courts of Appeals (two members) and presidents of the courts or units at the Ministry of Justice. Their term of service is three years not automatically renewable.

The Supreme Judicial Council is vested with the responsibility of preparing proposed judicial transfers, assignments and secondments, individually or collectively, and presenting them to the Minister of Justice for endorsement. The judicial empanelling of the courts is issued by decree on the recommendation of the Minister of Justice.

However, no member of the Supreme Judicial Council may be promoted or transferred throughout his term of service. The Supreme Judicial Council creates the judicial disciplinary tribunal, examines the file of any judge and requests the judicial inspection body to conduct the necessary investigation and take the appropriate measures and decision. Furthermore, the Supreme Judicial Council reviews the petitions for special reprieve submitted by persons sentenced to death or referred to it by the competent authorities. A tripartite committee is appointed from among its members to review all petitions for special

reprieve. The Council renders its opinion on draft laws and regulations relating to the ordinary judiciary and recommends appropriate drafts and provisions in this regard to the Minister of Justice. In addition, it prepares minutes of the sessions that are kept in a file at the President's office and signed by all members who are sworn to secrecy similar to that in court deliberations. But it must be pointed out that in the formation of the Supreme Judicial Council the sectarian balance is taken into consideration by halving the membership between Muslim and Christian sects.

SECTION THREE: INDEPENDENCE OF THE JUDICIAL BRANCH

Independence of the Judicial Branch in principle and in reality

The breaking up and scattering of the judicial bodies into smaller cliques, as well as the non-existence of one unified judicial system in Lebanon, demand that we immediately examine the extent of independence of the judicial branch, as long as the executive and legislative branches have an effective say in the structure of the ruling judicial bodies.

In reality, the Lebanese Constitution, in the last paragraph of Article 20 thereof, did affirm the independence of the judicial branch in carrying out its function. It states the following: “[A]nd the judges are independent in carrying out their function. Decisions and rulings shall be issued by the courts in the name of the Lebanese people.”

Moreover, the Code of Civil Procedure states in the first article thereof that “the judiciary is an independent power in relation to the other powers in the investigation of cases and the adjudication thereof”. Furthermore, this first article, in the last paragraph thereof, added that “its independence shall not be limited by any restriction not provided for in the Constitution,” confirming the independence of the judicial branch in carrying out its work when deciding disputes. In addition, the Ordinary Judiciary Law upheld this principle in Article 40 thereof, which states that “judges are independent in the performance of their function” based on the fact that the independence of the judicial branch specifically means that the judiciary shall decide every dispute brought before it and shall not deny justice. Article 4 of the Civil Procedure Code states that: “no judge, at the risk of being viewed as refusing to administer justice, may abstain from rendering a judgment for reasons of ambiguity or lack of legal text, or delay rendering his judgment for no reason. In case of ambiguity of a legal text, the judge shall interpret it in a manner that produces an effect that is consistent with the purpose thereof and insures its conformity with other legal provisions. In the absence of a legal text, the judge shall rely on general principles, customary law and equity.”

Similarly, the Judicial Branch shall not interfere in the work of the Legislative and Executive Branches. Thus, “no judge may issue his rulings in the form of regulations”, as mentioned in Article 3 of the Civil Procedure Code. The task of lawmaking is that of the Chamber of Deputies; and the task of issuing regulations is that of the Executive Branch. Therefore, Article 91 of the State Consultative Council Regulation of 14/6/1075 states that the decisions of the Consultative Council shall be restricted to: “[A] declaration of only the legal issues that constitute the subject-matter of the case being decided. The Consultative Council has no right to take the place of the proper administrative authority in order to conclude from these circumstances the legal results that are a consequence thereof and make whatever resolutions necessitated thereby.” Moreover, Article 2 of the Procedure Code states: “... the courts may not pronounce the invalidity of the work of the Legislative Branch for reasons of inconsistency of the common laws with the Constitution or international conventions”; furthermore, after the enactment of the law establishing the Constitutional Council in 1993, the courts were stripped not only of the authority of direct review, but also indirect review, of the constitutionality of laws by means of challenge. The review of the constitutionality of laws has become the exclusive domain of the Constitutional Council, despite the fact that the Lebanese constitutional system is founded on the principle of separation, balance and

cooperation of powers, as stated verbatim in the preamble to the Constitution as amended in 1990. In the legal texts concerning the separation of powers between the executive and legislative branches, there is a preponderance of the executive branch, which appoints eight out of the ten judges who comprise the Supreme Judicial Council (as will be shown below), whereas the judges of the Court of Cassation elect two members from among the chamber presidents at the Court of Cassation to sit on the Supreme Judicial Council, thereby enforcing the National Détente Document which had stated the following: "In support of the independence of the judiciary, a certain number of members of the Supreme Judicial Council shall be elected by the judicial body". Moreover, the preponderance of the executive branch is clearly manifested in the appointment of the president and members of the Office of the State Consultative Council following the appointment of its president and members to their positions. This is besides the fact that the First Chief Justice of the Court of Cassation (president of the Supreme Judicial Council) and the public prosecutor at the Court of Cassation, as well as the president of the judicial inspection body, inspectors-general, inspectors, president of the State Consultative Council and the government commissioner thereat, president of the Audit Court and the public prosecutor thereat, are all appointed by decrees issued by the Council of Ministers.

A real reform must take place with respect to how the Supreme Judicial Council is formed by limiting the preponderance of the executive branch in the appointment of most of its members. This can be done through the mechanism by which the members arrive to the Council, either by the election of all the judges – not two members only – or through a rotational mechanism set up by law without any interference from the executive branch. The Supreme Judicial Council alone should be vested with the power to select the list of graduates from the Institute for Judges, and their appointment decrees must be issued in accordance therewith. In addition, said Council should be entrusted with the responsibility of judicial empanelling and all judicial appointments and secondments, and that no measure or determination is pursued with respect to a judge without the approval of said Council which alone has the right to distribute the work among the courts. The Supreme Judicial Council must be regarded as the true representative of the Judicial Branch, which watches over its independence, the good conduct of its work and the protection of the integrity of judges; and its president must be commissioned as the head of this branch and a symbol of this title in public celebrations and protocol functions.

