



“Promoting the Rule of Law and Integrity in the Arab Countries” Project

Regional Conference On The State of the Judiciary In Lebanon, Jordan, Egypt and Morocco

Introductory paper

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First: Project Background

It is rather difficult for Arab countries to overcome the intense crises which they are going through, unless a complete reform happens leading them onto the path of democratic change. Arab voices have already reclaimed a reform, and some initiatives also agreed on the need to reinforce the Rule of Law as a support for the Good Governance which should achieve development and provide the good living conditions for its citizens. This would allow them to benefit from the rights and liberties stipulated in the International Declaration of Human Rights, the International Conventions and the Constitutions of some Arab countries.

For the purpose of achieving the objectives which it was grounded on, the Arab Center for the Development of the Rule of Law and Integrity (ACRLI) found it essential to carry out a research project entitled “Promoting the Rule of Law and Integrity in the Arab Countries”, funded by the United Nations Developmental Program (UNPD – POGAR), and examining three primary pillars to reinforce of the Rule of law and integrity, which are: Participation/ Parliament, the Judiciary and the Media. Participation is the foundation of democratic systems, and it ought to find its way in parliament which generates its power from the people, entrusted with the legislative authority which forms the cornerstone in the State of law. As for the judiciary, it is no doubt crucial to the future of justice, and consequently, to securing stability and the conditions of economic prosperity. The State of law cannot exist unless there is a fair, effective and integral Judiciary. And the Media plays a major role in settling the Rule of Law and Integrity, through its efforts to form a general public opinion which pursues the administration of the public matter and the promulgation of the truth, and highlights the government performance for the purpose of reforming.

The project on the Rule of Law and Integrity, in its three Pillars, encompasses four Arab countries: Lebanon, Jordan, Egypt and Morocco, and also Iraq but in a specific frame discussing (1) Federalism as a solution to the Iraqi crisis, and (2) the Judicial authorities, specifically in their attempt to curb the relation between the Federal authority and autonomous authorities, owing to its importance in the Federal System as for the reinforcement of the Rule of Law

Second: Judiciary Pillar Background Selection

It is with the rise of the enlightenment era of and its philosophers Locke and Hume, that the idea of an independent country on its own soil was born, and with it, the judiciary appeared in its present form as a power wide-awake for the application of the social will which is illustrated by the elected power, i.e. the representatives of the nation. Later, Montesquieu developed this nation theory suggesting three separate but integral powers of which the judiciary is one.

Since then, a new era of judicial development emerged in the world, especially after the French Revolution’s Declaration of the Charter of Human and citizen’s Rights, to the declaration of the United Nations’ Charter of Human Rights which clearly stated the fundamental right of each person and the full equality as to his appearance before an independent and impartial court for a fair and public trial, in an effort to specify his rights and responsibilities, or to make him sign any retribution.

Frequent European and regional announcements worldwide helped to develop this approach until the United Nations General Assembly acknowledged, on 29th November 1985, the fundamental principles concerning the judiciary’s independence, which were adopted by the UN Conference, held in Milan between 26th August and 6th September 1985. Arabic nations in general were not secluded from it owing to the fact that since the middle of the nineteenth century, some Arabic communities have started to get influenced by the democratic approach of the judiciary which had been considered for centuries an expansion of the autocratic power generating its strength and efficiency from the Sultan despite it being based upon a divine enactment.

Nevertheless, despite the adoption of provisions which emphasize the separation of powers and the respect of the judicial power's independence, the obstruction of the political life in Arabic societies in general, and the disorder of the constitutional institutions' performance had their negative implications on the government with regard to independence, efficiency, integrity or competence. As a result, the judicial power proved to be dependent on the legislative power, the strongest of them all. And due to the absence of the political will, the reforming attempts came divided and modest.

Yet we see some attempts for a serious reform and development, influenced by the essence of the era, the receptiveness to globalization and the moves of some groups from the civil society calling for development and more public liberties, and consequently, the safeguarding of the judiciary's independence to ensure that it is the only way to guarantee these fundamental liberties and equality between citizens.

This comparative report on the state of the judiciary in Lebanon, Jordan, Egypt and Morocco, demonstrates the constitutional and legal grounds for the judicial systems in these countries. It also shows the weaknesses in the legal, political and societal guarantees especially in their practical approaches, which afflict these systems alternately, and form obstacles to their radical development stretching out far beyond the embellishing attempts currently made. We shall conclude that without a true political will, there is no development in the judicial systems. Otherwise, the most effective method is to start with the base so as to intensify both legal and social awareness by civil society's means and mediators.

Third: Project Implementation Strategy

Experts in the Arab Center for the Development of the Rule of Law and Integrity (ACRLI) proceeded to set the methodologies necessary for the writing of reports, the primary principles which should exist in the parliament, the judiciary and the media for the reinforcement of the rule of law and integrity, and the secondary principles which assess the real application of the primary principle. And a set of indicators have also been placed to assess the real application of the principle, so as to have the criteria for assessment. These issues have been discussed by a group of experts in workshops before their adoption in their final version.

The center has entrusted a group of well known competent experts, to prepare reports, on the countries concerned, on the three pillars. These reports were discussed in National Workshops with the participation of parliamentarians, legal experts, judges, academics and civil society representatives aiming for the development of these reports, to elaborate its ideas raised, and to set of reforms strategies. Experts from the Center have also prepared Comparative Reports, based upon the National Reports in the three Pillars, and commented on them, for a thorough examination and for the participation in drawing Reform Policies.

Fourth: Regional Conference Background

The efforts made in writing the reports, the facts acknowledged, and the suggestions laid down for the reform remain without any practical benefit unless they are paired up with a work plan based on these reports, and illustrated, and are transformed into programs to be implemented. Reforming the present situation requires dealing with its facts, and planning policies aiming at developing it in the right direction, since reform is a long and difficult process full of obstacles and hindrances which should be dealt with realism and in a systematic way, in the context of well planned and worked-out plans that will be implemented through the will of change and development for a better future.

The fundamental topics that will be presented in the meeting are:

- The Principles and Methodologies of the National Reports on the State of Judiciary in Lebanon, Jordan, Egypt and Morocco.
- The National reports on the State of Judiciary in Lebanon, Jordan, Egypt and Morocco.
- The Comparative Report on the State of Judiciary in Lebanon, Jordan, Egypt and Morocco.
- The Comments on the Comparative Report on the State of Judiciary in Lebanon, Jordan, Egypt and Morocco.
- The Reforming Policies and the work plan.

The fundamental purpose of holding the regional conference is to present the overall state of three key democratic institutions- the Judiciary, the Media and the Parliament, to analyze the findings, to exchange views and set a rational work plan in an effort to put a reform strategy to be executed as a first step towards the establishing of the Rule of Law, Integrity and Good Governance.