The foregoing exemplifies a now pressing and essential need for the embodiment of the Judicial Branch, as represented by the Supreme Judicial Council, which, in reality, means that it works as an actual independent constitutional power that is parallel to, and in cooperation with, the other powers. The Supreme Judicial Council must be made the head of this judicial power, and the president of this Council be made the supreme authority of the judicial branch of government.

With respect to the administrative judiciary, some legalists see a contradiction between its judicial and advisory roles, which limits its independence. This is in addition to the fact that many of its judges are seconded in many instances to work as consultants at ministries and administrations. This raises the question of the extent of independence, even though the answer is that the administrative judge, who gives an advisory opinion, does not take part in ruling on a review in which such advisory opinion was rendered.

With respect to the Audit Court, as an administrative financial court, the question was raised as to whether its connection with the presidency of the Council of Ministers would have an effect on its judicial independence. The answer was that the judges of the Court are independent in the performance of their judicial function, even though some suggest that it should be connected directly with the Chamber of Deputies.

In any event, the executive branch, despite the principle of separation, balance and cooperation of powers, is still the one that appoints the president of the Supreme Judicial

Council, president of the State Consultative Council and president of the Audit Court, which clearly demonstrates that the Lebanese judiciary with all its branches is in some way or another connected with the executive branch. Therefore, an appointment mechanism must be found in order to sever this strong tie between the judicial and executive branches while preserving the principle of cooperation.

The issue of whether the Judicial Branch is an independent constitutional power as in *pouvoir*, or power as in *autorité*, is being debated in Lebanon, as is the case in other countries in which judges are elected directly by the people. However, no elections does not necessarily mean stripping the judiciary of its role as an independent power because it adjudicates in the name of the people without receiving any orders from higher authorities, and because the Constitution and laws have established the principle of independence of the judicial branch in Lebanon (as in many countries) without having judges elected by the people. Indeed, as powers such as the power of the media rise and impose themselves in the modern world without any provision in constitution or law, then it would make more sense that the judiciary be a power by its mere nature of its function, and by constitutional and manifest legal texts.

SECTION FOUR: THE STATE OF AFFAIRS OF JUDGES

1. Appointment of Judges

Ordinary judges are appointed initially from among the graduates of the Institute for Judicial Studies, and may be appointed from non-trainee judges. The Institute for Judicial Studies is one of the institutions of the Ministry of Justice. It ensures the following: prepare trainee judges to assume judicial functions, organize training courses for judicial support agencies, judicial assistants, notaries public, experts and others who are required by the Minister of Justice to take training courses, as well as prepare non-Lebanese judges for assuming judicial responsibilities in their respective countries. The study courses at the Institute offer theoretical and practical studies, writing papers on legal sciences and other subjects which are useful in raising the educational level of judges intellectually and morally to prepare them for assuming their judicial functions. They also offer practical training exercises regularly at various courts where the trainee participates in the deliberations and swears to secrecy in regard thereto in accordance with Article 54 of the Ordinary Judiciary Law No. 150/83.

Admission to the Institute is based on an examination conducted by the Supreme Judicial Council for holders of law degrees. The Council appoints an examinations committee composed of judges who are selected by it specifically for this purpose. In addition to the law degrees, candidates are required to be proficient in the Arabic language and either the French or English language. Prior to the pre-test interview, another interview is scheduled for the candidates by the Supreme Judicial Council, which announces the list of those who will be admitted. At the end of the test, the committee announces its results and communicates them to the Minister of Justice, Supreme Judicial Council and the Institute's board of directors, without any restriction as to the sectarian balance. In terms of the course duration at the Institute, it is three years during which the trainee judges who have passed successfully and have been appointed by decree receive salaries. For those who have Ph.D. degrees in law, they may be appointed as trainee judges without having to take the test upon the approval of the Supreme Judicial Council after it conducts extensive personal interviews with them. After successfully completing the training period, decrees are issued appointing the trainees as incumbent judges, after the Supreme Judicial Council has verified their competence to fill judicial positions.

On the other hand, incumbent judges may be appointed from among lawyers, judicial assistants and holders of law degrees who have passed the test and have been practicing their profession for six years.

Upon the issuance of a decree of appointment as trainee or incumbent judge, that judge must disclose his assets in accordance with the Illicit Gains Law. Similarly, at the end of his term of service, the judge must disclose his assets. However, we should point out that women have been entering the judicial profession for over forty years. The percentage of women who successfully pass the Judges' Institute test is approximately 65%, and women currently occupy one-fourth of the judicial positions (25%). It is expected that the number of women judges will be half the total by the beginning of 2011-2012.

(Kindly refer to the Human Components of the Judicial Body, attached hereto as Annex No. 3)

2. Inspection of Judges

In the Lebanese judiciary, the organization responsible for inspection is the Judicial Inspection Body, which is made up of judges as follows: a president from among the highest-ranks of the judiciary, inspectors-general (four) and inspectors (six), who are appointed by decrees issued by the Council of Ministers on the recommendation of the Minister of Justice. The president and inspectors-general form the body's council, which refers judges to the disciplinary tribunal after investigation. The Judicial Inspection Body assumes the function of overseeing the good administration of justice and the work of the courts, judicial assistants and all the people working therefor, as well as submitting its recommendations for enhancing the work of the judiciary.

3. Disciplining of Judges

Any breach of duties by a judge and any activity that infringes upon honor, integrity and morality, are considered errors punishable by discipline. The judge is referred by a decision issued by the council of the Judicial Inspection Body to the judicial disciplinary tribunal, which is composed of a chamber president from the Court of Cassation as president of the tribunal and a chamber president from the Court of Appeals as member, both of whom are appointed by the president of the Supreme Judicial Council at the beginning of every judicial year. The president of the Judicial Inspection Body, or whomever he delegates from among the inspectors-general, performs the function of the government commissioner at the tribunal. The president of the disciplinary tribunal or any one of its members prepares a report after the *rapporteur* conducts the investigations and hears the sworn testimonies of the concerned party and witnesses, and then submits his report to the tribunal. The hearings are closed and private. Decisions of the disciplinary tribunal may be appealed by the concerned judge or by the president of the Judicial Inspection Body within a period of 15 days before the High Judicial Disciplinary Tribunal, which is composed of the president of the Supreme Judicial Council or his vice-president and four members appointed [*sic*] by the Council. The High Body follows the same aforementioned procedures, and its decisions are not subject to revision and are reported to the Minister.

4. Financial Status of Judges

Upon appointment at the first grade level, an incumbent judge in Lebanon receives a monthly salary of slightly over \$1,000. Then every two years he receives an automatic grade promotion accompanied with a raise that tops at \$22. He continues to be promoted up to the twenty-second grade level, and continues to receive salary raises, even if he becomes an over-the-top judge. The monthly salary of a judge who is at the top is approximately \$3,000, and married judges receive a monthly family allowance for the spouse and children. For ordinary, administrative and financial judges in Lebanon, there is a mutual assistance fund which offers them health, social and educational grants. In fact, the mutual assistance fund is still offering active judges grants equivalent to approximately six annual salaries. These grants are taken in times of shortages in resources. In addition, retired

judges, their widows or unmarried daughters are offered a lump sum grant that is not large in monetary value, but provides security to retired judges similar to their active counterparts, and security to those persons who are legal dependents of the retired judges with respect to their health and education. The fund also offers retired judges a large compensation package based on the years of service at the time of retirement. This compensation package has nothing to do with the end-of-service compensation or pension which the retiree receives from the Ministry of Finance. Judges working outside of Beirut receive a transportation allowance of 10 to 15% of their base salaries assessed retroactively (prior to the modification of ranks and salaries), which is relatively diminutive.

At the start of their professional careers, the incomes of judges are not sufficient if measured against the requirements of running a household. Therefore, the mutual assistance fund has taken the initiative to offer loans depending on the availability of funds or provide a collateral guaranty for judges at any bank when applying for residential loans where the fund tries to get interest rates slightly lower than the market rate.

Nonetheless, the salaries of Lebanese judges are considered reasonable compared to the salaries of administrative employees, even if less than those paid at the Central Bank of Lebanon or at the Development and Reconstruction Council.

The base salary of an incumbent judge at the first grade level is equivalent to five times the minimum wage in Lebanon, not counting the grants offered by the mutual assistance fund. Moreover, Lebanese judges are not allowed to work in any private or public sector job save for the higher education sector and at the rate of 100 hours of teaching per year pursuant to a decision by the Minister of Justice, excluding judges of the Court of Cassation and the State Consultative Council, who receive their authorizations from the First Chief Justice or the President of the Consultative Council, respectively. However, a judge may preside over any of the judicial committees, e.g. the eminent domain committee, and receive compensation therefor.

Furthermore, in the event of secondment of a judge to a job at any public institution for a limited period of time, the judge will receive the compensation set for that particular job in addition to his salary. Judges are not entitled to run in parliamentary elections until after one year of his resignation.

The judges' diligence in their judicial work is monitored legally by the Judicial Inspection Body, which can require a judge under investigation to waive the secrecy privilege with regard to his bank accounts; and the judge has the right of refusal, while assuming full responsibility for the evidentiary consequences thereof.

There is no special budget for the Lebanese judiciary, but rather the expenditures of this judicial body are entered under the budget of the Ministry of Justice in the general winter budget of the State, including the item of salaries and expenditures.

However, it is worth pointing out that the State Consultative Council, as a result of the policy one of its former presidents, has its own budget allocations which it spends through one of its treasurers. This enables the president of the State Consultative Council to disburse the expenditures directly within the legally prescribed limits without having to refer to the accounting department at the Ministry of Justice. This represents a kind of financial independence, which enabled the State Consultative Council, for example, to publish the Administrative Judiciary Magazine in which the Council's decisions and studies in common law are published.

Moreover, it is noteworthy that the expenses of the Audit Court are entered under the chapter for the presidency of the ministers and the budget that is administratively prepared therefor. This also applies to the expenditures of the Shari'a and denominational courts of

the Muslim sect. As for the religious courts for the Christian sect, their special budget comes from their own resources, even if the Lebanese State provides them financial aid in the interest of maintaining the general sectarian balance.

5. Judges' Work Tools

With regard the work tools available to judges, their offices are generally equipped with a telephone, fax and the collection of Lebanese laws. In the Palace of Justice and Judges' Institute in Beirut, there is a major law library which is annually updated especially with Arabic and French law periodicals. At the beginning of the summer of 2004, the Ministry of Justice inaugurated the opening of a modern e-Library, which according to Ministry circles, is unique to the Arab World. It is hoped that the judges will take advantage of it.

At the Ministry of Justice there is an information technology department, which provides the Judicial Inspection Body with statistical data. In addition, the Ministry of Justice has set out to distribute some legal books to judges at the start of every calendar year.

Since 1944, the Ministry of Justice had been publishing a non-monthly law journal called "The Judicial Bulletin" in which rulings and decisions were published. This came to a halt during the events that overtook Lebanon. Then it was back in circulation on an irregular basis during the last decade of the 20th century. The Ministry of Justice intends to re-publish this publication. The Minister of Justice has set up a judicial committee for this purpose.

Judges sometimes use the large library of the Bar Association in Beirut. Moreover, the judges in Tripoli and Liban-Nord [Northern Lebanon] make use of the law library at the Tripoli Bar Association. It is obvious that there are no libraries at either the palaces or courthouses outside Beirut, and judges have to rely on themselves in purchasing these references.

Furthermore, two specialized legal publishing houses intend to offer collections of Lebanese laws and law studies on compact discs which would indeed facilitate access to knowledge for judges and legalists in Lebanon.

However, the computerization of the courts has not yet begun, despite the constant recommendation to do so. But a first step has been taken to that end, which is the computerization of the commercial registry clerks' offices of the Courts of First Instance in Beirut and the capitals of governorates. Issues of the Official Gazette, which was published weekly in Beirut and contained laws, covenants, regulations, decrees, ministerial decisions and judicial notices, were distributed among all the Lebanese judges; yet this distribution for cost-cutting reasons has become limited to judicial departments and clerks' offices as well as some judicial authorities. Nevertheless, Lebanese judges are still able to easily get copies of it.

6. Code of Judicial Ethics

At the present time, there is no special code of judicial ethics in Lebanon. However, the Supreme Judicial Council, the Judicial Inspection Body and the Office of the State Consultative Council have from time to time proceeded to issue guidelines to judges regarding compliance with judicial ethics and conduct, e.g. not to appear in public meetings, especially political ones, to stay away from social functions and celebrations, and avoid making any public statements.

It is also worth pointing out that the Conference of Presidents of Judicial Inspection Bodies in the Arab States held in February of 2004, at the request of the Lebanese Minister of Justice, has put forward a recommendation concerning the drafting of a code of judicial ethics.

7. Execution of Court Judgments

Court judgments rendered by ordinary, Shari'a, denominational and religious courts are executed by the judgment execution departments, each headed by a judge. The execution of judgments takes up blocks of time and incurs costs due to the problems caused by the parties against whom the judgments are being executed during the execution process.

8. Access to Justice and the Costs Thereof

In Lebanon, access to justice is wide open to all Lebanese and others. The law does not impose anything on foreigners except posting a bond for costs and fees in criminal cases.

It appears that the number and distribution of courts among the various Lebanese governorates is sufficient. And the number of courts can be increased within the cadre earmarked therefor by a decree issued by the Council of Ministers on the recommendation of the Minister of Justice, which is a relatively easy matter.

In terms of the cost of litigation, it is relatively high. There are fixed fees which are paid in many of the cases and are not much (e.g., summary cases, criminal cases, etc.); however, the other associated fees are high and total 2.5% of the amount in litigation, plus fees for the judges' mutual assistance fund and the lawyers' retirement fund. This makes the cost of litigation in Lebanon among the highest with respect to many other countries.

Nonetheless, the right to a fair trial, even by European and international standards, is guaranteed in Lebanon. The Lebanese judiciary, particularly the sitting judiciary, i.e. the adjudicating courts, is founded on deep-rooted traditions that generally were not compromised by the tragic events experienced by Lebanon, as cruel as they were. Moreover, the right of defense is guaranteed completely.

Trials take place in accordance with the principle that trial proceedings and verdict pronouncements shall be open and public. There is no discrimination between Lebanese, residents and foreigners; and nationalities, ethnicities, and social or financial statuses in principle have no bearing, but naturally those who are financially capable are able to strengthen their defense cases by retaining top-level attorneys. This is something not unique to Lebanon but is part of reality and does not as a consequence have any effect on the judge entrusted with making sure that justice is served.

All Lebanese citizens and others have easy access to legal and judicial information, as all the laws are publicly available in the Official Gazette and the media.

In addition, the Information Technology Center at the Ministry of Justice is working on documenting judicial rulings, which will facilitate access thereto in the future by creating a legal information bank. Moreover, the e-Library that was recently created by the Ministry of Justice is intended to allow judges in the future to have access to it from their offices or even their homes.

The many human rights organizations that exist in Lebanon focus their attention on the judiciary in general and issue statements concerning the judicial state of affairs while expressing their views freely. Similarly, the two Bar Associations in Beirut and Tripoli are doing the same and issuing two law journals, the first of which continues to be published quarterly, called "*Al-Adl*" [Justice] and the second is published on an irregular basis by the Tripoli Bar, called "*Al-Muhamaah*" [The Legal Profession].

SECTION FIVE: THE MAIN PROBLEMS FACING THE LEBANESE JUDICIARY

I. Caseload Congestion

According to the statistical charts released by the Information Technology Center at the Ministry of Justice, which are submitted to the Judicial Inspection Body, the number of cases that were filed with the ordinary courts in judicial year 2002-2003, i.e. beginning on 1/10/2002 and ending on 30/9/2003, was 147,848 various civil and criminal cases. The number of cases decided that year was 130,553 cases from the total number of cases pending before the ordinary courts; while the number of cases pending was 378,448 rounded, of which approximately 100,000 cases were not prosecuted in the practical sense by the concerned parties, or lapsed by statute of limitations for not being heard by the courts during the legally prescribed time period, or were criminal cases that were dropped by statute of limitations for not being heard by the courts during the legally prescribed time period. It is clear from these same statistical data that in comparison with the previous judicial year ending on 30/9/2002 the number of cases filed was 144,116, while the number of cases decided from among the total caseload at the ordinary courts was 126,270 cases, and the number of cases pending and backlogged at the ordinary courts was 360,272, noting that the same applies to cases omitted.

The percentage of case resolution in 2002/2003 was 88.20%, whereas the percentage in judicial year 2001/2002 was 87.62%, bearing in mind that these figures do not include complaints filed with the office of public prosecution at the Court of Cassation and the offices of appellate public prosecution, which were in the thousands and are not entered in case dockets until a prosecution process is initiated before the investigating magistracy or the courts of jurisdiction.

These figures, including the percentage of case resolution, reflect the magnitude of the caseload that is burdening Lebanon as in many other countries, which is the cause for delays in resolving judicial disputes. This raises sharp criticism from the ranks of lawyers, citizens, political authorities and civil society organizations, not to mention the judicial review authorities themselves.

What made things worse is the increase in caseload at the chambers of the Court of Cassation, especially the civil chamber where the number of appeals for cassation review doubled within a period of three years, which is currently getting close to 5,000 cases. It is to be noted, however, that the number of appeals decided in the civil chambers of the Court of Cassation particularly is much lower than the total number of cases filed, which makes the problem of caseload congestion much worse.

The same situation exists at the State Consultation Council, where delays in deciding administrative reviews have become the norm. This results in cases being put on hold for many years before being decided, despite the efforts of the relevant review authorities.

Furthermore, the Audit Court is also suffering from a sort of congestion in its workload, which causes huge delays in ruling on the files under review.

These delays in deciding cases lead to a situation of justice not being served, which is almost the same as the absence of justice. This is in addition to their negative implications on the national peace within the society, the investments in the country, and the feeling that the justice authority is out of commission or at least ineffective.

It would be superfluous to just keep talking about the reasons of this judicial congestion; and there is nothing to gain by attributing them to the Lebanese events of 1975-1990 which ended about 15 years ago, when the judiciary came to a halt and the courts ceased to operate. It is possible to attribute the reasons to the shortage in the number of judges and

judicial assistants, the Civil and Criminal Procedure Codes (which, due to the many challenges raised pursuant thereto, have led to delays in the judicial process instead of protecting the litigants), the methods of serving notices, the procedures resorted to by attorneys, the delays caused by court experts, receivers and others, the mentalities and intellects of litigants who are accustomed to a state of lawlessness, or the judicial summer vacations. So whether it is one or all of the above reasons, or whether there are other factors, they all lead to judicial overload. The reality of the crisis at hand necessitates finding solutions, whether by filling the shortage of judges and assistants according to the cadre, and expanding this cadre, or facilitating the methods of serving notices, simplifying the Codes, being stricter with court experts and not allowing attorneys to extend the length of trials. However, the foundation to solving the problems still remains with the judges' self-discipline by being productive and effective and not too routine-oriented in performing their judicial functions.

With respect to the caseload congestion at the Court of Cassation, the way to deal with it boils down to adopting a series of regulatory and legislative procedures, among which are increasing the number of justices, raising the minimum budget allocation for the Court of Cassation from 6 to 30 million Lebanese liras, limiting the grounds on which appeals for cassation can be brought and the matters appealable by cassation, and whatever other solutions that are currently under review and consideration.

Moreover, the Criminal Procedure Code must be amended in a manner that simultaneously takes into consideration the rights of the defense (the ability to present legal argument) and the speedy resolution of criminal cases which guarantees the rights of all parties.

II. Other Problems

If we wanted to summarize the main problems of the Lebanese judiciary, we would list only the following headings without going into much detail for which time and space do not allow:

- A. Development of the Institute for Judicial Studies to become a capable and effective in developing and preparing trainee judges, and rehabilitating judges, assistants, experts, notaries public and others.
- B. Delays in litigation at both the ordinary and administrative judiciaries; work to speed up the process of case resolution by applying the Code of Procedure with extreme precision; distribution of judges among the centers of congestion; and modification of the notice service process, especially notices to attorneys.
- C. Reinforce the cadre of judicial support staff by filling the severe shortage (there are 1,080 from originally 2,200 approximately), and provide regular training to the support staff.
- D. Computerize the administration of justice and modernize the courts, as the manual methods are still in prevalence (the writing of legal grounds, court reporting, issuance of rulings, and various paperwork).
- E. Create departments in all the capitals of the governorates and the major judicial districts for process servers in charge of serving judicial papers, and create a mechanism for serving notices to attorneys at the location of the Bar Association.
- F. Calculate the allowance paid to judges for transportation to areas outside Beirut based on their current salaries.

- G. Restore the special fee paid to the judges of the Judicial Inspection Body in return for their taking authorized leaves to work at the Body and thus are unable to chair any committees or other judicial bodies that pay them compensation commensurate with their work therefor.
- H. Amend the Criminal Procedure Code in order to limit challenges, lengthy investigations, and avoid the many loopholes inherent therein in light of the experience of the last four years in the application thereof.
- I. Enhance the role of the Supreme Judicial Council, as well as the Office of the State Consultative Council and the Office of the Audit Court, such that anything having to do with the judiciary, judges, judicial support staff must be approved by said Council; and work towards amending the legislation currently in effect such that the Council becomes the actual guardian of all matters related to the judiciary. At the same time, modify the composition of the Council in such a manner that the appointments of its members are effected periodically and automatically, and the representation of the first presidents of the governorate courts of appeals is reasonable to enable them to view the immediate needs and the state of affairs of the courts under their presidencies.

SECTION SIX: REFORM PLANS

I. Judicial Reform Plans

A. Amendment of the Ordinary Judiciary Law

The Ordinary Judiciary Law No. 150/83 was amended by Law No. 389/2001 enacted on 21/12/2001. The amendment focused particularly on Article 2 thereof regarding the structure of the Supreme Judicial Council, requiring the election of two of its members from among the chamber presidents of the Court of Cassation by the justices of said Court.

Moreover, the amendment dealt with Article 4 of the Ordinary Judiciary Law whereby the judicial empanelling that is put in place by the Supreme Judicial Council does not become in effect until it is approved by the Minister of Justice. In the event of a disagreement, a joint session is held and if the disagreement continues the Council will re-examine and decide the matter. Its decision shall pass by a majority of seven members and will be final and binding.

Furthermore, Articles 85 and 87 of the Ordinary Judiciary Law were amended in such a manner that made it possible to appeal the decisions of the judicial disciplinary tribunal before the High Judicial Disciplinary Body.

In addition, Article 95 of the same law was amended with regard to the powers of the Supreme Judicial Council such that at the conclusion of every disciplinary prosecution a general report shall be issued on the competence of the incumbent judge on the basis of a well-reasoned decision. Such decision shall be issued upon the recommendation of the Judicial Inspection Body and based on the testimony of the concerned judge; and shall be issued by a majority vote of eight of its members. These decisions of the Supreme Judicial Council shall not be subject to any form of revision including motions to quash for overstepping authority.

Moreover, Article 98 of the Ordinary Judiciary Law was amended in such a manner that the Judicial Inspection Body can now direct an admonition to judges, as necessary, and make recommendations to the Supreme Judicial Council as to the appropriate measure to be taken against the judge.

B. Plans Under Implementation:

Among the plans under implementation is the reform of the Institute for Judicial Studies, upon the urging of the Supreme Judicial Council and the Judicial Inspection Body. In the winter of 2004, the Ministry of Justice responded, and a delegation from the French Institute for Judicial Studies arrived, headed by its director, and prepared a detailed report after listening to the Minister, the members of the judiciary and the Institute's board of directors. The reforms that were proposed focused particularly on the full-time appointment of the head of the Institute, appointment of a managing director therefor who does not necessarily have to be a judge, expanding the administrative cadre of the Institute, modifying the practical and theoretical course programs, broadening its scope of work to include developing judges and providing continuous training for them, the support staff, experts and others, and securing a special building for the Institute. This is in addition to other proposals that are supposed to be decided on legally within the next judicial year.

C. Among the plans proposed by the Ministry of Justice by agreement with the European Union and were not implemented:

The project regarding the establishment of a model commercial court in Tripoli in Liban-Nord. The reason was that the current Minister of Justice was not convinced of the feasibility of the project.

D. Ten representatives, including the heads of previous parliaments and governments, proposed a bill for the judicial branch, which aims particularly at establishing a supreme council for the ordinary, administrative and financial judiciaries, entrusted with oversight over the affairs of the entire independent judicial branch, to be given the exclusive right of judicial empanelling, to achieve administrative and financial independence for the judiciary, and to clearly define the relationship between the Minister of Justice and the public prosecution. However, despite the extensive deliberations on this bill in the Chamber of Deputies for over two years, they have not produced any positive result.

E. The implementation of plans in recent years to enhance the Audit Court's work

The modernization and enhancement of the Audit Court's work was necessitated by the circumstances of the war and the breakdown effect it had on the state of affairs of public administration in general and on the situation of the Audit Court in particular.

The cadre of administrative judges and staff declined noticeably during the war, and the cadre of auditors that was created by virtue of Law No. 82/83 was not staffed with human resources until 1995. Moreover, the accounts that are subject to Audit Court review were not prepared by specialized staff, and thus were not sent to the Court for a financial audit as stipulated in Decree No. 3489/65.

All of this burdened the Audit Court with the task of instituting some reforms and administrative procedures to promote the Court, enhance its work and increase its effectiveness in cooperation with certain sponsoring international organizations. The most important of these reforms are the following:

1. Determine the commencement of the Audit Court's review of the accounts.

Due to the difficulties in preparing and forwarding accounts to the Audit Court, which were all a result of the war from 1975-1990, Law No. 393/5 was enacted providing for the exemption of all accounts prior to 1991 from an Audit Court review.

2. Amend the Law organizing the Audit Court and some of the provisions that pertain to the work of the Audit Court.

The enhancement of the Audit Court's work requires first and foremost an amendment and update of the laws concerned therewith, in view of the international commercial developments in this regard. It also requires amending the legal and regulatory provisions directly associated with the work of the Court.

In implementation thereof, several committees were formed consisting of judges, auditors and controllers from the Audit Court, and representatives from the office of the Minister of State for Administrative Development Affairs. After several sessions of these committees, they arrived at a proposal to amend the following provisions:

- Propose an amendment to a law organizing the Audit Court
- Propose an amendment to Decree No. 3489/65 concerning the submission of accounts to the Audit Court.
- Propose an amendment to Decree No. 13/635 concerning the submission of the accounts of associations and agencies receiving support from the State to the Audit Court.
- Propose an amendment to Decree No. 3489/65 concerning the submission of accounts to the Audit Court.
- Propose a draft decree concerning the submission of the accounts of public institutions to the Audit Court.
- Propose a draft uniform decree concerning the rules of municipal accounting.
- Propose a draft uniform decree concerning the general circularization of municipal accounts.
- Propose a draft uniform decree concerning the submission of municipal accounts to the Audit Court.
- Propose a draft uniform decision concerning the rules of preparation of municipal budgets.
- Propose a plan for the training of municipal employees.

It should be pointed out that all the drafts of the above legal texts have been sent to the government by the Office of the Minister of State for Administrative Development Affairs two years ago, and they have yet to be ratified.

3. Computerizing the work of the Audit Court

The Audit Court realized the importance of computerizing its activities. Thus, beginning from 1995, it has implemented some activities and programs through the Internet at all its offices, and has furnished a large section of these offices with computers as shown below:

- A flowchart software to build a kind of Data Base [sic] containing the most important statements issued by the Court in the area of its review of employees and in the area of advance administrative review and rendering opinion.
- Software for creating personal files for administrative employees.
- Special program for performing advance reviews.
- Purchase a program that contains the laws and decrees published in the Official Gazette.
- Create a website for the Court on the Internet.
- Provide a number of computers (around 750) to the organization.

In order to operate this equipment and software, and maintain the administration and development thereof, the Court had to do the following:

- Train judges and staff on the use of computers and the suggested software.

- Create an information technology department to employ computer management and programming specialists. This was implemented by virtue of Decree No. 7374 dated 8/2/2002.

It should be noted that this department to-date has not been staffed with back-up employees. Currently the work of information management and development is being done by one person with a Master's degree in information technology management.

4. Offer a training course for auditors.

In principle, the purpose of this process is to achieve efficient and effective performance and job execution.

II. Relationship Between the Judiciary and Administrative Reform

It does not appear that the Lebanese judiciary has any direct relationship with the administrative reform plans, except through the advisory role of the State Consultative Council and the process of judicial review that it exercises over the administration in its capacity as the judicial authority responsible for reviewing appeals brought against administrative decisions in matters involving non-capacity and non-jurisdiction, *pro forma* errors and overstepping authority in general.

In terms of ordinary judicial review of the administration, it is restricted to the two cases of *Emprise et voie de fait* [sic] expropriation and assault and battery.

Furthermore, the Audit Court, through its financial and judicial functions, audits public administrations and institutions.

III. Relationship Between the Judiciary and Economic Development

The relationship between the judiciary and economic development appears strong, as there is an increasing sense in Lebanon within and outside the judiciary, and particularly within political and economic circles, that without a judiciary that is independent, fair, transparent, trustworthy, productive and speedy, there would neither be economic development nor an influx of appreciable foreign investments.

Therefore, what reinforces trust in the Lebanese judiciary is the judges' own sense of the importance of their fairness and independence and their upholding the tradition of the Lebanese judiciary as the protector of civil liberties and basic rights, which mandates their maintaining a high moral integrity and conduct. This would indeed encourage optimism for a brighter future for a Lebanese judiciary that is financially secure and morally inviolable.

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.

Annex No. 1

Legal Texts Concerned with the Judiciary

Title of Legal Text	Type of Text	Text No.	Date
Lebanese Constitution	Constitution	N/A	23/5/1926
Organization of the Judiciary	Law	7855	16/10/1961
Law concerning the Ordinary Judiciary	Legislative Decree	150	16/9/1983
Court Fees	Law	N/A	10/10/1950
Establishment of the Constitutional Council	Law	250	14/7/1993
Organization of the Ministry of Justice	Legislative Decree	151	16/9/1983
Organization of the Druse Denominational Courts	Law	3473	5/3/1960
Law concerning the Organization of the Sunni and Jaafari Shari'a Courts	Law	N/A	16/7/1962
Law concerning the Personal Status of the Druse Sect	Law	N/A	24/2/1948
State Consultative Council System	Law	10434	14/6/1975
The Audit Court	Legislative Decree	82	16/9/1983
Military Courts	Law	24	13/4/1968
Termination of a Special Security Court	Decree	603	19/5/1983

- The Lebanese Constitution, which was promulgated on 23/5/1926, states in Article Twenty thereof that the Judicial Branch shall be vested in the courts of all levels and jurisdiction within a system to be established by law, pursuant to which the necessary safeguards for judges and litigants shall be protected. The law shall determine judicial guarantees and the limits thereof. Judges shall be independent in the performance of their duties. Decisions and rulings shall be issued in all the courts, and executed in the name of the Lebanese people. The Constitution did not contain any detailed provisions concerning the Judicial Branch, as it did with respect to the Executive and Legislative Branches, leaving that to the positive laws.

In addition, the Constitution has been amended numerous times since 1926. The last and most important constitutional amendment was in 1990 after the bloody events. This amendment introduced a preamble to the Constitution

that stated that the system shall be founded on the principle of separation, balance and cooperation of the powers of government. This preamble also affirmed that Lebanon is a founding and active member of the United Nations Organization, and is committed to its charters and the Universal Declaration of Human Rights. The State shall embody these principles in all fields and areas without exception. The Constitutional amendment also updated Article 19 to reflect the establishment of a Constitutional Council to review the constitutionality of laws, which is also responsible for deciding appeals brought with regard to parliamentary elections and thus it constitutes a political judiciary. Moreover, the Lebanese Constitution states in Article 80 thereof that the supreme council for the impeachment of presidents and ministers shall be composed of seven representatives elected by the Chamber of Deputies from among the highest-ranking Lebanese judges. Such council shall convene under the presidency of the highest ranking judge. Decisions of incrimination shall be issued by a majority of ten votes in the case of high treason with regard to the President of the Republic and the ministers, and in the event of any ministerial breach of duty as a result thereof. This shall take place after an official indictment is handed down by the Chamber of Deputies by a two-thirds majority of its members.

- In addition to the Constitution, there are international conventions to which Lebanon is a party, at the fore of which is the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The former, in Article 10 thereof, and the latter in Article 14 thereof, state that every person shall have the right to a fair and public trial before an independent competent court established by law, and the existence of an independent judiciary is necessary for all persons to exercise this right. Furthermore, Article 2 of the Civil Procedure Code states the following: "The Courts must comply with the principle of rule precedence," i.e. to apply the legal text of the highest precedence. This allowed the courts to apply the provisions of the international conventions ratified by Lebanon, and thereupon the basic principles of judicial independence adopted by the United Nations Conference held in Milan on 26/8 and 6/9/1985, and the partnership agreement between Lebanon and the European Republic as sanctioned by Law No. 474 on 12/12/2002.

The positive laws concerning the judiciary are numerous. At the forefront of these laws are the Civil Procedure Code and the Ordinary Judiciary Law (as shown above), the State Consultative Council System (administrative judiciary), and Legislative Decree No. 82 of 16/9/1983 concerning the organization of the Audit Court (financial judiciary).

To that end, there is Law No. 24/68 enacted on 13/4/1968 concerning the military judiciary. In addition, there are the laws concerning the Shari'a, denominational and religious courts, which will be explained further in the course of this study.

Annex No. 3

The Human Component of the Lebanese Judiciary

As of the first of July 2004, the number of Lebanese court judges was 395 from a total number of 531 judges within the cadre, i.e. there is an acute shortage in the number of court judges. At the Institute for Judicial Studies there are approximately 100 judges enrolled, from whom 42 judges will be added to the ranks of the active judiciary at the beginning of October 2004. There are examinations conducted for admission to the Judicial Institute for the purpose of selecting trainee judges to spend three years at the Institute in theoretical and practical studies, as we will see in our review of the Institute for Judicial Studies. In the Spring of 2004, approximately 30 candidates passed the admission examination, most of whom were women. The number of administrative judges is approximately 40 judges from a total original number of 64 within the cadre, which also indicates a shortage.

This is in addition to the fact that the State Consultative Council conducts examinations for admission to the general section of said Institute. Eight candidates passed the examination in 2004. As for the number of retired judges, there are approximately 120 judges still alive.

It is worth mentioning that the majority of court judges are newcomer judges who are relatively young in age (between 25 and 35 years of age), who have not spent ten years in their positions as actual judges, i.e. at the lower ranks of the judiciary. Their number is approximately half the total number of judges. This situation indicates that most of the Lebanese judges are from among the youth, which is a positive sign, but poses a problem in terms of the structure and composition of the courts of appeals and cassation, as it represents an acute shortage in the middle- and high-level ranks of the Lebanese judiciary.

Every year, nearly ten judges leave the Lebanese judiciary for reasons of retirement, resignation or death. The Court Chart attached to the Ordinary Judiciary Law shows the distribution of first-tier courts among the Lebanese governorates as follows:

	First-Instance Chambers	Number of Divisions – Single Judges
-- Governorate of Beirut	10 with 33 judges	55 single judges
-- Governorate of Liban-Nord (Tripoli)	4 with 14 judges	26 single judges
-- Governorate of Mont- Liban (Baabda)	6 with 20 judges	36 single judges
-- Governorate of Liban-Sud (Sidon)	2 with 7 judges	11 single judges
-- Governorate of Nabatiye (Nabatiye)	1 with 4 judges	7 single judges
-- Governorate of Beqaa (Zahle)	3 with 10 judges	17 single judges

The Courts of Appeals are as follows:

-- Governorate of Beirut: 15 chambers, with 15 presidents and 30 justices, and 5 additional justices, 1 public prosecutor, 6 solicitors-general, 1 chief investigating magistrate and 6 investigating magistrates. Their total number is 64.

-- Governorate of Liban-Nord: 7 appellate chambers, with 7 presidents and 14 justices, and 2 additional justices, 1 public prosecutor, 4 solicitors-general, 1 chief investigating magistrate and 4 investigating magistrates. Their total number is 33.

-- Governorate of Mont-Liban: 12 appellate chambers, with 12 presidents and 24 justices, and 3 additional justices, 1 public prosecutor, 6 solicitors-general, 1 chief investigating magistrate and 6 investigating magistrates. Their total number is 53.

-- Governorate of Liban-Sud: 3 appellate chambers, with 3 presidents and 6 justices, and 1 additional justice, 1 public prosecutor, 2 solicitors-general, 1 chief investigating magistrate and 2 investigating magistrates. Their total number is 16.

-- Governorate of Beqaa: 4 chambers, with 4 presidents and 8 justices, and 2 additional justices, 1 public prosecutor, 3 solicitors-general, 1 chief investigating magistrate and 4 investigating magistrates. Their total number is 23.

-- Governorate of Nabatiye: 2 chambers, with 2 presidents and 4 justices, and 1 additional justice, 1 public prosecutor, 1 solicitor-general, 1 chief investigating magistrate and 1 investigating magistrate. Their total number is 11.

With respect to the cadre of judges at the Court of Cassation (located in Beirut), the number of chambers is 11, with a First Chief Justice of the Court of Cassation (President of the Supreme Judicial Council), 11 chamber presidents, 26 justices, 1 public prosecutor and 7 solicitors-general. The total number of judges at the Court of Cassation (according to the cadre) is 46.

The total number of judges at the military courts is 13.

The total number of judges at the Ministry of Justice, according to the cadre, is 35 judges affiliated with the Minister, and 5 affiliated with the director-general, the litigation body, and the legislation and consultation body, while the number of judges at the judicial inspection body is 10 including its president.

This means that the total number of Lebanese judges, according to the cadre, is 531. However, the number of judges in the cadre is not complete due to the aforementioned shortage in the number of judges, which, in October 2004, will become approximately 435, i.e. a decrease of approximately 100 judges that naturally will have an effect on the judicial work.

According to the cadre, the number of judicial assistants, clerks, managers and bailiffs working in judicial circles is 2,276 employees. However, the actual number of active employees is around 1,080, i.e. an acute shortage in the number of judicial assistants, which, in turn, affects the judicial workflow.

The number of cases pending before the Lebanese ordinary courts is approximately 387,000 cases of all kinds, criminal and civil. Naturally, this does not include cases brought before the Shari'a, denominational and religious courts. However, from the practical sense, approximately 100,000 of these cases are dropped either because the amounts in question have become so diminutive or as a result of the statute of limitations with respect to many of the undecided criminal cases.

The number of cases in the State Consultative Council (administrative judiciary) is around 400.

The number of active lawyers registered in the Beirut Bar is approximately 7,000, among whom half are actual legal practitioners. The number of active lawyers registered with the Tripoli Bar is around 700, among whom 400 are in actual practice.

Annex No. 4

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